

2024:PHHC:147151



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CRM M-38412 of 2023 (O&M)  
Date of Decision:17.09.2024

|                             |        |                 |
|-----------------------------|--------|-----------------|
| Rohit Joshi                 |        | ...Petitioner   |
|                             | Versus |                 |
| State of Haryana and others |        | ... Respondents |

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

Present : Mr. Shubham Goyal, Advocate  
for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

Mr. S.S. Bhinder, Advocate, for respondents No. 2 and 3.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the impugned FIR No. 147 dated 13.05.2023 under Sections 406 and 420 of IPC at Police Station Ambala Sadar, District Ambala (Annexure P-1) and all consequential proceedings arising therefrom.
2. The FIR in the present case was registered on the basis of the complaint filed by Gursweak Singh, respondent No. 2/complainant and the same has been reproduced below:-

*""Complaint is as under: Sir, Police Superintendent, Ambala City. Subject:- Complaint against Rohit Joshi (Mobile No.99146-42222) Ganpati Concept Design, Adda Basti Road, Near Raja Hospital, Football Chowk, Jalandhar City, for cheating the applicant of money and for legal investigation not sending 12 AC's and for giving threats to kill the applicant. Sir, It is requested that I work as a Manager in M/S Nature Best Agro Industries. I contacted above mentioned Rohit Joshi through India Mart. I had to purchase 12 AC's for Mushroom plant. On 24.08.2021 accused came to meet me. He gave me example of 5.5 tan of AC of Hitachi company and out to be Rs. 11,50,000/- and I gave the accused Rs. 1,14,432 through online mode as an advance on 24.08.2021. After some days accused called me and started asking for some more money and he started saying that I will give you delivery of AC's and I on 30.11.2021 transferred Rs. 8,00,000 through online mode and after some days I called the accused. At first he did not take my calls, but after 4-5 phone calls, he picked up the phone and I told him to send the AC's, then promised that we will receive the AC's shortly. After some days when AC's were not received then I again accuse called the accused and he started saying that you should transfer the amount first and after that I will send you the AC's. On 25.03.2022 I transferred the balance amount i.e. Rs. 2,29,800/- to culprit through online mode. After that in June, 2022 culprit sent 4 AC's and when I telephoned him to send the remaining AC's, then the culprit asked for 1-2 days time and said that in 1 or 2 days he will send the AC's and after some days when I*

*again tried to call the accused then his phone used to be switched off and I tried to contact him, then one day accused picked the call and when I asked for AC then accused straightaway refused and said that he will not be able to send the AC's and said that I can do what ever I can and also refused to return the money and now when I call the accused, he abuses me and also threaten to kill me and also threaten to kill my family. Therefore, I request you to take strict action against Rohit Joshi for cheating and for giving threats to kill, matter be registered and legal action be taken". Sd/-"*

3. Learned counsel for the petitioner contends that the petitioner is proprietor of M/s Ganpati Concept Design, Footwal Chowk, Jalandhar and is in the business of selling and installing commercial air conditioners. The respondent No. 3 is owner of M/s Natures Best Agro Industries and contacted the petitioner for purchase and installation of 12 ductable type split air conditioners of Hitachi Company and asked for quotation of the same. The petitioner gave the quotation dated 24.08.2021 (Annexure P-2) amounting to Rs. 11,44,320/- as the costs of equipment only. It was further mentioned in the quotation that the case of installation of ductable unit, copper wire, canvas, gas cylinder and cost of labour would be charged extra. The cost of the equipment was to be fully paid in advance and the prices mentioned in the quotation were valid for 15 days from the date of the offer. The petitioner delivered 4 air conditioners and started work of installing the AC's. After some time,

the petitioner gave the bill amounting to Rs. 6,04,600/-, which included the costs of 04 AC's as well as the cost of installation of ductable unit, copper wire, canvas, cost of labour and cost of gas cylinder. However, the respondent No. 3 refused to pay the money of all extra work like cost of installation wire and labour etc., and was adamant that the petitioner should supply him the remaining 08 AC's. The petitioner refused to supply the remaining AC's and the respondent/complainant moved a complaint to the police and the police registered the FIR by completely ignoring the fact that it was a commercial and business transaction, which was civil in nature and the ingredients of the offence were completely missing. He further submits that the dispute between the parties was predominantly of civil nature and at the most, it could be a breach of conditions of the contract. However, the respondent No. 2/complainant got the false FIR registered against the present petitioner. He further contends that it was a pure and simple civil dispute between the parties and the FIR has been wrongly registered against him.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner and submits that specific allegations had been levelled against the petitioner and the present petition deserves to be dismissed by this Court.

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

6. In fact, this Court as well as the Hon'ble Supreme Court have held in number of judgments that every breach of contract may not give rise to a criminal offence. Many a times, certain civil transactions or criminal transactions may not contain ingredients of criminal offence and in such cases the Court must come forward to quash the criminal prosecution. The Hon'ble Supreme Court in the matter of ***Gian Singh Vs. State of Punjab and another, [2012(4) RCR, (Criminal) 543*** observed as under:-

*“55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under section 482 of the Code is of wide amplitude but*

*requires exercise with great caution and circumspection."*

7. Section 415 of IPC is reproduced as under-

**"415. Cheating.** *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'. Explanation. A dishonest concealment of facts is a deception within the meaning of this section."*

*Section 415 Indian Penal Code thus requires -*

- 1. deception of any person.*
- 2. (a) fraudulently or dishonestly inducing that person -*
  - (i) to deliver any property to any person; or*
  - (ii) to consent that any person shall retain any property;*

*or*

- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property.*

8. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he

may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.

9. Still further, the Hon'ble Supreme Court in the matter of **M/s Indian Oil Corporation Vs. M/s NEPC India Limited and others, 2006(3) RCR (Criminal) 740** again cautioned about a growing tendency in business circles to convert the purely civil dispute into a criminal case. The Hon'ble Supreme Court noticing the prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lenders/creditors and, consequently, criminal prosecutions are launched. However, any effort to settle the civil disputes and claims, which do not involve any criminal offence, by applying pressure through that criminal

prosecution should be deprecated and discouraged. The Hon'ble Supreme Court has held as follows:-

*“9. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - **Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre**, 1988(1) RCR(Crl.) 565: [1988(1) SCC 692], **State of Haryana v. Bhajanlal**, 1991(1) RCR(Crl.) 383: [1992 Supp (1) SCC 335], **Rupan Deol Bajaj v. Kanwar Pal Singh Gill**, 1995(3) RCR(Crl.) 700: (1995(6) SCC 194), **Central Bureau of Investigation v. Duncans Agro Industries Ltd.**, 1996(3) RCR(Crl.) 60: [1996(5) SCC 591], **State of Bihar v. Rajendra Agrawalla**, 1996(1) RCR(Crl.) 530: [1996(8) SCC 164] **Rajesh Bajaj Vs. State of NCT of Delhi**, 1999(2) RCR(CrL.) 160: [1999(3) SCC 259] **Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.**, 2000(2) RCR (Crl. 122: [2000(3) SCC 269], **Hridaya Ranjan Prasad Verma v. State of Bihar**, 2000(2) RCR (Crl.) 484: {2000(4) SCC 168], **M. Krishnan Vs. Vijay Kumar**, 2001(4) RCR(Crl.) 405: (2001(8) SCC 645), and **Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque**, 2004(4) RCR(Crl.) 937: 2005(1) Apex Criminal 75: [2005(1) SCC 122). The principles, relevant to our purpose are:*

*“(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.*

*For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.*

*(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*

*(m) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.*

*(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.*

*(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial*

*transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.*

*10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In **G. Sagar Suri v. State of U.P., 2000(1) RCR(Crl.) 707: [2000(2) SCC 636]**, this Court observed:*

*"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution.*

*For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."*

*While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C., more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may".*

10. In view of the above discussion, this Court has not hesitation to hold that the dispute in question is purely of civil nature and the complainant could institute civil suit before the Court of competent jurisdiction. In the peculiar facts and circumstances of the present case and also in view of the law laid down by the Hon'ble Supreme Court, the initiation of criminal proceedings by the respondent No. 2/complainant against the petitioner is clearly an abuse of the process of the Court. Thus, the proceedings arising out of the FIR No. 147 dated 13.05.2023 under Sections 406 and 420 of IPC

at Police Station Ambala Sadar, District Ambala (Annexure P-1) are clearly abuse of the process of the Court.

11. Consequently, the present petition is allowed and the FIR No. 147 dated 13.05.2023 under Sections 406 and 420 of IPC registered at Police Station Ambala Sadar, District Ambala (Annexure P-1) and all consequential proceedings arising therefrom are ordered to be quashed.

12. CRM 37609 of 2023 also stands disposed off, accordingly.

17.09.2024  
amit rana

(N.S.SHEKHAWAT)  
JUDGE

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