



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

270

CRM-M-44508-2023
Reserved on : 30.04.2024
Pronounced on : 06.08.2024

Ashutoshanand @ Aashu Baba and another **Petitioners**

versus

State of Haryana and another **Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ravi Sharma, Advocate
for the petitioners.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

None for respondent No.2.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 482 of Cr.P.C. seeking quashing of FIR No.273 dated 30.08.2021, registered for offences punishable under Sections 406 and 506 of IPC at Police Station Mundkati, District Palwal.

2. Present FIR was registered at the instance of respondent No.2 who as per the office report though stands served but has opted not to appear. The contents of the FIR read as under:-

“To the Deputy Superintendent of Police, Hodal District Palwal Haryana. Subject: - Complaint regarding plying of Mahindra Balero HR-30L-6353 on lease and threatening to eliminate on asking for



returning the same and paying the lease money and further to involve in a false criminal case. Sir, I Navneet Tewatia son of Shri Jagmohan Singh is resident of B-2 Civil Lines Palwal Haryana. I have the business of transport. I had purchased a Mahendera Balero bearing No. HR-30L-6353 in the year 2013 which was used by me for my personal work. In this vehicle, I used to visit my spiritual Guru Paramhans Ashram Vinoga Shivpuri, Madhya Pardesh. Sometimes my family members used to stay in the ashram and the abovesaid Balero Jeep remained parked for months together there. In Vinoga Ashram Bhagwandas Badoniya son of Sunder Das resident of Shivpuri and his companion Rahul Gupta @ Ashu son of Virender Gupta resident of Aligarh also used to visiting the ashram, who became acquainted with me. Bhagwan Dass and Rahul Gupta contacted me many times and offered to get the Balero vehicle engaged on contract as you have been having many vehicles for which you may be getting Rs 30,000/- per month as income and the driver on the vehicle will also be getting salary, which will be a livelihood for him. Thereafter, Bhagwan Dass Badoniya, Rahul Gupta and one another person, known to the Bhagwan Dass and Rahul Gupta, came to me. At that time, I had gone to Filling Station Sraye, Khataila, Tehsil Hodal, District Palwal, from where all these three persons took away the Balero vehicle from me and by saying that the documents regarding contract for plying the vehicle on lease to be sent later on. After three months of the taking away of the Balero when I went to Shivpuri where Rahul Gupta and Bhagwandas gave me Rs 20,000/- as cash and said



that the payment of contract money is late but in future the same will be in time and the documents will also be sent earliest. Thereafter the Balero Jeep remained with Bhagwandas. In the year 2019, Bhagwan Das and Rahul Gupta stopped me paying the settled monthly rent on different pretext. Being known I believed them. After this, Bhagwandas and Rahul Gupta did not pay me the anything on the pretext of Corona since 2020. In the meanwhile, our spiritual Guru Swami Bajranand ji got brain stroke, I visited him where Rahul Gupta was also present and I asked there to Rahul Gupta that if both of you cannot pay the settled amount, you may return my Balero on which he said that you sell the vehicle to us as the same is not running smoothly due to accident. Keeping in view the condition of the vehicle, I consented to sell the Balero Jeep to Bhagwandas and Rahul Gupta and the consideration amount was settled as Rs.3,56,000/-, but the Bhagwandas and Rahul Gupta kept on giving time and did not make the payment of settled amount of my Balero Jeep till today. Sometimes ago, Bhagwandas sent the documents of his known person on whatsapp requesting to sent the NOC for transfer so that consideration money may be paid. I refused to send the paper and firstly demanded the balance settled amount of running the Balero Jeep on lease on which Bhagwandas and Rahul Gupta threatened to eliminate me and asked to sell the vehicle to them. In case you ever there to visit Shivpuri to take that vehicle, then 1 and Rahul Gupta will get involved in so many cases and the price of the vehicle will be consumed on the litigation. Rahul Gupta spoke to me that you don't



know me, I have many goons in my group and I will get your body thrown in the forest after killing you. Sir, now I have to come to know that Bhagwandas and Rahul Gupta are thief and mischievous type of person whose brother Hemant and Rahul Gupta are wanted Criminal Wing Haryana. Bhagwandas and Rahul Gupta alias Ashu conniving with others have breached the trust and cheating as well as threatened to kill. You are requested to take strict legal action against the abovesaid both persons i.e. Bhagwandas and Rahul Gupta alias Ashu and my Balero jeep restored and to get the misappropriated settled money by cheating. Sd/- Navneet Tewatia.xxx”

3. Petitioners claim themselves to be disciples of Shri Paramhans Swami Bajranandji Maharaj, who is stated to have expired on 23.05.2020. It has been claimed that after the death of Swami Bajranandji Maharaj, petitioner No.1 was unanimously appointed as Chairman of the Trust as successor of the deceased-Swami. On 02.06.2020, one Ravinder started interfering in the affairs of ashram. Ravinder has been illegally appointed as self-styled Swami on 17.03.2021 and thus Ravinder is disputing the authority of petitioner No.1 over the ashram. In order to create further hurdles, he through one Satish got registered FIR No.0232 dated 01.07.2021 for offences punishable under Sections 380 and 457 IPC at Police Station Chand Hut, District Palwal against the petitioners.

4. Petitioners approached this Court by way of CRM-M-31529-2021 seeking pre-arrest bail which was allowed vide order dated 06.08.2021. In order to victimize the petitioners further, respondent No.2-



complainant at the instance of said Ravinder, has now succeeded in getting the present FIR No.273 registered against the petitioners again for offences punishable under Sections 406 and 506 of IPC. Petitioners earlier approached this Court by way of CRM-M-38366-2021 which stands disposed off vide order dated 15.09.2021 observing as under:-

“xx xx xx

In the wake of the above, it would be expedient, if the petition is disposed of, at this stage, in terms of the statement made by learned State counsel. This Court is sanguine that if any such representation, as indicated above, is moved by the petitioners the concerned authority shall consider and decide the same in the right earnest and in accordance with law.”

5. Counsel for the petitioners after referring to the aforesaid facts and the order passed by this Court dated 15.09.2021 draws attention of this Court to order dated 02.11.2021 passed by Inspector General of Police, South Range, Rewari to submit despite the Superintendent of Police, Palwal reporting to the Inspector General of Police that no concrete evidence has come on file against the petitioners, the police authorities in connivance with the complainant are persecuting the petitioners. He submits that whole of the criminal proceedings have been designed to dissuade the petitioners from conducting the affairs of the ashram. It is an illegal device to arm-twist them to enable the respondents and their ultimate head Ravinder to intrude into the ashram without having any right. He further submits that it being patent abuse of process of law, FIR needs to be quashed.



6. *Per contra*, counsel for the State submits that status report by way of affidavit of Sajjan Singh, HPS, Deputy Superintendent of Police, Hodal, District Palwal already stands filed. Report under Section 173(2) has been filed before the competent Court and the copy thereof has been placed on record as Annexure R-1. He asserts that a bare perusal of thereof would reveal that report under Section 173(2) has been filed before the Trial Court at Hodal, Palwal after investigating agency found sufficient evidence against the petitioners.

7. I have heard counsel for the parties and with their able assistance have carefully gone through the records of the case.

8. In the considered opinion of this Court, plea raised by counsel for the petitioners with respect to the FIR having been registered with an intent to arm twist the petitioners cannot be scope of the present petition under Section 482 Cr.P.C.

9. The issue to be adjudicated in proceedings under Section 482 Cr.P.C. is:

- a) Whether the FIR is an abuse of process?
- b) Whether contents of FIR constitute offence qua the petitioners?

10. The test with respect to exercise of jurisdiction under Section 482 of the Code stands well laid by Apex Court in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others reported as 1992 SCC (Cri) 426**, which reads as under:-

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter



XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) 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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute



only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR 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.

(6) 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.

(7) 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.”

11. The question thus before this Court is whether the allegations levelled against the petitioners in the present case constitute offence punishable under Section 406 IPC or not. Section 406 IPC prescribes punishment for criminal breach of trust. Section 405 IPC defines criminal breach of trust and the same reads as under:-

**“405 Criminal breach of trust**

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes off that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

12. A bare perusal of the aforesaid definition of criminal breach of trust means, using or disposing of the property by a person who is entrusted with or has otherwise dominion their over. Further such act of user or disposal of the property must not only be dishonest, but should also be in violation of any direction of law or any contract expressed or implied relating to the entrustment.

13. Lately, in ***Sachin Garg vs. State of U.P.*** reported as **2024 SCC OnLine SC 82**, Apex Court had an occasion of dealing with necessary ingredients to constitute offence punishable under Section 405 IPC. Relying upon ***Deepak Gaba vs. State of Uttar Pradesh*** reported as **(2023) 3 SCC 423**, Apex Court held as under:-

“xx xx xx

8. It was observed in the judgment under appeal that the applicant has got the right of discharge which could be freely taken up by him before the Trial Court. Mr. Mukul Rohatgi, learned senior counsel has appeared in this matter on behalf of the appellant along with Mr. Guru Krishna Kumar, while the case of respondent no. 2 has been argued by Ms. Divya Jyoti



Singh. State was represented before us by Mr. Sarvesh Singh Baghel. The main contentions urged by Mr. Rohatgi is that the complaint made against the appellant does not disclose any criminal offence and at best, it is a commercial dispute, which ought to be determined by a Civil Court. In so far as the allegations of commission of offence under Sections 405 and 406 are concerned, he has relied on a judgment of this Court in the case of *Deepak Gaba v. State of Uttar Pradesh* [(2023) 3 SCC 423]. This decision deals with the basic ingredients of a complaint under Sections 405 and 406 of the 1860 Code and it has been held in this judgment:—

“15. For Section 405 IPC to be attracted, the following have to be established:

(a) the accused was entrusted with property, or entrusted with dominion over property; (b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and (c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.”

14. Likewise in ***Ashoke Basak vs. State of Maharashtra*** reported as ***(2010) 10 SCC 660***, Apex Court held that in order to constitute offence of criminal breach of trust, it is necessary for the complainant to satisfy the following ingredients observing as under:-

“xx xx xx

21. It is plain that for constituting an offence of criminal breach of trust, the following ingredients must be satisfied:

(a) a person should have been entrusted with property, or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person



to do so;

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.”

15. Applying the aforesaid test to the allegations levelled in instant FIR, it is evident that the gravamen of the allegations levelled against the petitioners is with respect to retaining of Bolero vehicle belonging to the complainant. The complainant himself avers that the vehicle was engaged on contract @ Rs.30,000/- per month apart from the salary of the driver of the vehicle. He alleges that when after 03 months he asked for the lease money, he was only paid Rs.20,000/- in cash and later on the same was not paid on the pretext of Covid-19. As per the contents of the complaint further, the complainant agreed to sell the aforesaid vehicle to the petitioners for an amount of Rs.3,56,000/-. It is further alleged that the said amount has not been paid to him till today. It has been claimed by the complainant himself that sometime prior to filing of the complaint, petitioner No.2 sent documents on whatsapp requesting to send NOC necessary for transfer so that the consideration money can be paid. The complainant claims that he refused to send the papers till the settled amount for sale of vehicle is paid to him. He further claims of having threatened by petitioner No.1.

16. Thus, the entrustment of the vehicle is evident from the record. However, the question is whether the petitioners are using the vehicle with dishonest intention. In other words, the question before this Court is



whether its a mere breach of agreement of sale or there is fraudulent or dishonest user in violation of any law or contract that can give rise to criminal prosecution. In ***Indian Oil Corporation vs. NEPC India Limited*** reported as ***(2006) 6 SCC 736***, Apex Court observed as under:-

“xx xx xx

13. 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. ... 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.”

17. The same was reiterated by Supreme Court in the case of ***Mitesh Kumar J. Shah vs. State of Karnataka*** reported as ***(2022) 14 SCC 572*** holding as under:-

“xx xx xx

38. Having considered the relevant arguments of the parties and decisions of this Court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this Court, by way of an observation rendered in *Indian Oil Corpn. v. NEPC India Ltd.* [*Indian Oil Corpn. v. NEPC India Ltd.*, (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , as under : (SCC p. 749, para 14)

“14. 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 only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.”

18. Even in report filed under Section 173(2) Cr.P.C. placed on record by the respondent No.1 as Annexure R-2 alongwith the status report, the only evidence collected is in the form of seizure of vehicle which is subject matter of dispute from the custody of the petitioners. The vehicle being in custody or having been entrusted to the petitioners. is not in dispute. Rather dispute is whether their action of putting the same to their own use is dishonest or is in violation of any law to constitute offence punishable under Section 406 IPC. Once complainant himself admits that he handed over the vehicle to the petitioners for lease amount of Rs.30,000/- per month and thereafter agreed to sell the same for an amount of Rs.3,56,000/-, this Court finds that it will be tough to hold that the petitioners had any dishonest intent in using the vehicle. More so, when complainant also admits that respondents offered to pay him the money subject to issuance of ‘no objection certificate’ which was necessary for transfer of the vehicle, the offer complainant himself rejected.

19. Applying the aforesaid ratio to the factual matrix of the present case, this Court finds that the present case would fall within the ambit of categories enlisted by Apex Court in the case of **Bhajan Lal (supra)** by its category No.2 and 3. Apart from that, this Court finds that dispute between the parties to the contract of sell of vehicle regarding covenants thereof has been given criminal colour which has led to registration of



FIR. This is impermissible in law.

20. In view of above, this Court finds that the impugned FIR cannot be sustained and needs to be quashed.

21. Consequently, the present petition is allowed. FIR No.273 dated 30.08.2021, registered for offences punishable under Sections 406 and 506 of IPC at Police Station Mundkati, District Palwal and all proceedings arising therefrom, are, hereby, quashed qua the petitioners.

06.08.2024

Dinesh

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable :

No