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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

201

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Date of decision: 19th November, 2024

Harmesh Singh Thoda

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Harsh Chopra, Advocate for the petitioner.

Mr. A.S. Samra, AAG, Punjab.

Mr. Ashok Giri, Advocate for respondents No.2 and 3.

MANISHA BATRA, J (ORAL):-

The petitioner is making prayer for quashing of FIR No. 202 dated 30.10.2020 registered under Section 420 of IPC, 1860 at Police Station Nurpur Bedi, Rupnagar and the proceedings having emanated therefrom.

2. For the sake of continuity and coherence, hereinafter the parties shall be referred to as per their original nomenclature as given at the time of trial.

3. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the complaints lodged by the complainants Surjit Singh and Surinder Singh alleging therein that the accused was running committee business. The complainants had joined two committees each for a period of fifteen months



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with the petitioner. The instalment of one committee was of a sum of Rs. 1,00,000/- per month and of the other one, it was of Rs. 50,000/- per month. The complainant-Surinder Singh had deposited a sum total of amount of Rs. 22,50,000/- in the said committees, whereas the complainant-Surjit Singh had deposited an amount of Rs. 30,00,000/-. The accused, however, failed to return the aforementioned amount to the complainants. On insistence of the complainants to return their money, the accused executed sale deed of a plot measuring 10 marlas in favour of the respondent No.1-Surjit Singh on 19.04.2017, the value of this plot was Rs. 2,00,000/- and accused promised to return the remaining amount in installments. He executed two sale deeds of plot having worth of Rs. 6,35,000/- and Rs. 1,10,000/- respectively in favour of respondent No.2 and promised to return the remaining amount in instalments but failed to fulfill his promise. The complainants therefore, prayed for taking action in the matter. On the basis of their complaints, a case under Section 420 of IPC was registered against the accused.

4. It is argued by learned counsel for the petitioner-accused that he has been falsely implicated in this case. He is alleged to have committed the offence under Section 420 of IPC. However, even on taking the allegations as levelled against him at their face value, the ingredients for commission of offence of cheating have not even been *prima facie* made out. The complainants themselves admitted execution of sale deeds by the petitioner in their favour. They had got the same executed *in lieu* of the amount of money given by them. Subsequently, they started pressurizing the petitioner to cancel the sale deeds due to the fact that the value of the purchased plots



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had been lowered down. The allegations do not show that there was any fraudulent or dishonest intention on the part of the petitioner to induce the complainants to invest money with him. There is no proof of payment of amount of Rs. 22,50,000/- and Rs. 30,00,000/- respectively by the complainants in his favour. The alleged transactions of money are even otherwise seven years old and there was huge delay in lodging the FIR. The relief claimed by the complainants has been hit by the law of limitation. With these broad submissions, it is urged that the FIR in question is liable to be set aside. To fortify his arguments, learned counsel for the petitioner has placed reliance upon the judgments cited as ***Sushil Sethi and another vs. State of Arunachal Pradesh and others, AIR 2020 (SC) 765***, ***'Ajay Mitra vs. State of Madhya Pradesh and others, 2003 AIR (Supreme Court) 1069'***, ***Lalit Chaturvedi and others vs. State of Uttar Pradesh and another, 2024(2) RCR (Criminal) 73*** and in ***CRA-2340-2023*** in ***'Mohammad Wajid and another Vs. State of Uttar Pradesh and others'***.

5. On the other hand, learned State counsel assisted by learned counsel for respondents No.2 and 3-complainants, vehemently argued that there was a *prima facie* case on record to prove that the petitioner had induced the complainants to deposit money in the form of committees by way of installments with them by alluring them to give 30% more amount along with the principal amount after fifteen months of the deposit thereof but had failed to return the same. Inquiry had been conducted against the petitioner which proved the factum of payment of money having taken place. The plots which were sold to the complainants were having much



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lesser value. Huge amount of money was due to be payable by the petitioner. The complainants as well as several other persons have been duped of their hard earned money by the petitioner. Therefore, it is urged that the petition does not deserve to be allowed.

6. At the outset, it will be profitable to look into the scope and ambit of the Court's power under Section 482 Cr.P.C. as spelt out in several judicial pronouncements of Hon'ble Supreme Court as well as different High Courts. The well settled proposition of law is that in exercise of inherent powers under Section 482 Cr.P.C., the High Court is not expected to analyze all the facts, which are to be placed before the High Court. The power conferred under this section is very specific and to secure the ends of justice or to prevent the abuse of process of Court or to make any such orders as may be necessary to give effect to any order under the Code, such power can be exercised to prevent abuse of process of Court. Hon'ble Supreme Court has drawn up some guidelines in some categories of cases by way of illustration to circumscribe the exercise of inherent power under Section 482 of Cr.P.C. to prevent abuse of process of any Court or to secure the ends of the justice or to give effect to an order of the Court. A celebrated pronouncement on this point is the case cited as ***State of Haryana vs. Bhajan Lal : (1992) SUPP 1 SCC 335***, wherein several guidelines have been laid down. Some of them, which are relevant for the purpose of disposal of the present petition, are reproduced as under:

- (i). Where the allegations made in the First Information Report or the complaint, even if they are taken at their face



value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii). Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(iii). Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv). Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(v). Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi). Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(vii). Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously



instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

7. Reference can further be made to ***Gian Singh vs. State of Punjab : (2012) 10 SCC 303***, wherein Hon'ble Supreme Court has observed that the power of the High Court in quashing a criminal complaint or an FIR, in exercise of its inherent jurisdiction, is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accordance with the guidelines engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. Reference can also be made to ***Padal Venkata Rama Reddy @ Ramu vs. Kovvuri Satyanarayana Reddy & Ors. : (2011) 12 SCC 437***, wherein it was observed that the inherent power under Section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. Reliance can further be placed upon ***State of Andhra Pradesh vs. Gourishetty Mahesh and others : 2010 Criminal Law Journal 3844***, wherein the Apex Court has propounded that while exercising jurisdiction under Section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained as that is the function of the trial Court.

8. It is also well settled proposition of law that the exercise of



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powers under Section 482 Cr.P.C. to quash proceedings is an exception and not a rule. In ***Monika Kumar vs. State of U.P. : (2006) 8 SCC 781***, the Apex Court has propounded that the inherent jurisdiction under Section 482 Cr.P.C., though wide, is to be exercised sparingly, carefully and with caution, only when such exercise is justified by the test specifically laid down in the section itself and appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power. The inherent powers do not confer an arbitrary jurisdiction upon the High Court to act according to whims and caprice.

9. Reference can also be made to the authority cited as ***M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others : 2021 SCC OnLine SC 315***, wherein the Hon'ble Apex Court, after analyzing and examining several judicial precedents, had observed that the Courts should not thwart any investigation into the cognizable offences; criminal proceedings ought not to be scuttled at the initial stage; the power of quashing should be exercised sparingly with circumspection in the 'rarest of rare cases' and while examining the FIR/complaint, quashing of which is sought, the Court should not embark upon inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint. It was also observed that in cases where no cognizable offence or offence of any kind is disclosed in the first information report, the Court should not permit an investigation to go on.

10. Reference can also be made to ***CBI v. Aryan Singh : 2023 SCC OnLine SC 379***, wherein Hon'ble Apex Court observed that while exercising



powers under Section 482 of Cr.P.C., the Courts have a very limited jurisdiction and are only required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”. In ***Kaptan Singh vs. State of U.P. and others, 2021 SCC Online SC 580*** and ***Dhruvaram Murlidhar Sonar vs. State of Maharashtra, (2020) 3 SCC (Criminal) 672***, it was observed that the appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 of Cr.P.C. as this power is an exception and not a rule. Inherent jurisdiction under Section 482 of Cr.P.C. though wide is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is also well settled proposition of law that the Court is not required to go into the merits of the allegations and/or entering into the merits of the case as if it is exercising the appellate jurisdiction and/or conducting the trial, at the stage of exercising powers under Section 482 of Cr.P.C. In order to examine as to whether the factual contents of the FIR disclose any cognizable offence or not, the High Court cannot act like investigating agency nor can exercise the powers like an appellate court. The said question is required to be examined keeping in view the contents of the FIR and *prima facie* material, if any, requiring any proof.

11. This Court has considered the contentions raised by learned counsel for the parties in the light of the above discussed proposition of law and on applying the same, to the peculiar facts and circumstances of the present case, it has emerged that the petitioner has been booked and charge



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sheeted for commission of offence punishable under Section 420 of IPC on the allegations that he had induced respondents No. 2 and 3-complainants to invest their money in the committees organized by him on instalment basis, by making representation that they would be fetching 30% more amount along with the invested amount after fifteen months of the deposit thereof. As alleged, he did not return even the principal amount and made false representations to dupe the money of respondents No. 2 and 3. The investigation in this case has been completed. Challan stands presented. For establishing the offence of cheating, it is to be shown that the accused had fraudulent or dishonest intention at the time of making promise or representation. On going through the contents of the FIR, it is revealed that the allegations disclose a *prima facie* case against the petitioner which justify registration of criminal proceedings against him. It cannot be stated that the allegations so levelled are bereft of basic facts and are of such nature which taken to be correct at their face value, do not disclose any offence. Rather on appraising the material placed on record, on the touchstone of the above discussed legal position, this Court of the opinion that the allegations show a *prima facie* case to the effect that the petitioner had induced respondents No. 2 and 3 to deposit money in the committees organized by him by alluring them of fetching huge profit and non-return of the said amount *prima facie* shows his dishonest intention since the very beginning. The argument that the petitioner would not have transferred plots in the names of the complainants if he was having any fraudulent or dishonest intention, cannot be accepted at this stage, since it has not been proved that



the plots so transferred were equivalent to the value of the money deposited by respondents No.2 and 3 or that the transfers were made *in lieu of* the money due. It appears that by seeking to quash the FIR and criminal proceedings, the petitioner intends to stifle a legitimate prosecution. The allegations levelled in the FIR do not advance the case of the petitioner at this stage to seek quashing thereof. Disputed questions of fact cannot be dealt into by this Court at this stage to exercise jurisdiction under Section 482 of Cr.P.C. to quash the FIR in question. Keeping in view the facts and circumstances of the case, this Court finds no ground, whatsoever to interfere at this stage for quashing of FIR in question as well as the charge sheet filed in the same. The petition is accordingly dismissed.

12. It is, however, clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

13. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

19th November, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |