

2024:PHHC:146544



285 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45856-2023 (O&M)
DECIDED ON: 08.07.2024

BHOLA SINGH AND ANOTHER

.....PETITIONERS

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sunil Sihag, Advocate
for the petitioners.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J

1. Relief Sought:

The jurisdiction of this Court under Section 482 Cr.P.C. has been invoked seeking quashing of FIR No. 272, dated 28.06.2023 (Annexure P-1), under Sections 294, 406, 506 read with 34 IPC registered at Police Station Ellenabad, along-with all consequential proceedings arising therefrom.

2. *Facts*

The facts as narrated in the FIR are that a complaint dated 28.06.2023 has been moved by Rajesh Kumar working as a Clerk at M/s Arjun Ram Birbal Ram, Ellenabad on the allegations that the accused persons namely Bhola Singh and Jaswinder Singh borrowed a sum of Rs.16,32,500/- from him for household and

agricultural purposes between 2019-2021. They have refused to repay the said amount, despite panchayat interventions, in fact, threatened his life, and abused him. Hence, the present FIR.

3. Submissions

On behalf of petitioners:

It has been contended by learned counsel for the petitioners that the police has registered the impugned FIR without mandatory inquiry under law and the dispute concerns monetary transactions, with ongoing civil litigation. It has further contended that the trial Court while granting anticipatory bail to the petitioners has specifically observed that the offence is of civil in nature, which has been given a colour of criminal nature. Petitioners are Rajasthan based farmers, sold crops to M/s Arjun Ram Birbal Ram since 2017 but the said fact has not been deliberately mentioned in the FIR by the complainant in his complaint. Moreover, the complainant has also concealed the fact of sending legal notice to petitioner No.2 as well as filing of civil suits.

On behalf of respondent-State

Learned State counsel has contended that during investigation the petitioners accused have not co-operated with the investigation, as they have neither disclosed anything nor got recovered the money of the complainant. Moreover, after completion of investigation, challan/report under Section 173 Cr.P.C. has been presented before the Court concerned on 26.02.2024.

Heard learned counsel for the petitioner at length.

4. Analysis & Conclusion:

Code of Criminal Procedure, 1973 Section 482 of Cr.P.C., 1973 reads as under:-

“482. Saving of inherent powers of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

The observations made by Hon’ble Apex Court in the case of “**Gulam Mustafa v. State of Karnataka**”, 2023 SCC OnLine SC 603 reads as under:-

*26. Although we are not for verbosity in our judgments, a slightly detailed survey of the judicial precedents is in order. In “**State of Haryana v. Bhajan Lal**”, 1992 Supp (1) SCC 335, this Court held:*

"102. 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 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.

(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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."(emphasis supplied)

It was laid down in “**CBI v. Aryan Singh**”, **2023 SCC OnLine SC 379**,

that the High Court cannot conduct a mini-trial while exercising jurisdiction under Section 482 of Cr.P.C. The relevant extract of the judgment reads as under:-

10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini-trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini-trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not of proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial based on the evidence led by the rt prosecution/investigating agency. Therefore, the High Court has materially erred in going into detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has very limited jurisdiction and is 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".

This position was reiterated in "**Abhishek v. State of M.P.**" 2023 SCC

OnLine SC 1083 wherein it was observed:

12. The contours of the power to quash criminal proceedings under Section 482 Cr.P.C. are well defined. In **Ravi Kumar Vs. State** represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu and others [(2019) 14 SCC 568], this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. In "**M/s. Neeharika Infrastructure (P).Ltd. vs. State of Maharashtra and others**"[Criminal Appeal No.330 of 2021, decided on

13.04.2021], a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in R.P. Kapur vs. State of Punjab (AIR 1960 SC 866) and State of Haryana and others vs. Bhajan Lal and others [(1992) Supp (1) SCC 335], the Court would have jurisdiction to quash the FIR/complaint.

It is apparent from these judgments that power under Section 482 of Cr.P.C. can be exercised to prevent the abuse of process or secure the ends of justice. The Court can quash the F.I.R. if the allegations do not constitute an offence or make out a case against the accused. However, it is not permissible for it to conduct a mini-trial to arrive at such findings.

Having gone through the complaint, which was registered as an FIR and the assertions made therein, it is quite clear that respondent No.2-Rajesh Kumar's grievance is regarding failure of the petitioners to pay the outstanding amount, in spite of repeated demands and panchayat interventions.

The complaint contains all three of the elements listed in Section 406 IPC: cheating, dishonest intention, and criminal breach of trust. Respondent No. 2 transferred Rs. 13,32,500/-to the petitioners' bank account via RTGS after the petitioners promised to either reimburse the money or sell their crop at the company where respondent No. 2 was employed as a clerk. Additionally, there are elements

of Section 506 IPC because the petitioners are accused of threatening respondent No. 2 in the panchayat on May 26, 2023, and June 1, 2023.

In view of the discussions made hereinabove and judicial pronouncements, this Court does not find it a fit case to exercise its inherent powers under Section 482 Cr.P.C. to quash the impugned FIR. Hence, the present petition being devoid of any merits is dismissed.

Pending criminal misc. application, if any shall also stands disposed off.

08.07.2024
sham

(SANDEEP MOUDGIL)
JUDGE

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