

2024:PHHC:146999



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

281

CRM M-50172 of 2019
Date of Decision: 22.10.2024

Naresh Gopal Sharma ...Petitioner
Versus
State of Haryana and another ... Respondents

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

Present : Mr. Rajesh Khandelwal, Advocate, for the petitioner.
Mr. Rajinder Kumar Banku, DAG, Haryana.
None for respondent No. 2/complainant.

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. 74 dated 13.02.2019 under Sections 379, 406 and 506 IPC (Section 420 IPC added later on) at Police Station Sector 50, Gurugram (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 respondent No. 2/complainant and the same has been reproduced below:-

"To The Commissioner of Police, Gurugram.

Sub: Criminal complaint against (1) Naresh Gopal Sharma, Mobile No. 9650266166, Director of M/S NGS Design Studio Pvt. Limited, 746, Sector D-6, Kaveri Block, Vasant Kunj, New Delhi-110070 (2) I.S. Chauhan Architect, Mobile No. 9899261600, SCO No. 30, Old Jail Road Complex, First Floor, Gurugram.

Sir, The Complainant Hyun Suk Kim Resident Of C-1-601, Palm Grove Heights, Sector-52, Gurugram, Mobile No. 8800930053, 9971130157 Humbly Submits As Under:-

1. That the complainant is South Korea resident and having Business Visa to carry out business in India and she is residing at above stated address in the jurisdiction of Gurugram City. The Complainant is President and Secretary of establishment PBWM India Educational Pvt. Limited, H-79, Kalkaji, New Delhi-110019.

2. That the complainant after having purchased a plot of 12 Marlas, plot at Lal Dora of Village Samaspur Gurugram wanted to erect a Building for educating poor students of the locality and also for educating poor ladies of the locality for their development and for this purpose accused No. 2 was engaged for preparing the site plan of the said building.

3. That meantime accused No. 1 was introduced to the complainant for the construction of the said building through accused No.2.

4. That accused No. 1 represented himself to be the reputed and competent building contractor having competent staff, engineers, supervisors and well maintained machinery and office. He also represented

that his company has already constructed various building with all satisfaction In the area of Gurugram City and through email he sent the photographs and particulars of some buildings alleged to be constructed by his company. Copy of the said representation is attached herewith. But later on verifications it was revealed that none of the said building was constructed by them. So later on the complainant got suspicious on their representation.

5. That on persuasion of the accused persons and believing their representation to be true, the complainant entered into construction agreement for the above said building with accused No. 1 on dated 11th June, 2018 as the accused No. 2 owned a guarantee for the proper and upto mark construction by accused No.1.

6. That the accused persons started construction of the building w.e.f. 20.06.2018 in the basement of the said proposed building. Basement was already got dug by the complainant from some local contractor months before entering into the contract. The accused No.1 erected single lanter on the floor of the basement of the said building and thereafter prepared for the second lanter and foundations for pillars in the basement on the first lanter.

7. That the complainant paid an amount of Rs. 37,00,000/- (Rupees Thirty Seven Lakh) from time to time as detailed in the statement of account attached herewith for the purchase of iron bars, cement and other material and material was purchased and delivered at the site. Iron bars were installed for second basement lanter and iron bars were installed for erecting pillars.

8. That the accused No. 1 stopped carrying out the work w.e.f. 16.08.2018 without notice and knowledge of the complainant and thereafter despite various repeated requests he did not start work for the reasons best known to the accused without assigning any reason to the complainant. However, the accused No. 1 used substandard material and installed less gauge of iron tore which resulted into falling of side walls.

9. That the accused persons in connivance with each other persuaded and lured the complainant to lure her to part with her hard earned money and intentionally and deliberately induced the complainant to pay an amount of Rs. 37,00,000/- in order to cause wrongful loss to the complainant and to cause wrongful gain to themselves and they took away the building material ie. cement, oars, crusher and bricks from the site and also took away the iron oars from the basement and pillars by cutting the same and destroyed the base of the basement of the building.

10. That the accused persons were asked to restart the work and to return the building material which was taken away by them from the site but they did not care and kept on demanding more money and on asking that as per agreement further money will be paid to them after the report of the architect I. S. Chauhan, but both the accused in collusion with each other did not pay any heed to the just and genuine request of the complainant.

11. That the accused persons have also threatened me of dire consequences and had stated that 'they will not carry out the construction work' and on demand to return the amount which they have received they stated

that 'they will not return even a single penny and also stated that 'whatever you want to do you can, we are strong headed persons and no one can do anything against us'. It is, therefore prayed that both the said accused persons have cheated me in collusion with each other and have parted with my money of Rs. 37,00,000/- on the false pretext and have also committed the theft of construction material which was purchased from my hard earned money, so strict and legal action may kindly be taken against the said accused persons and my amount of Rs. 37,00,000/- be got recovered from the accused persons.

Thanking you,

Sd.

Complainant Hyun Suk Kim"

3. Learned counsel for the petitioner contends that PBWM India Educational Private Limited (the complainant's Company) and the petitioner's Company, i.e., NGS Design Studio Private Limited entered into a construction agreement dated 11.06.2018 for constructing a building in village Samaspur, Gurugram. The construction at the site started on 20th June 2018 and in August 2018, a civil suit with regard to payments and wrong designing of the side wall etc., arose between the parties. Thereafter, construction at the site was stopped and there was an exchange of e-mail between both the sides. The respondent No. 2/complainant also served an unsigned legal notice on 20.11.2018 (Annexure P-4), in which, the case of the petitioner was virtually admitted. The petitioner raise many requests for appointment of an Arbitrator, 14 of the Construction Agreement

(Annexure P-2) for resolving the dispute between the parties. The respondent No. 2 did not agree. Ultimately, the petitioner filed a petition, i.e., ARB No. 35 of 2019 before this Court for appointment of Arbitrator and vide order dated 18.10.2019 (Annexure P-5), the prayer was allowed.

4. The Arbitrator appointed by the Court had fixed the preliminary arbitral hearing on 15.11.2019. However, in the meantime, the complainant/respondent No. 2 had already lodged the present FIR against the petitioner. Learned counsel further contends that the FIR in the present case has been got registered by respondent No. 2 to arm twist the petitioner and several complaints were made to the police by him.

5. He further contends that a civil dispute has been converted into a criminal offence illegally. The police has registered the FIR under Sections 406, 420, 379 and 506 IPC. He further contends that no offence under Section 379 IPC is made out against the petitioner as the possession of the property was always with respondent No. 2 and ultimately no property had been taken away from the possession of respondent No. 2. Further, no property was entrusted to the petitioner nor it had been misappropriated or converted for own use by the petitioner. Still further, the basic ingredients of the offence under Section 506 IPC were clearly missing in the instant case as no person was ever threatened by the petitioner.

Even, no FIR can be registered against the same accused under Sections 379 and 406 IPC simultaneously. Apart from that, the complainant on the one side was alleging that she was cheated by the alleged acts and misdeeds of the accused in respect of the construction contract, whereas, on the other hand, she had placed strong reliance on the construction contract (Annexure P-2).

6. On the other hand, learned State counsel has vehemently argued that a complaint was received in the Office of Commissioner of Police, Gurugram, by post and after holding an inquiry, the FIR has been registered against the petitioner and others. Still further, specific allegations had been levelled against the petitioner and the present petition deserves to be dismissed by this Court.

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

8. 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.”

9. 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.

10. 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.

11. 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”.

12. In view of the above discussion, it can be safely held that the dispute in question is purely of civil nature and an Arbitrator has already been appointed by this Court to decide the claims of the parties. Thus, in the peculiar facts and circumstances of the case and 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.

13. Consequently, this Court has no hesitation to hold that the FIR No. 74 dated 13.02.2019 under Sections 379, 406 and 506 IPC (Section 420 IPC added later on) at Police Station Sector 50, Gurugram (Annexure P-1) is an instrument of misuse of the process of the law and the same is ordered to be quashed alongwith all other proceedings emanating therefrom.

14. The petition is allowed.

15. Needless to observe that the parties shall be at liberty to avail their alternative remedies, if any, in accordance with law.

22.10.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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