210 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38808-2024
Date of Reserve:15.10.2024
Date of Decision: 19.10.2024

Preet Singh …Petitioner

vs.

State of Haryana …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Vishal Singh Chauhan, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

Mr. Sanjeev Kumar, Advocate
for the complainant.

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<u>N.S.Shekhawat J.</u>

1. The petitioner has filed the present petition under Section 482 of the B.N.S.S,2023 with a prayer to grant anticipatory bail to him in case FIR No. 207, dated 08.07.2024, under Sections 406, 420 of IPC, registered at Police Station, Sector 13/17 District Panipat (Annexure P-1).

2. The FIR in the present case was registered on the basis of the statement made by Happy Grover son of Bachan Lal and the same has been reproduced below:-

> "*To the SHO, Sector 13-17, Panipat, Subject Matter- Taking Legal action regarding the application against Preet Singh S/o Shri Jaswinder Singh, Jaswinder Singh S/o Shri Kripal Singh, Resident of House No. 29, Sion Park, Modal, Town, Panipat Regarding transfer of machinery worth Rs. 45,00,000/- and stock*

bags worth Rs. 25,80,000/- from the applicant's factory and threatening to kill and implicating him in a false serious case, about recovering the applicant's machinery and stock from the culprits and handing them over to the applicant. Honorable Sir, The applicant makes the following request that I am Happy Grover, S/o Shri Bachan Lal, resident of Sector-11, HUDA, Panipat. I am a law abiding person. That I and my wife Reena Sidhar are partners in a business in Guru Kripa Enterprises located at Pod No. 5, Faridpur Road, Box No. 18, Near Toll Plaza, Panipat. I had started the above firm in December-2021/January-2013 by renting race number 5, Faridpur Road, box number 78, near toll plaza, Panipat. 3. That in January, 2021, for business reasons, I had taken a loan of Rs. 50,00,000/- from Union Bank of India in the name of my above mentioned work. In 2023, I had handed over my above mentioned firm along with machinery, stock and other goods to the culprits to run them. In this regard, a mutual agreement was written between me and the culprits on 23/01/2024. According to the above mutual agreement, which was made between me and the convicts that the convicts will be bound to pay the bank installments related to the loan taken in the name of the above firm on the 30th of every month and I and the convicts will share the profits earned from the above firm. There will be 12 shares. According to the said mutual agreement, it was also decided between us that the culprits will be responsible for every kind of liability related to the said firm. Apart from this, it was also decided between me and the culprits that the liability of the bank towards the said firm would have to be cleared by the culprits by December, 2024. Considering all the terms and conditions of the said written mutual agreement to be true, I and the accused had signed the said mutual agreement in the presence of witnesses and the said mutual agreement was also verified by a notary public. That the culprits had stopped the installment of the concerned *bank twice in violation of the terms of the mutual agreement mentioned above. In this regard, I had given a written complaint against the culprits in Police Station Model Town, Panipat. That on 28.05.2024 the time will be around 10:00 p.m. When I went to my factory in the afternoon, I was surprised to see that my machinery worth Rs. 45,00,000/- and stock worth Rs. 25,00,000/- were missing from the factory. When I talked to the culprits in this regard and asked about their machinery and stock, the culprits first started evasiveness and then they raised their chests and threatened me that the machinery and stock would be shifted to some other place. We have done this and we will never let you know about it and if you make any kind of complaint against us, we will kill you. Due to the threats given by the culprits, my mental state had suddenly deteriorated and I was resting at my home the whole day yesterday. Due to which I was not able to complain about the said issue at that time. That today on 30/05/2024, I had come to the District Court, Panipat for some personal work, during that time the accused Preet Singh along with another person came to the lawyer premises, District Court, Panipat and asked me to take legal action. But gave various kinds of threats. I am under constant threat to my life and property from the culprits. Honorable Sir, I had already started my above mentioned firm by taking a loan from the bank and only on the basis of the assurances given by the culprits in the form of written conditions, I had given permission to the culprits to run my above mentioned firm but the culprits did not return the money to the bank on time. By not paying the installments and stealing the machinery and stock of my firm, they have caused huge financial, mental and physical loss to me, for which the culprits deserve punishment. Therefore, you are requested to intervene in the said matter and register a case against the culprits under appropriate sections and take legal action against the culprits and return my machinery* *worth Rs. 45,00,000/- and stock worth Rs. 25,00,000/- from the culprits. Let it be provided. It will be so kind of you. Date:- 30/05/2024 Applicant Happy Grover, S/o Shri Bachan Lal, resident of Sector-12, HUDA.*

3. Learned counsel for the petitioner submits that even from the allegations levelled by the complainant in the present case, no case under Sections 406,420 of IPC is made out against the present petitioner. In fact, both the parties had entered into an agreement (Annexure P-2), and as per the said agreement, the complainant had taken a shed of the accused on rent. Even, it was also agreed that in case of breach of any condition of the agreement, the parties will be at liberty to avail their civil remedies before the competent Court of law. Even, it has been falsely alleged that the stock was removed from the factory as the complainant was not filing the GST with regard to the existence of stocks in question. Learned counsel for the petitioner also relied upon the law laid down by the Hon'ble Supreme Court in the matter of "***Deepak Gaba and others Vs. State of Uttar Pardesh and Anr. (SC) 2023 (3) SCC 423 as follows,where in the Hon'ble Supreme Court held as follows:-***

21."We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by respondent no.-2 complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420, and 471 of the IPC, as the allegations pertain to alleged breach of contractual obligations. Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie *outrageous or pure civil claims. These attempts are not be entertained and should be dismissed at the threshold. To avoid prolixity, we would only like to refer to the judgment of this Court in* ***Thermax Limited and Others v. K.M. Johny (2011) 13 SCC 412,*** *as it refers to earlier case laws in copious detail. In Thermax Limited and Others (Supra), it was pointed that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. [17] Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without*

> *appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times".*

4. On the other hand learned State counsel assisted by learned counsel for the complainant have vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the complainant and his wife were running a factory in the name and style of M/s Gurukirpa Enterprises, Panipat. The accused had also become partners in the firm and they had taken away machinery worth Rs.45 lacs and goods worth Rs.25 lacs from the factory. Even they entered into a settlement that the complainant party to return the machinery as well as goods, but still did not return the same to the complainant party. Thus, the recovery of machinery as well as goods is yet to be got effected from the possession of the petitioner. They further contended that the custodial interrogation of the petitioner was required and the petition is liable to be dismissed by this Court.

5. I have heard the rival contentions made by learned counsel for the parties and perused the record carefully.

6. In the present case, there was already an agreement between the complainant and the accused and as per the complainant, the accused had breached the conditions of the said agreement. However, the law is well settled that every deceitful act is not unlawful, just as not every unlawful act is deceitful. "Cheating" generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of valuable security, prompting the induced person to undertake the said act, which they would not have done, but for the inducement. In the present case also, the breach of conditions of the agreement by the accused would constitute the offence of cheating or not, is a subject matter of trial before the Trial Court and the same is yet to be adjudicated by the trial Court, during the course of trial. Even, the parties had commercial transactions between them and the custodial interrogation of the accused may not be required.

7. Consequently, the present petition is allowed and the interim order dated 12.08.2024 is made absolute. The petitioner shall continue to join the investigation, as and when called by the Investigating Officer. The petitioner shall also abide by the conditions as specified under Section 482 (2) of B.N.S.S.

(N.S.SHEKHAWAT)
JUDGE

19.10.2024
hitesh

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