HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-21599-2024
Decided on 01.05.2024

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Vaishali Chauhan ... Petitioner

VS.

UT Chandigarh & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Deepak Kundu, Advocate
Mr. Ishant Negi, Advocate
for the petitioner

Mr. Rajiv Vij, Addl. PP, UT Chandigarh

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Sandeep Moudgil, J.

(1). The petitioner has filed the instant petition under Section 482 CrPC for quashing of the FIR No.0090 dated 24.11.2023 under Sections 380 IPC, registered at Police Station IT Park, District Chandigarh (Sections 451/411 IPC added later on) and subsequent proceedings arising therefrom.

(2). Learned counsel for the petitioner contends that the registration of the FIR qua the petitioner is glaring abuse of the process of law as the whole dispute is between the complainant and her son-in-law and no criminal offence is meted out against the present petitioner. The police official have wrongly added the offences & limited the investigation, only with a view to pressurize the petitioner and the reason to do the same is best known to them. It is submitted that as per the final report (Annexure P6), it is mentioned that during the investigation, accused Vikas deposed that he had mortgaged two gold mangalsutras pendent at Mannapuram Finance Ltd. Manimajra, to the petitioner-Vaishali Chauhan without KYC Verification and bill or address and thereafter, after issuance of notice under Section 91 CrPC to the Manager, Manappuram

Finance Limited, Manimajra, Chandigarh on 25.11.2023 for providing the 2 Gold articles for the investigation and on the same day, the investigating officer arrested the petitioner from the Bank

(3). It is further contended that the respondents have failed to follow due procedure prescribed under Section 91 CrPC and without verifying Petitioner's involvement in the alleged offence, wherein she has been arrested inasmuch as the no notice was served to her and neither any specified time nor date was given to her to produce the pledged gold article. Section 91 CrPC is reproduced hereunder:-

> ***"91. Summons to produce document or other thing.***
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> *(1)Whenever any Court or any officer-in-charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.*
>
> *(2)Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.*
>
> *(3)Nothing in this section shall be deemed –*
>
> > *(a)to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Banker's Books Evidence Act, 1891(13 of 1891); or*

> *(b)to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegram authority."*

(4). Learned counsel would submit that the essential ingredients of Section 411 IPC offence are not at all made out as there is no material on record has been adduced to show that the petitioner had knowledge that the gold items pledged were actually stolen articles and therefore, it is argued that unless the knowledge of the petitioner on the nature of the articles sold by them is established, the FIR under Section 411 of the IPC cannot be sustained in law.

(5). On the other hand, learned counsel for UT Chandigarh vehemently contends that no receipt was issued while receiving the gold items/articles and neither the petitioner was asked to produce any documents/bills to establish his ownership over the gold items sought to be pledged. Further it is argued that the petitioner could not prove his ownership/possession over the gold articles viz. any receipt to show as to how the gold articles were in her possession. The submissions made by learned counsel for the petitioner is liable to be refuted and further proves involvement of the petitioner in the theft of gold items in view of the fact that the gold items which was pledged with the Bank was found to be the stolen items and therefore, the petitioner is liable to be prosecuted under Section 411 IPC.

(6). Heard learned counsel for the parties and gone through the record.

(7). The allegation against the petitioner is that she, being an Officer with the Mannapuram Finance Ltd., kept the gold articles in her personal possession without issuing any receipt, without verifying the ownership and without verifying the address of the accused Vikash.

(8). In this regard, the petitioner has placed on record Annexure P4 i.e. copy of previous loans availed by the accused Vikas at different times which clearly shows that the accused Vikas had pledged gold loan on 06.04.2022 for an amount of Rs.8000/- and again on 13.04.2022 for an amount of Rs.9000/- and continued to avail such loans on 11.04.2022, 27.08.2022, 15.12.2022, 21.11.2023 for different amounts to the tune of maximum of Rs.42130/- which shows that accused Vikash was a regular customer of the Finance Company at Pipalwala Town, Manimajra Branch. His KYC details have also been annexed as Annexure P10. On 21.11.2023, the accused Vikas again approached the branch at Pipliwala Town, Manimajra for pledging gold articles i.e. two lockets weighing 10.30 grams and after checking the genuineness of the gold, the Branch Head granted him the loan of Rs. 30000/- against the due receipt (Annexure P5) of the gold as per the applicable rules of RBI.

(9). In this case, although recovery of items was made, the essential ingredient of knowledge of the petitioner that such goods are stolen property needs to be proved. Reliance solely upon the disclosure statement of accused Vikas will not otherwise be clinching for the purpose of Section 411 IPC. Section 411 IPC reads as under:-

> *"**411. Dishonestly receiving stolen property**.– Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

(10). A perusal of the above provision would show that to make a case under Section 411, it needs to be proved that there were element of (i) dishonestly; (ii) the beneficiary was in receipt or retained any stolen property; (iii) knowledge of such theft being carried out; or (iv) having reason to believe the same to be stolen property.

(11). "Dishonestly" is defined under Section 24 of the IPC as, "*Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly"*. The key ingredient for a crime is, of course, *mens rea* and as such a person is said to have done a thing 'dishonestly' who does it with the intention of causing wrongful gain or wrongful loss. It is not necessary that there should be an intention to cause both. On the analogy of this definition, it might be said that either an intention to secure a benefit or advantage on the one hand, or to cause loss or detriment on the other, by means of deceit is an intent to defraud.

(12). It is not enough to prove that the petitioner was either negligent or that she had a cause to think that the property was stolen, or that she failed to make enough inquiries to comprehend the nature of the goods procured by her. The initial possession of the gold items in question may not be illegal but retaining those with the 'knowledge' that it was stolen property, makes it culpable. Applying the legal proposition as propounded to the present circumstances, the inevitable conclusion is that the respondent-UT Chandigarh has failed to produce any cogent evidence or material on record, whatsoever, to establish that the petitioner had the knowledge that gold articles were stolen goods. This essential element was not established against the petitioner, in the final report, to bring home the charge under Section 411 of the IPC against her. In a case like this, where the fundamental evidence is not available and the law leans in favour of the petitioner, the Court has to exercise corrective jurisdiction as the circumstances justify where the respondents could not establish that the petitioner dishonestly received stolen property with the ‘knowledge’ and ‘belief’ that the gold items found were stolen.

(13). Besides, there is sheer non-compliance of Section 91 CrPC which provides for issuance of summons to a person in whose possession or power such document or thing is believed to be, requiring him/her to attend and produce it, or to produce it, at the time and place stated in the summons or order. In this case, the summons were issued in the name of the Branch Manager but was got received to the Assistant Manager of the Bank wherein it was mentioned that the accused-Vikas had given the case property i.e. 2 Mangalsutra Gold pendant and the same be handed over to the police as it is required for investigation. It is an admitted fact that the recovery of the said case property was received from the Branch and not from the personal possession of the petitioner which is sufficient to hold that the gold items were actually pledged to Bank and not to the petitioner who is allegedly hand-in-glove with the alleged crime.

(14). This Court is of the considered opinion that Section 411 IPC is indicative of the fact that the main ingredient is not present in the present case as the petitioner being the employee of the company was just performing her duties and she had no reason to believe that the same was stolen property as the accused Vikas was the old customer of their branch, hence, petitioner has done nothing wrong or against the law since the stolen property was not in her personal possession and the same is evident from the report stating it to be recovered from the Branch only.

(15). The parameters pertaining to the inherent powers and discretion of this Court under Section 482 of the CrPC have been well known and well read since the time of ***State of Haryana & Others v. Bhajan Lal & Others, (1992) Supp. (1) SCC 335***, whereby it was held that powers under Section 482 CrPC could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice where the allegations made in the FIR, even if taken at the face value, does not prima facie constitute any offence or make out any case against the accused and moreover, the uncontroverted allegations/averments made in the FIR or the evidence collected in support of the same does not make out any case against the petitioner.

(16). In view of the above discussion, this petition is allowed and the FIR No.0090 dated 24.11.2023 under Sections 380 IPC, registered at Police Station IT Park, District Chandigarh (Sections 451/411 IPC added later on) and subsequent proceedings arising therefrom, qua the petitioner, is hereby quashed.

01.05.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*