



2024:DHC:8602



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 02.08.2024
Pronounced on : 05.11.2024

+ **CRL.M.C 2853/2013**

NEELAM INDIA PVT. LTD. & ORSPetitioners
Through: Mr. Sudheer Voditel and Mr. Rono
Mohanty, Advocates.

versus

THE INVESTIGATING OFFICER POLICE STATION LAHORI
GATE & ANRRespondents
Through: Mr. Laksh Khanna, APP for State
with SI Anil Khatana PS Lahori Gate,
Delhi.
Mr. Deepak Kaushik and Ms. Ruchi
Kaushik, Advocates for respondent
No.2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present petitions, the petitioners seek quashing of the FIR No. 372/2007 registered under Sections 415/418/420/120-B/34 IPC at PS Lahori Gate, Delhi on the basis of a complaint dated 30.05.2007 and all consequential proceedings arising therefrom.
2. Briefly, the facts of the case are that petitioner No.1 company was desirous of availing 'warehouse receipt based financing.' For this purpose, it approached the respondent No.2 Bank through its Managing and Collection Agent i.e. *Hiban Lal's India Pvt. Ltd* (hereafter, the 'M&C') by offering to pledge its stock of *Guargum* seeds. After due verification and assessment,



the M&C agent recommended the petitioners' application against the pledged stock to the tune of 8683 bags that was stored at three different warehouses/godowns. The complainant/respondent No. 2 has granted warehouse receipt based finance facility to petitioner No.1 for a sum of Rs 2,21,86,416/- by cheque/D.D in September 2006. M/s *Indian Commodities.com* was appointed as the Collateral Manager (hereafter, the 'C.M.') to ensure the safety, security and proper maintenance of the produce.

The respondent No.2 used to receive ratified periodical/monthly reports regarding the pledged stock from the C.M. and M&C agent. In the report of February 2007, C.M. indicated major shortfall of the pledged stock of *Guargum* seeds. Whereafter, the subject criminal proceedings were initiated by Respondent No.2, alleging that the petitioners with the intent to defraud the respondent No.2 masked the shortfall of the pledged stock of *Guargum* seeds by hiding bags of husk in the inner rows behind the bags containing *Guargum* seeds.

3. Learned Counsel for the petitioner submits that the petitioners are innocent and falsely roped in the present case. He contends that the petitioners are in fact victims of a shoddy investigation. Though 1646 bags containing *Guargum* seeds were found during investigation, the IO has only managed to trace the source of only 1600 bags, which are stated to have been sold to the petitioners by one *Manoj Bansal*. He contends that no explanation has been provided as to source of the additional 46 bags of *Guargum* seeds found to be lying in the Godowns. He submits that though the goods were kept in godowns of the petitioner, the safe custody of the commodities was under the dominion, care and possession of the C.M. and



they had the keys to the warehouse.

Additionally, it is contended that there was no privity of contract between the petitioners and the complainant. The vetting of the petitioners' application was undertaken by the M&C agent. It is submitted that Credit Arrangement Letter of Rs. 15 crores (later on, enhanced to Rs.20 crores) was executed in favour of the M&C agent by Respondent No.2 for extending loans under Warehouse Receipt Based Finance Scheme. It is contended that as per the contract between the M&C agent and respondent No.2 bank, the M&C agent was to receive proposals from borrowers like the Petitioners and after verification of the pledged stock, it could either seek approval of the loan case from Respondent No.2 before disbursement of loan amount or it could even directly disburse the loan amount and thereafter claim reimbursement from the Respondent No.2. In the latter case, it is submitted that the respondent No.2 could in the event of any loss recover the money from the M&C agent. It is thus contended that the M&C agent had been granted wide discretion and there was no direct contact between the respondent No.2 and the petitioners. Reliance has been placed on decision of the Supreme Court in Joseph Salvarajan v. State of Gujarat & Ors., reported as **(2011) 7 SCC 59**.

It is also submitted that the credit facility was extended to the petitioners after due verification and the respondent No.2 raised no objection to their application at any stage of process, which shows that they were satisfied with the documentary proof of pledge/creation of security provided by the petitioners.

4. Learned counsel for the petitioner further submits that the terms of contract between the respondent No.2 and the M&C agent make it



abundantly clear that third parties like the petitioners could not bring forth any claims against the respondent No.2 which is another indication of the absence of privity of contract between the petitioners and respondent No.2.

It is next contended that the paragraph No. 4 of the complaint filed by the respondent No.2 specifies that it was the responsibility of the M&C agent to carry out the requisite verification, fix the maximum facility amount, check the quantity, quality, weighment and valuation of the pledged produce and thereafter certifying it. Further, paragraph No.8 of the complaint clearly states that the application for financing of the petitioner including the stock of *Guargum* seeds was duly verified by the M&C Agent before recommending it.

It is also contended that the recovery of the amount which was lost due to less than stipulated stock of *Guargum* seeds was due from the M&A agent and the C.M. and not the petitioners. It is submitted that the Respondent No.2 has needlessly initiated this criminal prosecution against the petitioners just to pressurize them into paying the respondent No.2 when the agreement between M&C agent and the respondent No.2 clearly indemnifies them against any loss which may occur. It is submitted that the dispute is civil in nature and yet no civil proceedings have been preferred by the respondent No.2. Reliance has been placed on the decision of Supreme Court in Dinesh Gupta v. State of U.P. and Anr, reported as [2024] 1 S.C.R. 390

5. Lastly, it is submitted that the preliminary report which was placed before the learned Judicial Magistrate prior to registration of the FIR would show that neither the reports of inspection of godowns conducted by the respondent No.2 nor the details of sanction of loan including names of the



officials of respondent No.2 bank have been provided by them. It is submitted that this would clearly show that the respondent No.2 is deflecting its own responsibility and trying to pin the blame on the borrower instead.

6. Mr. Laksh Khanna, learned APP for the state has vehemently opposed the present petition. He submits that the petitioners are guilty of cheating the respondent No.2 by not maintaining the requisite stock of *Guargum* seeds and instead replacing them with bags containing husk to hide their trail.

He submits that in the present case there are three sets of accused persons. Petitioners No.2 and 3 are the directors of petitioner No.1, who are the borrowers. By way of Supplementary Challan, Mr. Parvesh Manchanda, and Manohar Lal Sharma, who are the Director and Manager respectively of *Hibans Lal*, the M&C agent, were sent for trial. Mr. Janardan Sharma and Mr. Sunil Sharma, the Roaming supervisor and Collateral Manager, of *Indian Commodities Co*, the CM agent of respondent No.2, were also made an accused in the supplementary Challan.

7. Learned APP submits that multiple witnesses in their statements recorded under Section 161 Cr.P.C. have stated as to the complicity of the petitioners in the offences alleged. *Raj Singh*, the husk supplier from *Chara Mandi, Rohtak* has said that he had met petitioner No.2 and 3 who purchased from him the bags of Husk. *Bhushan Singh*, the labour *Thekedar* whose labour hid the bags of husk behind the *Guargum* seeds, has stated that he did so on instructions of petitioner No.2 and 3. *Harinder Kadyan*, the then general manager of petitioner No.1, has also said that he accompanied the petitioners No.2 and 3 when they purchased the husk bags, and that he paid *Raj Singh* as well as *Bhushan* for purchasing and storing the bags of husk respectively. He also stated that petitioner No.2 had specifically



instructed him as to how the sacks should be placed hidden behind the bags of *Guargum* seeds.

8. With regard to the alleged incompleteness of the investigation, learned APP for the State submits that defective investigation cannot solely be a ground of acquittal, let alone quashing.

On the aspect of privity of contract, it is submitted that the same might be relevant if the complainant was seeking the civil remedy of recovery. In the present case, however, the question of privity of contract does not arise in light of the statement of the witnesses who have made specific allegations attributing criminality to the petitioners herein.

He further submits that merely because a civil remedy may be available that by itself does not lead to quashing of criminal proceedings and it has been time and again reiterated that civil and criminal proceedings can proceed simultaneously.

9. Learned counsel for the respondent No.2/complainant has adopted the arguments of the State and has opposed the present petition. He submits that the contention of the petitioner that there was no privity of contract between the petitioner and respondent No.2 is baseless. He submits that petitioner No.1 was required to deposit the goods at godown and further, he was also required to deposit receipts of the same with the respondent No.2 bank. A 'Take Delivery Letter' has been addressed to the respondent no.2 by the petitioner No.2 in his capacity as Director of petitioner No.1 which shows that there was direct communication between the accused petitioners and the respondent No.2. He contends that merely because the M&C agent was tasked with the document scrutiny and verification, that does not mean that the respondent No.2 stopped being privy to the contract.



He further submits that the IO alongwith officials from the respondent No.2 had visited the three godowns of the petitioner. At the godown near Ganda Nala, Mundka, 1024 Bags of *Guargum* seeds and 4300 bags of Husk were found. From the Godown near Jai Mata Dharamkanta, Tikri Kalan, 285 Bags of *Guargum* seeds and 1092 bags of Husk were found. Lastly, from the Godown situated at SBI wali gali, Tikri Kalan, 337 Bags of *Guargum* seeds and 1680 bags of Husk were found.

It is thus submitted, that the petitioners have engaged in a deliberate act of cheating by hiding bags of husk behind the bags containing *Guargum* seeds to hide the fact that they are not maintaining the requisite level of stocks.

10. I have heard learned counsel for the parties and learned APP for the State and have also gone through the records.

11. Facts placed on record reveal petitioner No.1 company seeking to avail 'warehouse receipt based financing' approached the respondent No.2 Bank through its M&C agent offering to pledge its stock of *Guargum* seeds. The M&C after verification recommended the application of the petitioner against the pledged stock to the tune of 8683 bags at three different warehouses/godowns. The respondent No. 2 granted warehouse receipt based finance facility for a sum of Rs 2,21,86,416/- by cheque/ D.D in September 2006.

The bank received ratified periodical / monthly reports regarding the pledged stock from the C.M. and M&C agent October 2006 onwards and the reports were given for the months of October 2006, November 2006, December 2006 and January 2007. For the first time, in its report for the month of February 2007, the C.M. indicated major shortfall in quantity of



the pledged stock of *Guargum* seeds in the godowns.

Pursuant to this report, the respondent No.2 bank conducted an external audit and found large scale irregularities, discrepancies and shortfall in the pledged stock. Upon the conduction of official inspection by the respondent No.2 bank, only 1646 bags were found to contain *Guargum* seeds instead of the pledged 8683 bags and rest of the bags were found to be containing husk instead.

Show cause notices were issued by the respondent No.2 Bank to the M&C and the C.M. The respondent No.2 filed a complaint on 30.05.2007 with the SHO, PS Lahori Gate against the M&C, the CM and the present petitioners. Application was also filed under Section 156(3) of the Cr.P.C. for directions for registration of FIR on 30.07.2007.

The learned Magistrate vide order dated 07.08.2007 called for a preliminary report from the SHO. Pursuant to the order of Court dated 20.08.2007, FIR bearing No. 372/2007 came to be registered on 24.08.2007 under section 409, 418, 426, 120-B read with 34 of IPC against the partners and directors of M&C, CM and the petitioners herein. Chargesheet was filed under Sections 415/418/420/120-B/34 IPC and charges were framed under Sections 420/120B IPC.

12. The inherent power of the High Court can be exercised to prevent the abuse of process of Court or to secure ends of justice. While exercising this power, the Court cannot delve deep into the merits of the case and assess each piece of evidence, which is the domain of the Trial Court. The Court would be justified in quashing the criminal proceedings if the uncontroverted allegations in the FIR or complaint and the evidence collected in support of the same do not prima facie constitute any offence. In



the landmark case of State of Haryana v. Bhajan Lal, reported as **1992 Supp (1) SCC 335**, Supreme Court has illustrated the categories of cases wherein the extraordinary power of High Courts under Article 226 or inherent powers under Article 482 could be exercised. These illustrations, though not exhaustive, are still important to be kept in mind by this Court while exercising its discretion. They are being reproduced below for convenience:-

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.*

13. In the present case, multiple witnesses have stated about the presence of petitioner No.2 and No.3 at the godown when the husk bags were placed hidden behind the bags of *Guargum* seeds.

14. Director of the C.M. namely Smt Nirupama Pendurkar has stated in her statement under Section 161 Cr.P.C. that she received information from her employee *Anand* that in the *Tikri Kalan* godown of the petitioner No.1, he found bags of *Bhusa* (husk) and that the bags of *Guargum* seeds were present only on the periphery. Upon further inspection, it was found that all 3 godowns were stacked with bags of husk. She also stated that she along with her co-Director Alok Sekhsaria visited the site and saw the *Bhusa* bags lying in the godown. She further stated that an ICICI audit was conducted a week prior in which no irregularity was detected.

15. One *Bhushan Singh*, who is a labour *Thekedar* was also questioned who stated that he, on instructions of *Harminder Kadyan* and petitioner No.2 and 3 placed the husk bags in the inner rows and the bags containing *Guargum* seeds in the outer row, hiding them. He stated that for this work, he was paid 25,000 rupees in cash. When he had asked the petitioner No.2 as to why the bags were being placed in this way, it was replied that this way



the *Guargum* seeds were not spoilt and that the petitioner No.2 wanted to export the same.

16. *Harinder Kadyan*, the then general manager of the petitioner No.1 in his statement recorded under Section 164 Cr.P.C. stated that the petitioner No.2 had told him that he required some husk which he intended to use for making cattle feed by mixing it with *Guargum* seeds and exporting it to Australia. However, he later found that no such export had taken place. He has also stated that he accompanied the petitioner No.2 and 3 to the *Chara Mandi* where they had met one *Raj Singh* for purchasing the bags of husk. In his statement under Section 161 Cr.P.C., *Harinder* also has said that he paid *Raj Singh* as well as *Bhushan* for purchasing and storing the bags containing husk respectively. He also stated that petitioner No.2 had specifically instructed him as to the arrangement of the bags of husk behind the bags containing *Guargum* seeds.

17. *Raj Singh*, the husk supplier from *Chara Mandi, Rohtak* has stated that *Harinder* along with petitioner No.2 and 3 visited him in 2006 and purchased bags of husk. On their direction, he sent 28/29 Canters of Swaraj Mazda containing husk for which he was paid Rs 400/- per quintal.

18. *Manoj Kumar*, in his statement under Section 161 Cr.P.C., has stated that he had met petitioner No.2 who purchased 1600 bags of *Guargum* seeds from him. He further states that on 26.09.2006 and 27.09.2006, he had sent bags of *Guargum* seeds in trucks to the godowns of petitioner No.1. He received payments for the same vide bank transfer by petitioner No.2.

19. The veracity of these statements would be tested in the trial by the Trial Court. This Court in a Section 482 petition cannot delve deep into the merits of the case and conduct a detailed enquiry. The exercise of power



under Section 482 Cr.P.C. with respect to quashing of criminal proceedings is in the nature of an exception and not the rule. It is an inherent power of this Court, provided to meet the ends of Justice and such a proceeding is not in the nature of an appeal or revision. This power has to be exercised sparingly and for the purpose of doing real and substantive justice, and preventing abuse of process of law. This power cannot be used to stifle a legitimate prosecution, even if the prosecution may eventually lead to an acquittal, if *prima facie* the prosecution does not appear to be frivolous, vexatious or malicious. If it appears that the ingredients of the offence are disclosed in the FIR or complaint, and there is no material to show that the FIR or complaint is baseless or made in a *mala fide* manner, this Court would not interfere in the same.

20. A 3 Judge Bench of the Supreme Court in State of A.P. v. Aravapally Venkanna, reported as **(2009) 13 SCC 443** has highlighted the factors which need to be taken in consideration while exercising the powers under Section 482 Cr.P.C. by holding as follows:-

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the



material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.”

21. A reference may be made to the case of Mohd. Allauddin Khan v. State of Bihar, reported as (2019) 6 SCC 107, wherein the Supreme Court has held that:-

“13. The second error is that the High Court in para 6 held that there are contradictions in the statements of the witnesses on the point of occurrence.

14. In our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”) because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case.

On the aspect of scope of enquiry at the stage of Section 482 Cr.P.C., the Supreme Court in the case of State of Madhya Pradesh v. Kunwar Singh,



reported as **MANU/SCOR/25792/2021** has held as follows:-

8. Having heard the submissions of the learned counsel appearing on behalf of the appellant and the respondent, we are of the view that the High Court has transgressed the limits of its jurisdiction under Section 482 of CrPC by enquiring into the merits of the allegations at the present stage. The fact that the respondent was a signatory to the cheques is not in dispute. This, in fact, has been adverted to in the judgment of the High Court. The High Court has also noted that a person who is required to approve a financial proposal is duty bound to observe due care and responsibility. There are specific allegations in regard to the irregularities which have been committed in the course of the work of the 'Janani Mobility Express' under the National Rural Health Mission. At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia, particularly, in a matter involving financial irregularities in the course of the administration of a public scheme. A final report has been submitted under Section 173 of CrPC, after investigation.

22. Considering that various witnesses have attributed a role to the petitioner No.2 and 3 in the alleged offence, the same would need to be tested at the anvil of cross examination in the trial proceedings and a detailed assessment of evidence is neither proper nor necessary at this stage. The veracity of the allegations need to be tested in the trial. It would be open for the petitioners to urge the grounds taken here in the trial proceedings.

It cannot be said, *prima facie*, that no offence at all is made out against the petitioners. The prosecution does not appear to be frivolous, vexatious or malicious. Considering the facts of the case and the import of the Catena of judgements discussed hereinabove, this Court finds no ground to quash the impugned FIR and the proceedings arising therefrom.

23. In view of the above, this Court finds no merit in the petition and the



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same is dismissed alongwith pending application.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 05 , 2024