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

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CRM-M-38992-2023 (O&M)
Reserved On.: 09.01.2024
Pronounced On: 19.01.2024

Vijay Kumar .....Petitioner

Vs.

State of Punjab & Another .....Respondents

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Saurav Bhatia, Advocate
for the petitioner.

Ms. Kanica Sachdeva, AAG, Punjab.

Mr. Jasraj Singh, Advocate
for respondent No.2.

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DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioner prays to quash FIR No.1 dated 14.02.2022 registered at Police Station NRI, District Hoshiarpur under Sections 420, 120-B of the IPC (Annexure P-1) besides order dated 10.07.2023 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Hoshiarpur, whereby charges have been framed against the petitioner in the aforesaid FIR.

2. Perusal of the paper-book would reveal that a complaint dated 17.09.2021 was made by respondent No.2- complainant against Vinod Kumar Chhibar son of Sunil Dutt and his companions, in which it was alleged that in 2018, he had applied for his family tourist VISA for Canada but due to certain

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reasons, the same was rejected. He then talked to Vinod Kumar Chhibar, practicing as RMP Doctor at Khatkar Kalan, District S.B.S. Nagar, for going to Canada. He assured the complainant to do the needful and introduced him to his cousin Vijay Kumar (petitioner) and his father. In June 2018, he applied online for family tourist VISA and Vijay Kumar took ₹1,20,000/- from him. Complainant also deposited ₹30,000/- in IDBI bank account of Ginni Sharma wife of Vinod Kumar Chhibar. Complainant deposited another amount of ₹30,000/- in bank account of one Avtar Dass. After sometime, complainant was informed by the accused that VISA was refused. He was again asked to apply for VISA and deal was done for an amount of ₹8,00,000/-. Complainant was told that his VISA would be received by getting a letter from some M.P. of Canada. Complainant paid rest ₹2,00,000/- in cash to Vijay Kumar (petitioner) and his father and spent another amount of ₹80,000/- for getting a ticket for mother of Vinod Kumar Chhibar. In February, 2019, they applied for VISA only for the complainant, which was received in March, 2019 and for which complainant paid ₹4,00,000/- to the mother of Vinod Kumar Chhibar. Another amount of ₹1,20,000/- demanded by the accused was paid. In April, 2019 complainant went to Canada and then tourist VISA for his family was applied. An amount of ₹80,000/- in cash was taken by the accused but the VISA was refused. While in Canada, accused assured that they would apply work permit for him and that he would become permanent resident of Canada. In May, complainant came back from Canada and applied for tourist VISA of his son and wife but the same was refused. Vinod Kumar Chhibar told the complainant to come to Canada, where he had traced the truck company for getting work

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permit and deal was settled for ₹ 35,00,000/-, for which Vinod Kumar Chhibar demanded 5000 dollars i.e., ₹2,65,000/-. Said amount was paid by the complainant to Lucky in Khatkar Kalan on the asking of the accused. Complainant then went to Canada on tourist VISA. Vinod Kumar Chhibar and his wife took his passport and after 10 days, started demanding remaining amount. They returned the passport of the complainant after receiving ₹6,00,000/-. Complainant then returned to India and demanded his money back. An amount of ₹2,00,000/- was paid by petitioner to complainant through Western Union by Vinod Kumar Chhibar but the remaining amount was not paid and this way Vinod Kumar Chhibar and his wife, petitioner Vijay Kumar and his father, Urmila mother of Vijay Kumar Chhibar had cheated the complainant for an amount of ₹15,95,000/-.

3. As initially no action was taken on the aforesaid complaint, complainant- respondent No.2 filed CRM-M-49793-2021, which was disposed of by this court on 29.11.2021 directing the police authorities to decide the representation of respondent No.2. Pursuant to the aforesaid order, necessary enquiry was conducted by DSP, NRI Wing, who recommended registration of the case under Sections 420, 120-B of the IPC against petitioner Vijay Kumar and Vinod Kumar Chhibar. Legal opinion was also obtained. Fraud to the tune of ₹17,87,376/- was found to have been committed with the complainant.

4. FIR was registered. Necessary investigation was carried out. After completion of investigation, final report under Section 173 Cr.P.C. was filed against the petitioner and charges against him were framed on 10.07.2023 vide Annexure P-3. Co-accused Vinod Kumar Chhibar evaded his arrest and it has

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been submitted in the police report that supplementary challan *qua* him shall be filed after completion of investigation *qua* him.

5. It is submitted by learned counsel that petitioner has been falsely implicated and that as per the final report under Section 173 Cr.P.C. except one entry of ₹50,000/- to have been proved in the account of the petitioner, no other allegation of any fraud money were found to be true. Petitioner is being roped in only because he is cousin of Vinod Kumar Chhibar, who resides abroad. Vague allegations have been leveled against the petitioner without any corroborating evidence. Learned counsel further contends that ingredients of Sections 415, 420 of the IPC are missing. Besides, there is a delay of about 02 years in lodging of the FIR and that in all these circumstances, the FIR in question besides the charges framed by the Trial Court concerned and subsequent proceedings, deserves to be quashed.

6.1 Learned counsel for the petitioner has referred to ***"Dalip Kaur v. Jagnar Singh & Anr."*** *(2009) 14 SCC 696*, to contend that in order to make out an offence under Section 420 of the IPC, dishonest intention must exist from the very inception, when the promise or representation was made and that where allegations contained in the FIR, even if given face value is taken to be correct, does not disclose commission of alleged offence and discloses only a civil dispute, FIR is liable to be quashed.

6.2 Learned counsel further refers to ***"Hridaya Ranjan Prasad & Ors. v. State of Bihar & Anr."*** *2000 (4) SCC 168* to contend that there is a distinction between mere breach of contract and cheating as enshrined under Section 415 of the IPC i.e., the intention at the time of making such

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promise/inducement and that mere breach of trust cannot give rise to criminal prosecution in the absence of dishonest intention.

6.3 Ld. counsel contends that in the present case, complainant-respondent No.2 himself admits that he had gone to Canada, which indicates that there was no dishonest intention in the beginning and that whatever assurances to provide permanent residency were given to the complainant, the same were on the part of co-accused.

7.1 Learned State counsel, on the other hand contends that after initial enquiry and lodging of the FIR, investigation was conducted and complainant was found to have been cheated to the amount of ₹17,87,376/-. It is submitted further that charges have already been framed and that petitioner can put forth his defence at appropriate stage.

7.2 Learned State counsel further relies upon ***"Kaptan Singh v. State of Uttar Pradesh & Ors."*** *2021 9 SCC 35* so as to contend that when proceedings are at the stage when statements are recorded, evidence is collected and charge-sheet is filed after conclusion of the investigation/enquiry, High Court is required to exercise restraint in exercising its inherent jurisdiction under Section 482 Cr.P.C. With these submissions, learned State counsel prays for dismissal of the petition.

8.1 Respondent No.2- complainant filed separate reply, submitting that FIR has been lodged on the written complaint made by respondent No.2 and that it is the categoric instance of respondent No.2 that petitioner along with his cousin cheated and defrauded him for an amount of ₹15,70,000/- on the pretext of sending him and his family abroad along with securing

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permanent residence to them. Learned counsel contends that mode and manner in which various amounts were paid to the accused persons from time to time are duly given in the complaint. Since concerned police official had initially not take any action, so the respondent No.2 had to approach this Court and only after the direction issued by this Court that the enquiry was conducted and FIR was registered.

8.2 Learned counsel for respondent No.2 further submits that be that as it may, the question whether or not petitioner is part of conspiracy to defraud respondent No.2 is a subject-matter of trial, which cannot be circumvented by way of present petition, which tantamount to abuse of process of law. After thorough investigation and taking legal opinion, it has been categorically found that allegations of committing fraud of ₹17,87,376/- with respondent No.2 stands duly proved.

8.3 Learned counsel also contends that ostensibly main accused Vinod Chhibar has since evaded his arrest and has already been declared proclaimed offender in another case FIR No.72 dated 01.04.2017 registered at Police Station Phillaur, District Jalandhar under Sections 420, 465, 467, 468 & 120-B of the IPC. Learned counsel also contends that petitioner cannot isolate himself from the criminal liability by projecting Vinod Kumar Chhibar to be the main accused, who is settled in Canada.

8.4 Since initially Vinod Chhibar was in India, when the entire conspiracy was hatched with an intention to dishonestly defraud the respondent No.2 on pretext of sending him abroad and securing PR to him and his family. After Vinod Chhibar went Canada, the entire co-ordination and entire

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transactions were carried out by said Vinod Kumar Chhibar through his cousin i.e., petitioner. Respondent No.2 in his reply has also given the details of the transactions in para-No.18 as to how the amount was paid to the petitioner and the co-accused from time to time. Prayer is made for dismissal of the petition.

8.5 Learned counsel for respondent No.2 has referred to ***"Priti Saraf v. State of NCT of Delhi"*** *2021 (2) R.C.R. (Criminal) 340* in order to contend that many times offence of cheating is committed in course of commercial transactions and that in order to exercise powers under Section 482 Cr.P.C., complaint in its entirety is required to be examined on the basis of allegations made therein. It was also held by Hon'ble Supreme Court that at this stage, High Court was not under any obligation to go into the matter or examine its correctness and that whatever appears on the basis of complaint/FIR/charge-sheet should be taken into consideration without any critical examination of the same.

8.6 Learned counsel further referred to ***"Ashfaq Ahmed Quereshi v. Namrata Chopra"*** *2014 (2) R.C.R. (Criminal) 528* in order to contend that when there are disputed questions of fact, quashing is not possible.

With all these submissions, prayer is made for dismissal of the petition.

9. I have considered submissions of both the sides and have perused the record.

10. It is no doubt true that mere breach of contract does not give rise to criminal prosecution for cheating, unless fraudulent or dishonest intention is shown to exist right at the beginning of the transaction. However, at the same

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time, it cannot be ignored that there may be element of cheating in the course of commercial transaction. As has been held by Hon'ble Supreme Court in ***Priti Saraf*** **(supra),** to exercise power under Section 482 Cr.P.C., complaint in its entirety is required to be examined on the basis of allegations made in the complaint/FIR/charge-sheet. High Court at that stage is not under any obligation to go into the matter or examine its correctness and whatever appears on their face of complaint/FIR/charge-sheet, should be taken into consideration without any critical examination of the same.

11. Apart from the above, in ***Kaptan Singh's case (supra),*** it has been held that when quashing is sought after filing of the charge-sheet in the Court, the Court is required to consider even the material collected during investigation. It would be apt to reproduce the observations made by the Hon'ble Supreme Court in this regard as under:-

> *"If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/ inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in* **Dineshbhai Chandubhai Patel** *in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High*

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Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material."

12. In ***Ashfaq Ahmed Quereshi's*** **case**, it has been held by Hon'ble Supreme Court that disputed question of facts cannot be looked into by the High Court at the stage of considering the quashing petition.

13. In ***"Ram Bhul v. State of Haryana" 2022 (4) R.C.R. (Criminal) 634***, the co-ordinate Bench of this Court, after referring to catena of authorities held that merely because a dispute has civil over-tones as well, it would not be sufficient to invoke the power under Section 482 Cr.P.C.

14. In the present case, as the allegations made by respondent No.2-complainant would make out, though initially Vinod Kumar Chhibar was contracted by the complainant, as he along with his family wanted to go Canada and said Vinod Kumar Chhibar, resident of Canada was at that time in India but after said Vinod Kumar Chhibar went to Canada, all the dealings were struck through the petitioner Vijay Kumar, the cousin of Vinod Chhibar. Not only this, complainant- respondent No.2 has given details of the payments made from time to time to the accused including to the petitioner on different

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dates. Whether the amount was actually paid or not, is a question of fact, which is required to be decided during trial. After detailed enquiry and thorough investigation, it has been found that petitioner has been cheated for an amount of ₹17,87,376/- by Vinod Kumar Chhibar and petitioner in conspiracy with each other on the pretext of sending the complainant and his family abroad and securing a permanent residence to them.

15. In the aforesaid facts and circumstances, the present case does not fall under any of the parameters laid down by Hon'ble Supreme Court in ***"State of Haryana & ors. v. Ch. Bhajan Lal & ors." 1991 (1) R.C.R. (Criminal) 383,*** so as to quash the FIR.

16. Consequently, finding no merit in the present petition, same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

January 19, 2024
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Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No

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