IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

123 **CRM-M-33600-2022 (O&M)**
Date of Decision : July 24, 2024

DEEPAK GUPTA **-PETITIONER**

V/S

STATE OF PUNJAB AND ANOTHER **-RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Yugank Goyal, Advocate and
Mr. Harparteek Singh Sandhu, Advocate
for the petitioner.

Mr. Pardeep Bajaj, D.A.G., Punjab.

Mr. P.S. Ahluwalia, Advocate
for the complainant/respondent No.2.

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<u>KULDEEP TIWARI, J. (ORAL)</u>

1. Through the instant petition, as instituted under Section 482 of the Cr.P.C., the petitioner yearns for quashing of FIR No.110 dated 18.12.2021, under Sections 406, 420, 120-B of the IPC, registered at P.S. Dhakoli, S.A.S. Nagar, along with all consequent proceedings arising therefrom.

<u>SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER</u>

2. The learned senior counsel, in his beseeching the relief (supra), has made the hereinafter extracted submissions:-

> *(i) The petitioner has never received any amount from the complainant/respondent No.2 (hereinafter referred to as the 'complainant');*

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(ii) Even if, for the sake of arguments, the allegations are taken to be true on their face value, yet no offence whatsoever is made out against the petitioner, inasmuch as, it is the case of the complainant himself that he had invested Rs. 1 crore in March-August, 2017, in M/s Cremeway Dairy Farms (hereinafter referred to as 'M/s CDF'), whereas, the petitioner came into picture only post the execution of Annexure P-4, wherein becomes enclosed a sale deed dated 23.03.2019. Therefore, the petitioner cannot be held to be a conspirator for allegedly cheating the complainant;

(iii) The complainant, being a partner of M/s Cremeway Dairy Farms, had voluntarily appended his signatures on Annexure P-4, and, he was well aware that all the money invested by him in this partnership firm has went down the drain;

(iv) If any monetary dispute was there at all, it was prior to execution of Annexure P-4 and it was inter se the then partners, i.e. petitioner's co-accused Narender Chaudhary and the complainant;

(v) Annexure P-4 makes it apparent that, in lieu of purchase of assets of M/s CDF, the entire consideration of Rs.1 crore 40 lakhs was transferred from the official bank account of M/s Himalayan Creamery Private Limited (hereinafter referred to as 'M/s HCPL') to the official account of M/s CDF, which was then jointly owned by the complainant and co-accused Narender Chaudhary. No amount was ever deposited by the petitioner in some individual's account;

(vi) Petitioner's firm M/s HCPL has not been arrayed as an accused, therefore, allegations against its Director/shareholder(s) are not sustainable.

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SUBMISSIONS OF THE LEARNED STATE COUNSEL AND LEARNED COUNSEL FOR THE COMPLAINANT

3. The learned State counsel and learned counsel for the complainant have vociferously opposed the submissions made by the learned senior counsel for the petitioner and have made the following submissions:-

(i) The letter of Intent dated 19.03.2019, which is enclosed as Annexure R-2/3 with the reply short reply furnished by the complainant, was entered into by keeping the complainant in the dark;

(ii) M/s CDF, wherein, the complainant held 25% share was sold to M/s HCPL for a consideration of Rs. 1.40 crores, but, nothing was paid to the complainant;

(iii) By way of share transfer agreement dated 06.07.2019, the complainant was assigned a meagre share of 4.5% in the amalgamated M/s Cremeway Dairy Private Limited (hereinafter referred to as 'M/s CDPL') against his 25% shareholding in M/s CDF, whereas, the petitioner and his co-accused Narender Chaudhary held 76% and 19.5% shares respectively;

(iv) Consequent upon the complainant becoming assigned a mere share of 4.5%, he was assured that he will be paid a sum of Rs.1 lac per month and his invested amount will be returned to him, however, Rs. 1 lac was paid only for four months and the invested amount was never returned. Moreover, signatures of the complainant were fraudulently obtained on sale deed and share transfer agreement.

4. Before evincing any opinion upon the submissions made by the learned counsels for the contesting litigants, it is deemed imperative to first al-

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lude concisely to the allegations leading to registration of the present FIR, besides alluding to the role assigned to the petitioner.

ALLEGATIONS CONSTITUTING BEDROCK FOR REGISTRATION OF PRESENT FIR

5. The complainant alleged that accused Aashish Bhardwaj, Narender Chaudhary, Sibba Chaudhary and Deepak Gupta (petitioner) hatched a criminal conspiracy and committed fraud of crores of rupees with him.

6. To be precise, the complainant alleged that accused Aashish Bhardwaj introduced accused Narender Chaudhary to him, who then allured him to invest Rs. 1 crore in his company, namely, M/s CDF, in lieu of 25% holdings in the said company. He also allured that, out of profits, a sum of Rs.1 lac will be deposited in complainant's bank account. Accordingly, the complainant fell prey to such allurement and invested Rs. 1 crore in M/s CDF, in separate installments, which were made during March 2017 to August 2017. Initially, as assured by the accused, an amount of Rs. 1 lac was transferred in complainant's account, however, eventually this payment was stopped. Not only this, apart from the complainant, one Shiba Chaudhary was also made a partner in M/s CDF by accused Narender Chaudhary and he himself conveniently took an exit from the said company. In March 2019, accused Narender Chaudhary executed a sale deed (Annexure P-4) and sold the assets of M/s CDF to petitioner's firm M/s HCPL for a consideration of Rs.1.4 crores and this entire amount was retained by him. In furtherance of their pre-planned conspiracy, Shiba Chaudhary also left M/s CDF prior to execution of sale deed in favour of petitioner's firm M/s HCPL.

7. Thereafter, a collaborative agreement was entered into between

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the petitioner and co-accused Narender Chaudhary, which resulted in amalgamation of M/s HCPL into M/s CDPL, i.e. another firm owned by accused Narender Chaudhary. Accordingly, accused Narender Chaudhary sold 76% share of M/s CDPL to M/s HCPL and kept 19.5% share with him and made the complainant a partner therein with 4.5% holdings. The complainant was assured that now this company would do the marketing of all products of Himalayan and a sum of Rs.1 lac per month will be given to him and the whole amount invested by him will be returned. In this way, on the assurance (supra), the signatures of the complainant were fraudulently obtained on the sale deed and share transfer agreement.

ROLE OF THE PETITIONER (AS NARRATED IN THE SHORT REPLY DATED 01.02.2023, FILED BY THE RESPONDENT NO.1-STATE)

8. A perusal of the reply dated 01.02.2023 reveals that, the disclosure statement of accused Aashish Bhardwaj has constituted the bedrock for nominating the petitioner as an accused in the present FIR, vide D.D.R. No.03 dated 21.12.2021. The role assigned to the petitioner, in the reply (supra), is extracted hereinafter:-

> *"...It is submitted that the accused Aashish Bhardwaj and accused Narender Chaudhary are masterminds and they have committed a systematic fraud upon the complainant by changing the partnership deeds/firms and have taken away the investment as well as the customer share of the complainant, whereas, the petitioner is the Director of M/s Himalayan Creamery Pvt. Ltd., which is a Private Limited company having its registered office at Village Rohti Basta Singh, Tehsil Nabha, District Patiala, who in active connivance with his co-accused Narender Chaudhary, Ashish Bhardwaj have cheated the complainant to the tune of Rs.1 Crore by promising him the return of Rs. 1 Lac every month to him, if he invested Rs. 1 Crore in their firm Cremeway Private Limited, which was later on fraudulently sold to the firm Hi-*

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malayan Creamery Private Limited. It is further submitted that neither the aforesaid amount of Rs.1 Lac per month has been paid to the complainant by the petitioner and his co-accused as promised nor the aforesaid amount of Rs.1 Crore has been returned to the complainant by the present Petitioner and his co-accused….”

REASONS FOR DISMISSING THE INSTANT PETITION

9. This Court has heard the submissions made by the learned counsels for the contesting litigants and also perused the record. For the reasons to the assigned hereinafter, this Court is not inclined to grant the yearned for relief to the petitioner.

10. Apart from the hereinabove extracted incriminatory role of the petitioner, another principal reason for forming the above inference generates from the factum that, most of the issues canvassed by the learned senior counsel for the petitioner involve disputed question of facts, which cannot be adjudicated by this Court in the instant proceedings, rather the same require them being adjudicated by the learned trial Court concerned, after evidence becomes adduced before it by the parties and probative value thereof becomes appreciated. Therefore, this Court refrains from holding a mini-trial in the instant petition instituted under Section 482 of the Cr.P.C.

11. Another reason for this Court to decline petitioner's prayer is that, petitioner's co-accused Narender Chaudhary had also accessed this Court, through filing CRM-M-45391-2022, thereby seeking an alike relief, as claimed by the petitioner herein, however, vide order dated 15.01.2024, the said petition was dismissed as withdrawn, on the ground that, various disputed questions of facts were raised therein, which warranted them becoming adjudicated by the learned trial Court concerned. However, liberty was granted to the petitioner therein to raise all his pleas before the learned

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trial Court concerned at an appropriate stage.

12. Not only this, petitioner's co-accused Ashish Bharadwaj had also accessed this Court, through filing CRM-M-21156-2023, thereby seeking quashing of the present FIR and also the order of framing of charges dated 12.04.2022. However, the petitioner therein could not reap the desired results, rather his petition was dismissed by a Co-ordinate Bench of this Court, vide order dated 05.05.2023, with the hereinafter extracted relevant observations:-

> *"6. The allegations were that the petitioner and his accomplices robbed the complainant and assured him to invest a sum of Rs. One crore and promised him extranomical returns. They made him partner of 25% but lateron the petitioner had introduced the complainant to Narender Chaoudhary who after taking the money, sold the partnership firm to another private limited company and did not distributed a sum of Rs.1,50,00,000/- which he has received. Thus, the allegations are primarily of misappropriation apart from cheating. The petitioner's role is entering into criminal conspiracy and acting as a conduit to the main accused. In case, the petitioner's grievance of no fault with the accounts, nothing stopped the petitioner to go for the rendition of accounts. Instead of doing that and discharging his initial burden, the petitioner seeks quashing of FIR against him.*
>
> *7. Perusal of the complaint and inquiry, has point out towards the evidence not only of misappropriation of the share of the petitioner from Rs.1,50,00,000/- and also the petitioner introducing complainant to the main accused and acting as his conduit. Thus given the existence of incriminating evidence does not make a case to exercise the jurisdiction of this Court under Section 482 CrPC and there are no grounds to disrupt the criminal prosecution.*
>
> *8. I have also gone through the order of framing of charges. Given the aforesaid factual background there can be no fault found in the order of framing of charges. Consequently, there is no merit in the petition and the same is dismissed. Pending applications, if any, stand disposed of."*

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13. Insofar as the legal issue pertaining to non-arraignment of petitioner's firm is concerned, this argument of the learned senior counsel for the petitioner is bereft of any merit. The reason being that, in the instant case, the allegation against the petitioner is that, he colluded and actively participated with his co-accused in cheating the complainant for Rs. 1 crore. The case at hand is not the one, where the petitioner has been arraigned by virtue of any vicarious liability of his company, rather there are specific allegations levelled against him by the complainant and inculpatory evidence has also been collected against him by the investigating agency. It would be a premature stage to evince any opinion upon the issue *"whether the petitioner's firm was required to be arrayed as an accused or not"*.

FINAL ORDER

14. For all the reasons (supra), this Court does not find any merit in the instant petition and the same is accordingly **dismissed**.

15. Needless to say that the petitioner is at liberty to raise all the pleas and claims, as raised before this Court, before the learned trial Court concerned at an appropriate stage.

16. Pending application(s), if any, stand disposed of accordingly.

(KULDEEP TIWARI)
JUDGE

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Whether speaking/reasoned	**:**	**Yes/No**
Whether Reportable	**:**	**Yes/No**

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