HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CRM-M-25002-2021 (O&M)
Date of Decision: 01.03.2025
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Satish Mandaokar ... Petitioner

VS.

State of Punjab & Anr. ... Respondents
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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
****

Present: Mr. Shailendra Kashyap, Advocate and
Mr. Vishwendra Verma, Advocate for the petitioner

Mr. JS Rattu, DAG Punjab

Mr. Prabhnoor Kaur Bains, Advocate for
Mr. BS Jaswal, Advocate for respondent No.2
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Sandeep Moudgil, J. (Oral)

(1). This petition under Section 482 CrPC has been filed by the petitioner with a prayer to quash the FIR No.86 dated 06.06.2018 under Sections 406/420 IPC registered at Police Station Mandi Gobindgarh, District Fatehgarh Sahib qua the petitioner.

(2). The instant FIR was registered against the petitioner pursuant to the complaint dated 02.04.2018 from Sanjay Jain (complainant) alleging that the petitioner on behalf of his firm M/s Quality Engineering and Contractor purchased material on credit basis from M/s Jain Steel Industries, Mandi Gobindgarh – complainant's firm for which different bills/invoices were raised and a sum of Rs.1,28,43,438/- remained due towards the petitioner which he promised to clear immediately after receipt of material and since the complainant had long-standing business relationship with petitioner, the complainant kept supplying goods/material to him worth Rs.1,28,43,438/-. It was further alleged that when the complainant demanded aforesaid amount, the petitioner gave the complainant a cheque No.021526 dated 31.03.2017 of Rs.1,90,00,000/- drawn on Bank of Maharashtra, Branch Thane with instructions to adjust the excess amount against the material to be supplied subsequently. However, the aforesaid cheque bounced on its presentation, for shortage of funds. The respondent No.2 got issued legal notice under Section 138 of Negotiable Instruments Act, 1881 (in short, the 1881 Act) which was received by the petitioner but he did not pursue the same. Besides that, the instant FIR was lodged on the basis of investigation conducted by the Police which culminated in the trial proceedings before the trial Court.

(3). Learned counsel for the petitioner submits that the complainant is abusing the due process of law by registering a false FIR in connivance with the police officials against the Petitioner inasmuch as in the terms and conditions of the purchase order dated 16.02.2017 (Annexure P-4), it is mentioned that 100% payment will be made within 30 days after the receipt of material, however, respondent No.2 supplied only 196 MT of Galvanized steel structures which were short by 108 MT as per the purchase order.

(4). It is further averred that the petitioner also made a representation dated 10.06.2017 was also given to the respondent No.2 regarding the delay in supplying the remaining 108 MT material but respondent No.2 very cleverly deposited the cheque of Rs.1.90 crores in the bank with a mala fide intention to encash it for the whole amount of ordered steel i.e. 304 MT whereas material supplied to the petitioner by respondent No.2 was of Rs.1,05,86,891/- amounting to 196 MT steel and since there was a business relationship inter se parties, the goods were supplied on credit for which the payments were made from time to time and merely because complainant/respondent No.2 alleged that a sum of Rs 1.28 crores is due from the petitioner, the offence of cheating is not made out as there is no allegation of inducing the complainant with a mala fide intention as at the time of issuing of cheque there was no dishonest intention on the part of the petitioner.

(5). Another argument raised is that the petitioner was served with a notice under Section 138 of NI Act by the respondent No.2 when the cheque issued by the petitioner was dishonored, however, respondent no.2 did not follow the notice nor did he file any case against the petitioner under the NI Act and sought to convert the civil proceedings into a criminal case. Reliance has been placed on the Supreme Court decision in ***Veer Parkash Sharma v/s Anil Kumar Aggarwal & Another 2007(3) RCR (Criminal)*** to contend that the when the dispute between the parties is essentially a civil in nature, non-payment or under payment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.

(6). Learned State counsel submits that during the course of investigation, on 26.10.2018, pursuant to the orders passed by this Court, final police report under Section 173 Cr.P.C. was prepared on 05.12.2019 and presented before the trial court and thereafter, the trial court framed charges in the present matter on 13.03.2020 and now the matter is pending. On merits, it is submitted that the petitioner using his longstanding business relationship with complainant induced him to supply material worth Rs.1,28,43,438/- and thereafter made further attempt to obtain material worth Rs.1 crore more from the complainant on the pretext him giving a cheque of Rs.1,90,00,000/- of an account in which he had insufficiently low balance and misappropriated the material received from the complainant, which makes it apparent that he cheated the complainant and committed criminal breach of trust with him.

(7). Heard learned counsel for the parties.

(8). It is an admittedly fact that the cheque of Rs.1.90 crores was issued by the petitioner to the complainant on 01.04.2017 which was presented by him for encashment on 15.06.2017 with Karur Vasya Bank, Mandi Gobindgarh, however, the same bounced due to shortage of funds. Evidently, as per the petitioner's bank statement (Annexure R3), only a sum of Rs.9,04,622/- was available in his bank account and knowing full well of this fact, the petitioner issued the cheque in question.

(9). Before the trial court, challan has been presented by the prosecution on 20.01.2020 and thereafter, charges were framed against the petitioner on 13.03.2020. Even in the final report, it has been recorded that from the investigation conducted, a prima facie case under Section 406/420 IPC is made out against the petitioner. Moreover, there are specific allegations against the petitioner of having misused the old business relationship and induced the complainant/respondent No.2 to part with the goods worth Rs.1,28,43,438/- and thereafter made further attempt to obtain material worth crores of rupees from the respondent No.2 on the pretext of giving him cheque of Rs.1.90 crores and that too of an account wherein he maintained insufficient low balance at the time of issuance of cheque. This itself casts doubt on the overall deceptive and fraudulent conduct of the petitioner to dupe the respondent No.2.

(10). But before delving into the merits of the case, it is noteworthy that the trial has swung into action and is underway so much so, allegations leveled in the present case essentially are factual than legal, the trial court is vested with the requisite jurisdiction to determine the factual disputes presented in accordance with the principles of law and appreciation of evidence.

(11). In case of State of ***A.P. v. Aravapally Venkanna & Anr., (2009) 13 SCC 443***, the Supreme Court has held that exercise of power under Section 482 CrPC is an exception and not the rule and the acceptability of materials to fasten culpability is a matter of trial. It further held that the inherent power should not be exercised to stifle a legitimate prosecution and when FIR discloses commission of an offence, interference with FIR at threshold is to be in very exceptional circumstances.

(12). No case is made out to quash the FIR at this stage when the proceedings before the trial court are ripe and moreso, when disputed questions of facts are involved.

(13). Dismissed.

(14). Anything stated hereinabove, shall have no bearing on the merits of the case before the trial court.

01.03.2025
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*