204 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-30292-2020
Date of decision: 05.03.2024

Paramjit Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.S. Dhindsa, Advocate
for the petitioners.

Mr. Aditya Sanghi, Advocate
for respondent no. 4

Mr. Subhash Godara, Addl. A.G. Punjab

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HARPREET SINGH BRAR, J. (ORAL)

1. The petitioners have approached this Court by way of filing the present petition under Section 482 Code of Criminal Procedure,1973 (hereinafter Cr.P.C., for brevity) for quashing of the impugned FIR bearing no. 263 dated 17.06.2020 under Sections 379, 420, 120-B of IPC registered at Police Station Zirakpur, District SAS Nagar, Mohali (Annexure P-1), as well as all subsequent proceedings arising therefrom.

FACTUAL BACKGROUND

2. The facts of the present case, tersely put, are that the petitioners-accused entered into an agreement to sell a boring machine, bearing registration no. HR-37C-3207, for a sum of Rs. 22 lacs with respondent no.4-complainant. Out of the said sum, Rs. 7,35,000/- was paid by the complainant in cash. Further, an amount of Rs. 5,00,000/- was paid by the complainant in the form of 2 cheques, whereby only one cheque of Rs. 3,00,000/- was encashed by the petitioners-accused. After part payment by the complainant,

the possession of the machine was handed over to him, with the condition that the remaining amount of Rs. 9,85,000/- be paid by 25.03.2013. Later, the complainant discovered that in his absence, the petitioners-accused retook possession of the machine and refused to either return the machine or return the sum already paid by the complainant. Aggrieved by this, respondent no.4-complainant filed an application before the Senior Superintendent of Police, SAS Nagar, for the registration of FIR in December, 2019. After a detailed enquiry, the impugned FIR was registered against the petitioners-accused under Sections 379, 420, 120-B of IPC.

CONTENTIONS

3. Learned counsel for the petitioners *inter alia* contends that the genesis of the dispute is purely civil in nature. In fact, the respondent no. 4-complainant can be accused of cheating the petitioner. His intention to cheat is visible from the very outset as he took the boring machine without paying the complete amount. This is further proved by the fact that a cheque, amounting to Rs. 2,00,000/-, was issued by respondent no. 4-complainant at the time of taking possession of the machine, however, the said cheque was returned unpaid. Moreover, it took more than two and a half years from the due date i.e., 25.03.2013 to pay the remaining amount, before respondent no. 4-complainant agreed to return the boring machine. The learned counsel for the petitioners maintains that the allegations of theft are totally baseless as proven by the receipt of the toll plaza of the vehicle in question at 16:45:03 hours on 19.11.15 (Annexure P-10). The petitioner no. 1 has already filed a civil suit against respondent no. 4 in this regard (Annexure P-2). Subsequently, notice was issued on 11th February 2020 to respondent no. 4-complainant by the jurisdictional Civil Court. Learned counsel further avers

that it is pertinent to mention that it was only after the notice was issued that the present FIR was registered against the petitioners.

4. Learned counsel for the petitioners alternatively argues that from the bare perusal of the record, the foundational ingredients of Sections 379 and 420 of the IPC are missing, especially when petitioner no. 1 is the owner of the boring machine, as proved by the registration as well as the recurrent road tax paid by him. As a result, the petitioners cannot be held liable as per the allegations made in the FIR. Lastly, learned counsel points out that respondent no. 4-complainant kept mum for 4 years, before a complaint was made to the Senior Superintendent of Police, Mohali, which proves the frivolity and falsity of the complaint. The due date to pay the remaining amount as per the affidavit (Annexure P-7) was fixed for 23.03.13, yet respondent no. 4 used the boring machine till 19.11.2015, deriving economic advantage, without making the balance payment of the outstanding amount.

5. Per contra, learned State counsel assisted by counsel for respondent no.4-complainant submits that it would not be sufficient to discard respondent no.4-complainant's version on the ground of delay alone. The ingredients of theft are clearly made out as the machine was taken away on 19.11.15, from his place of work, without his consent. The FIR (supra) was registered after a detailed and comprehensive enquiry in which the petitioners' culpability was clearly established. Further, during investigation, the petitioners confessed to committing the theft of the machine, thus proving mala-fide intention on their part. Moreover, it is settled law that both civil and criminal cases can proceed simultaneously and therefore the arguments of counsel for the petitioners are without any basis.

ANALYSIS AND OBSERVATION

6. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the genesis of the dispute is the agreement to sell a boring machine vide affidavit dated 15.01.2013 and the case set up by respondent no. 4- complainant for setting the criminal law machinery into motion revolves around the allegation that the petitioner took Rs. 10,35,000/- as part payment, in pursuance of aforementioned agreement to sell and has not returned the same. The target date to pay the remaining amount was fixed for 25.03.2013. There is no convincing material on record to indicate as to why respondent no. 4-complainant did not pay the remaining amount on the decided date. The readiness and willingness on part of respondent no. 4 to pay the remaining amount or whether the amount already paid by respondent no.4-complainant is liable to be forfeited would be adjudicated by the learned civil Court. The only reason to lodge FIR No. 263 dated 17.06.2020 under Sections 379, 420, 120-B of IPC is to give a civil dispute the colour of a criminal offence.

7. With regard to the allegations of theft, punishment for which is prescribed under Section 379 of IPC, it would be apposite to mention that the machine in question was taken back by the petitioners-accused on 19.11.2015. However, the application to the Senior Superintendent of Police, SAS Nagar for registration of the case against the petitioners, was filed in December, 2019 i.e., after a period of more than 4 years. Delay in setting the law into motion by lodging of complaint and registration of FIR is normally viewed by the courts with suspicion as it undermines the integrity of the cause of action. Hence, it becomes imperative for the prosecution to satisfactorily and cogently explain the delay. In the case at hand, however,

the explanation put forth by respondent no. 4 i.e., he was busy pursuing justice for his murdered son in a sperate case and that the petitioners kept dawdling for 4 years upon being asked to return the machine, lacks force. Further, it is an established fact that respondent no. 4 failed to pay the agreed amount and yet kept the machine is his possession. In fact, he used it for his benefit for an additional 3 years from the date of the payment of the remaining amount as agreed upon between the parties. The petitioners have produced evidence on record that the machine in question still stands registered in the name of petitioner no. 1 and he continues to pay the road tax for the same. All facts point to the conclusion that the complaint was filed to harass and inconvenience the petitioners. Here, it would be worthwhile to refer to the judgement of the Hon'ble Apex Court in ***Thulia Kali v. State of Tamil Nadu (1972) 3 SCC 393,*** wherein a 2 Judge Bench, speaking through H.R. Khanna, J. observed as follows:

> *"12. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained…"*

8. Having gone through the complaint which was later converted into an FIR and the assertions made therein, it is quite clear that the petitioners who were the sellers of the machine, handed over the possession

of the same to respondent no. 4-complainant in good faith as was agreed per the agreement to sell. Indeed, it was respondent no. 4-complainant who failed to honour his obligation to give the remaining amount. The petitioners unquestionably did not possess dishonest intention to cheat since the inception, which is a condition precedent to make out an offence under Section 420 IPC. If the petitioners right from the inception of the agreement to sell had any intention to cheat, they would not have executed the agreement and hand over possession of the machine to respondent no. 4-complaianant. The dishonest and fraudulent intention at the inception is an essential ingredient of the offence. Thus, insofar as Section 420 of the IPC is concerned, the ingredients of Section 415 of the IPC that also constitute an offence under Section 420 are missing. Reliance in this regard is place on ***Lalit Chaturvedi and Ors. v. State of U.P. and Anr. Criminal Appeal No. of 2023 (Arising out of SLP (Crl.) No. 13485 of 2023),*** in which a Division Bench of the Hon'ble Supreme Court held as follows:

> *"7. Similar elucidation by this Court in "V.Y. Jose v. State of Gujarat"5, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of 'cheating', as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr. P.C. Section 482of the Cr. P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a*

person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in "Hira Lal Hari Lal Bhagwati v. CBI", "Indian Oil Corporation v. NEPC India Ltd.", "Vir Prakash Sharma v. Anil Kumar Agarwal" and "All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain."

9. It is settled law that the recourse to inherent power of under Section 482 CrPC can be taken to ensure that criminal proceedings are not allowed to be used as weapons of harassment. Undoubtedly, the existence of pending civil suit between the petitioners and respondent no. 4 before a competent civil Court makes it clear that the current dispute is essentially of civil nature. In the considered opinion of this Court, the criminal proceedings launched by respondent no. 4 cannot be sustained in the facts and circumstances of the present case. A two Judge bench of the Hon'ble Supreme Court in ***Paramjeet Batra v. State of Uttarakhand & ors (2013) 11 SCC 673,*** speaking through both Justice Aftab Alam and Justice Ranjana P. Desiai, has held as under:

"7. While exercising its jurisdiction under section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of

court."

A similar view was taken by a two Judge bench of the Hon'ble Supreme Court in ***Vesa Holdings P. Ltd. v. State of Kerala (2015) 8 SCC 293***. Speaking through C. Nagappa, J., it was observed as follows:

> *"9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 I.P.C.In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings."*

<u>CONCLUSION</u>

10. For the aforesaid reasons, this Court finds that the issue involved between the parties is purely of civil nature. Petitioner no. 1 has already approached the jurisdictional civil Court by instituting the civil suit in this regard which is still pending. It is a fit case to invoke the wholesome power of this Court under Section 482 of CrPC to prevent respondent no. 4 from abusing the process of law and use criminal proceedings as a weapon of harassment against the petitioners.

11. Consequently, the present petition is allowed and FIR No. 263 dated 17.06.2020 under Sections 379, 420, 120-B of IPC registered at Police Station Zirakpur, District SAS Nagar and all subsequent proceedings arising therefrom are quashed qua the petitioners.

12. Disposed of, in the aforesaid terms.

(HARPREET SINGH BRAR)
JUDGE

05.03.2024
Ajay Goswami

Whether speaking/reasoned: - Yes/No
Whether reportable: - Yes/No