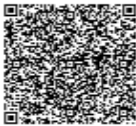


2024:PHHC:109353



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

292

CRM M-27614 of 2024
Date of Decision: 22.08.2024

Abhishek Tiwari and others ...Petitioners
Versus
State of U.T. Chandigarh and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Deepak Gupta, Advocate, for the petitioners.

Mr. Manish Bansal, Public Prosecutor for U.T.,
Chandigarh.

Mr. Nishant Sidhu, Advocate
for the complainant.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 107 dated 21.10.2023 under Sections 419, 420, 467, 468, 471 and 120-B of IPC registered at Police Station Cyber Crime, Sector 17, Chandigarh (Annexure P-1) on the basis of the compromise (Annexure P-2).
2. The FIR in the present case was registered on the basis of the complaint moved by Navin Gupta, respondent No. 2, and the same has been reproduced below:-

*“To the SHO, PS Cyber Crime Sector-17, Chandigarh,
Subject:- Job fraud, Respected Sir, it is submitted that 1,*

Navin Gupta S/o Sh. Madan Lal Gupta, r/o 802/1, Sector-43A, Chandigarh bring to your kind notice that I received a phone call from Mobile No.918959368987 on 22nd June 2023 from a person called Amit Kaushik pretended to speak from Timejobs.com and offered to scheduled on interview for a job and asked for Rs.6500/- registration fees. He shared a mail for the same on 22nd June 2023 with e-mail amit.kaushik@Xn-tmsjobs-C2a.com to my e-mail, gnavin 13@hotmail.com Since, I don't have a job at that time so I got lured and paid Rs 6500/- through SBI net banking from my SBI A/c: 20018399573 to their Account with following details as, Account Holder Name: Times Jobs Limited, Bank Name: IDBI bank, Account Number: 1325104000097273, IFSC Code: 1BKL0001325, Amount: Rs. 6500/- A mail confirming payment receipt and Invoice copy received dated 27th June 2023 from accounts@timesjobs.com received a phone call from phone No.91-80-46767800 from Company Called AECOM Limited for an Interview dated 28/6/23 and e-mail received same day (28/6/23) for further Interview on 29/6/23 @ 12:30 PM Via telephonic mode with nos 91-8046767800 and email with id Careers@Xn-aeco-jd5a.com (AECOM Limited). They (AECOM Limited with e-mail Careers@aecom.com. offered me a job through this above said e-mail on 30/6/23 and asked me to do 9PM Course (Compulsory) thus forced me to make payment of Rs.48,640/ through my a/c No. 20018399573 (SBI) to their above said a/c No. 1325104000097273 (IDBI). A mail for this course received from Amit Kaushik

(amit.kaushik@timesjobs.com) dated 30/6/23. A mail also received from same above e-mail for the required documents for recruitment process. On 1st July 2023, received a mail from Amit Kaushik with e-mail id (amit.kaushik@Xn--tmesjobs-c2a.com to make a payment for documents verification process for Rs 84,680/- to their IDBI bank A/C No. 1325104000097273. This was followed up by e-mail from Times jobs (accounts@timesjobs.com) payment was made through my SBI A/C-20018399573 to their bank A/c- 1325104000097273 (IDBI). On 3rd July, AECOM limited (careers@aecom.com) offered me a job with all details and a mail received from times jobs (accounts@timesjobs.com) on 3/7/23 to transfer amount for Rs. 84200/- towards medical test through AllMS: payment transfer for my SBI A/C to their A/C with details as, A/C Holder: Times Jobs Limited, Bank Name: HDFC Bank, A/c No: 50100622924593, IFSC Code: HDFC0009679 a follow up Phone call for this payment was made by Amit Kaushik with Mob No. 8959368987. On 4th July 2023- a mail received from Times Jobs (accounts@timesjobs.com) to transfer amounts for Rs. 92804/- towards appointing PRO (Personal Relationship Officer) named Prithviraj and his Mob. No. 8950126058. Amount was transferred from my SBI A/C to their HDFC A/C 50100622924593 IFSC Code HDFC0009679. Invoice copy for said amount received from Times jobs on 4/7/2023. On 05th July 2023 E-Mail received from AECOM Ltd. from e-mail id-careers@xn--neco-jda5a.com to transfer amount for Rs. 182400/- towards permanent employment

agreement. Payment was transferred from my SBI A/C to their HDPC A/C-50100622924593. A phone call was also received from Mr. Parveen Gupta with Mob 84588-04035 who has pretending as HR-Head of AECOM limited. A follow up call from Amit Kaushik 89573-68987 for processing for quick payment. On 5th July 2023 again, mail with Id Careers@necom.com received from Aecom Ltd to pay 1,46,000/- for IT Security and training setting up. Payment transferred through my SBI A/C to their HDFC A/C No. 50100622924593. Various phone calls were received from Parveen Gupta of AECOM Ltd from Mobile no 84588-04035 and from Amit Kaushik of Times jobs from his Mobile No. 89593-68987. I paid total amount of Rs. 6,45,224/- to these fraudster in their different accounts but no job has been given to me. You are requested to register the case against these fraudster and help me to recover my money from them, a fake letter of job appointment given to me through e-mail from Aecom limited (careers@acom.com) and receipt of payment from times jobs. I have uploaded my Resume@Naukri.com and linkedin. Please be noted that all e-mail have been received on my id-GNAVIN13@HOTMAIL.com. Yours Truly, Sd. Navin Gupta DOB 13/09/72 Mob 9888747470 e-mail gnavin 13@hotmail.com Dated 10-07-2023. XXXXX”.

3. Learned counsel for the petitioners contends that in the present case the FIR was got registered by respondent No. 2 against unknown persons and during the course of investigation, the petitioners were wrongly involved by the police in the present case. It

was alleged that in the FIR that some unknown persons had cheated the respondent No. 2 to the tune of Rs. 6.45 lacs on the pretext of providing him employment in some company and during the investigation, the petitioners, who are residents of Madhya Pradesh were falsely involved by Chandigarh Police. Learned counsel further contends that now with the intervention of the respectable of the society, the matter has been compromised between the petitioners and respondent No. 2/complainant vide compromise deed dated 14.05.2024 (Annexure P-2). Even, respondent No. 2 also filed an affidavit (Annexure P-3) to the effect that he had received the entire amount from the petitioners. Since, the complainant did not want to proceed against the petitioners in the instant case, the FIR is liable to be quashed by this Court on the basis of the compromise between the parties.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioners on the ground that it is a case of fraud by petitioners not only with the respondent No. 2, but several other persons also might have fallen prey to the petitioners. Even, by no stretch of imagination, it can be termed as private dispute between two individuals. The society at large is generally effected by such crimes and the petition is liable to be dismissed by this Court. Learned State counsel further submits that during the course of investigation, CAF & CDR of alleged/fraudsters mobile numbers 8046767800, 8959126058 and 8458804035 were

obtained from concerned service providers. CAF of mobile number 8046767800 was not received and the CAF of other mobile numbers i.e., 8959368987 is in the name of Anmol Tiwari S/o Sanant Kumar Tiwari R/o ward No. 9, Village Puras Post Office Mahason, Distt. Rewa, MP; 8959126058 is in the name of Rahul Pathak S/o Chandra Pathak R/o Ward No. 26, Near Subhash Jyoti School Distt. Rewa, MP and 8458804035 is in the name of Kamla wife of Lata Ram R/o #12, Shhramik Line No. 2, Gwalior, MP. The KYC detail/ownership & statement of A/C No. 1325104000097273 IDBI Bank, A/c No. 50100622924593 of HDFC Bank, A/C No. of 2211232942296175 AU Small Finance Bank, A/C No. 922010050265260 Axis Bank, A/C No. 110120934210 Canara Bank were obtained and analysed. Account No. 1325104000097273 (IDBI) has been found in the name of Prity Devi H. No. 11119/4 Shanti Nagar Distt. Suryapet (AP) & A/c No: 50100622924593 of HDFC Bank, A/C No. 2211232942296175 AU Small Finance Bank, A/C No. 922010050265260 Axis Bank, A/C No. 110120934210 Canara Bank found in the name of Satish Kushwaha, petitioner No. 2 Ward No. 26 near Subhash Jyoti School Pokhari Tola, Sharda Puram, Huzur Distt. Rewa (MP). Further, the above-mentioned accounts have been scrutinized. The whole amount was transferred in account of HDFC Bank and IDBI Bank Account. Further the whole amount in question was found transferred in different accounts No. 2211232942296175 of (AU Small Financial Bank), Account

No. 922010050265260 (Axis Bank) & Account No. 110120934210 of (Canara Bank) and the same was found in the name of Satish Kushwaha, petitioner No.2, resident of Ward No. 26 near Subhash Jyoti School, Pokhari Tola, Sharda Puram, Huzur Distt. Rewa (MP). Bank statement of complainant's SBI Bank A/c No. 20018399573 alongwith under Section 65B Evidence Act Certificate obtained from the bank. The separate requests have been sent to google to ascertain the registered mobile number alleged and all email i.e. amikaushik@timesjobs.com., accounts@timesjobs.com, info@timesJObS.com, accounts@xn-tmesjobs-c2a.com and careers@aecom.com. Further, conversation of the emails of complainant obtained from complainant, in this regard and he gave a certificate U/S 65B Evidence Act.

5. Learned State counsel further submits that Satish Kushwaha, petitioner No. 2 was arrested on 23.11.2023 and on his disclosure statement, Abhishek Tiwari petitioner No. 1 was arrested and PAN Card and Aadhar Card were recovered from petitioner No. 1. KYC detail/ownership & statement of bank along-with U/s 65-B Evidence Act, Certificate of Account No. 1325104000097273 IDBI Bank, Account No. 50100622924593 of HDFC Bank, Account No.2211232942296175 AU Small Finance Bank, Account No. 922010050265260 Axis Bank and Account No. 110120934210 Canara Bank were obtained and analyzed. Account No. 1325104000097273 (IDBI) has been found in the name

of Prity Devi H. No. 11119/4, Shanti Nagar Distt. Suryapet (AP) and Account No. 50100622924593 of HDFC Bank, Account No. 2211232942296175 AU Small Finance Bank, Account No. 922010050265260 Axis Bank and Account No. 110120934210 Canara Bank found in the name of Satish Kushwaha, petitioner No. 2, Ward No. 26 near Subhash Jyoti School Pokhari Tola, Sharda Puram, Huzur Distt. Rewa (MP). Almost cheating amount was transferred in above said four accounts. Further during investigation, it came into light that Mobile Number 9752134348 (which is found in the name of accused Abhishek Tiwari) found registered in bank Account No. 922010050265260 of Axis Bank and Account No. 110120934210 of Canara Bank used in fraud money transactions.

6. Learned State counsel further submits that Satish Khushwaha petitioner No. 2 was not involved in any other case, however, Abhishek Tiwari petitioner No. 1 was involved in following case:-

“FIR No. 251 of 2023 under Sections 294, 323, 325, 326, 506 and 34 of IPC registered at Police Station Raipur Karchuliyan, District Madhya Pradesh.”

7. Still further, Shivendra Singh Sikarwar, petitioner No.3 was also facing two more criminal cases. Learned State counsel further submits that keeping in view of the *modus operandi* of the petitioners and also looking at the society at large and the motive of

the petitioners, the present petition deserves to be dismissed by this Court.

8. On the other hand, learned counsel appearing on behalf of respondent No. 2 submits that he has no objection, in case the FIR is ordered to be quashed on the basis of the compromise between the parties. He further submits that even the parties had appeared before the Court of Judicial Magistrate 1st Class, Chandigarh, in compliance of the order dated 29.05.2024 passed by this Court and the FIR may be quashed on the basis of the compromise.

9. I have heard learned counsel for the parties and perused the record.

10. The Hon'ble Supreme Court has held in the matter of ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another, 2017(4) R.C.R. (Criminal) 523 and 2017 AIR Supreme Court 4843*** as follows:-

“11 In Narinder Singh (supra), Dr Justice A K Sikri, speaking for a bench of two learned Judges of this Court observed that in respect of offences against society, it is the duty of the state to punish the offender. In consequence, deterrence provides a rationale for punishing the offender. Hence, even when there is a settlement, the view of the offender and victim will not prevail since it is in the interest of society that the offender should be punished to deter others from committing a similar crime. On the other hand, there may be offences falling in the category where the

correctional objective of criminal law would have to be given more weightage than the theory of deterrence. In such a case, the court may be of the opinion that a settlement between the parties would lead to better relations between them and would resolve a festering private dispute. The court observed that the timing of a settlement is of significance in determining whether the jurisdiction under Section 482 should be exercised:

“29.7...Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits...”

This Court held, while dealing with an offence under Section 307 of the Penal Code that the following circumstances had weighed with it in quashing the First Information Report:

"33. We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz., "respectable persons have been trying for a compromise up till now, which could not be finalized". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings..."

12 In **State of Maharashtra v Vikram Anantrai Doshi**, 2014(4) RCR (Criminal) 381; 2014(4) Recent Apex Judgment (R.A.J.) 382; (2014) 15 SCC 29, a bench of two learned Judges of this Court explained the earlier

decisions and the principles which must govern in deciding whether a criminal proceeding involving a non-compoundable offence should be quashed. In that case, the respondents were alleged to have obtained Letters of Credit from a bank in favour of fictitious entities. The charge-sheet involved offences under Sections 406, 420, 467, 468, and 471 read with Section 120-B of the Penal Code. Bogus beneficiary companies were alleged to have got them discounted by attaching fabricated bills. Mr. Justice Dipak Misra (as the learned Chief Justice then was) emphasised that the case involved an allegation of forgery; hence the court was not dealing with a simple case where “the accused had borrowed money from a bank, to divert it elsewhere”. The court held that the manner in which Letters of Credit were issued and funds were siphoned off had a foundation in criminal law:

“... availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposit fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominatingly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the

offence creates a dent in the economic spine of the nation.”

The judgment of the High Court quashing the criminal proceedings was hence set aside by this Court”.

11. Still further, the Hon’ble Delhi High Court has held in W.P. (CRL.) 685 of 2023 titled as “**Achal Rana Vs. Govt. of NCT of Delhi and another**”, as follows:-

*“11. In **Madan Mohan Abbot v. State of Punjab (2008) 4 SCC 582**, it was observed by the Hon'ble Apex Court, while quashing an FIR registered inter alia under Section 406 of IPC, that Courts can quash an FIR on the basis of settlement where the disputes are purely personal nature and do not affect the society at large. The relevant observations read as under:*

"6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law."

(Emphasis supplied)

12. Learned counsel for petitioner had also argued that the FIR in question pertains only to an offence under

*Section 420 of IPC and since the dispute between two private persons has been settled, the FIR ought to be quashed. In this regard, this Court takes note of the observations of Hon'ble Apex Court in case of **Parbatbhai Aahir v. State of Gujarat (2017) 9 SCC 641**, where while laying down principles for quashing of FIR in cases of settlement, following principles, relevant for the adjudication of present case, were also laid down:*

"16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance..."

(Emphasis supplied)

15. A bare reading of the FIR, details of which have already been discussed in the preceding paragraphs,

prima facie reveals commission of cyber-crime/cyber-fraud whereby the amount was surreptitiously debited from the bank account of complainant while he was having a conversation with an individual presenting himself as a customer care executive, who had called the complainant from a mobile number. It remains undisputed that the said sum which had got debited from the complainant's bank account in Delhi had found its way into a bank account held by the petitioner in Ahmedabad, Gujarat. It is also not the case of either party that they were known to each other in past or that there was any history of previous transactions between them.

16. In today's digital era, cyber-crimes are proliferating at an alarming rate, leaving a trail of victims in their wake. Neither are cyber- criminals bound by restrictions of borders due to their global reach, nor do they discriminate among their victims, thereby targeting the elderly, the young, the businesses as well as the governments in the digital landscape. The consequences of cyber-crimes go beyond individual boundaries, impacting numerous unsuspecting victims. As brought to the knowledge of this Court during the course of arguments, the investigation so far has revealed that huge amount of money, totalling Rs. 28.17 crores has been credited to the bank account of present petitioner and it is to be investigated whether this amount also has been obtained through such illegal and fraudulent means and whether there are other victims of such cyber-fraud. The gravity of such allegations cannot be undermined, as they not only jeopardize the financial security and

trust of individuals on financial payment gateways/platforms, but also potentially expose the broader public to similar threats”.

12. In the present case, it is apparent from the allegations levelled by respondent No. 2/complainant that the respondent No. 2 had received several calls as well as e-mails from different persons and a false promise was made to him to provide him employment in some company. Even, the complainant had paid a total amount of Rs. 6,45,224/- to the fraudsters/petitioners in different accounts, but no job was provided to the respondent No. 2/complainant. Even, the matter was investigated by the police and sufficient documentary evidence was collected by the police, to show the complicity of the petitioners in the crime. Even, no doubt the parties have entered into a compromise in the present case, however, from the careful examination of the material placed on record by the State, it becomes very clear that the case extends beyond the realm of mere private dispute between certain individuals. Rather, it is apparent from the allegations that the *modus operandi* adopted by the petitioners as is discernible from the contents of the FIR, indicates towards the commission of cyber fraud and there is a possibility that more and more victims had fallen prey to such cyber frauds and the investigation is being conducted by the police further in this regard. Thus, at this stage, it would not be appropriate to quash the FIR even on the basis of compromise.

13. Consequently, finding no merits, the present petition is
ordered to be dismissed.

22.08.2024.
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking :

Whether reportable :

Yes/No

Yes/No