



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

**CRM-M-28298-2024
DECIDED ON:25.04.2025**

ASHOK KUMAR GUPTA

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.S. Rai, Senior Advocate and
Mr. Chetan Mittal, Senior Advocate with
Mr. Mayank Aggarwal, Advocate and
Mr. Farhad Kohli, Advocate
for the petitioner.

Mr. Baljinder Singh Virk, Senior DAG Haryana

Dr. Pankaj Nanhera, Advocate and
Mr. Pardeep Duhan, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court has been invoked under Section 482 of the Cr.P.C. seeking quashing of the Impugned Order dated 05.04.2023 (Annexure P-2) passed by the learned Addl. Chief Judicial Magistrate, Gurugram whereby Criminal Complaint bearing No.COMI-147 of 2023 (Annexure P-19) has been sent to the SHO, P.S. Gurgaon Sadar, Gurugram to register a FIR and FIR No.242 (Annexure P-1) dated 11.04.2023 registered at P.S. Gurgaon Sadar, Gurugram under Sections 120-B, 406, 420 of the Indian

Penal Code, 1860, as well as all subsequent proceedings arising therefrom, qua the Petitioner, as the same are a blatant abuse of the process of law.

2. Contentions

On behalf of the petitioner

Learned Senior Counsel appearing on behalf of the Petitioner respectfully submits that the order dated 05.04.2023 (Annexure P-2), whereby the Court below directed the registration of FIR No. 242 dated 11.04.2023 under Sections 120-B, 406, and 420 of the IPC, has been passed in a mechanical and perfunctory manner, without due consideration of the material on record.

It is further vehemently argued that the trial Court failed to appreciate the fact that on an earlier complaint dated 26.07.2022 (Annexure P-17) made against the petitioner by the complainant before the Commissioner of Police, Gurugram, after conducting a thorough inquiry, it was closed with the finding that no cognizable offence is found to have been committed vide report dated 08.10.2022 (Annexure P-18).

Learned counsel further submits that respondent No. 2 has deliberately suppressed this material fact while filing the present complaint, concealing the earlier proceedings and findings. He would state that despite this, and without appreciating this deliberate suppression, the Court below proceeded to pass the impugned order dated 05.04.2023 (Annexure P-2), directing the registration of FIR against the petitioner, solely on the basis of unverified, baseless, and mala fide allegations.

It is further submitted that there has been non-compliance with the mandatory procedural safeguards under Sections 154(3) and 156(3) CrPC. As per established law, a complainant must first approach the Superintendent

of Police under Section 154(3) if the SHO fails to register the FIR. Only thereafter, and upon continued inaction, can an application be made before the Magistrate under Section 156(3). In the present case, these essential procedural steps have been entirely bypassed by Respondent No. 2, and the Magistrate has entertained the application without ensuring compliance, which renders the order liable to be quashed on this ground alone.

It is next submitted that the impugned order is cryptic, non-speaking, and bereft of any judicial reasoning, as the order do not disclose whether the Learned Magistrate applied his mind to the allegations or considered whether a prima facie case was made out.

Learned Senior Advocate Mr. R.S. Rai concludes the arguments while emphasizing that the Complaint filed by respondent No. 2 is tainted by material suppression and is a gross abuse of the process of law inasmuch as the respondent has falsely referred to the existence of a Memorandum of Agreement (MoA) dated 14.07.2019, which in fact, does not exist and, therefore, plain reading of the complaint would have revealed the fabricated and *mala fide* nature of the allegations.

On behalf of respondent No.2/State/complainant

Learned counsel appearing for respondent No.2/complainant submits that as per the agreement and upon the request of the petitioner-accused, he has invested an amount of ₹5.95 crores in the project of the petitioner's company but with fraudulent and deceitful intention even without terminating the said agreement the petitioner's company entered into a separate agreement with another company causing wrongful loss to the tune of ₹5.95 crores.

He further submits that subsequently, on 17.10.2020, the petitioner-accused filed a false and frivolous petition before the National Company Law Tribunal (NCLT) under the titled ***Ashok Gupta vs. M/s Gopal Hitect Infra Developers Pvt. Ltd.*** Though, the said petition was withdrawn by the him.

It is argued that, being aggrieved by the acts of fraud and deceit committed by the petitioner-accused, the complainant/respondent No.2 filed a complaint before the Police Station Sadar, Gurugram, however, due to inaction by the police, the complainant approached the Commissioner of Police, Gurugram, who forwarded the complaint to the Deputy Commissioner of Police, Headquarters for appropriate action. He would also refer to a closure report dated 08.10.2022/12.10.2022 (Annexure P-18), as a result of an inquiry conducted by ASI Pawan Kumar (EOW-II).

Dr. Nanhera, on behalf of the complainant also urges that he approached the Learned Additional Chief Judicial Magistrate, Gurugram, by filing a complaint along with an application under Section 156(3) Cr.P.C. seeking directions for the registration of an FIR. Upon finding prima facie evidence of fraud committed by the petitioner-accused, the Learned Magistrate followed due process of law and issued a notice to the concerned SHO/Investigating Officer to file an Action Taken Report (ATR), vide order dated 21.03.2023 and it was then adjourned to 03.04.2023.

It is submitted on behalf of the complainant that on 03.04.2023, the Action Taken Report was received and the case was further adjourned to 05.04.2023 for consideration, whereas orders dated 21.03.2023 and 03.04.2023 were deliberately suppressed by the petitioner-accused while approaching this Court.

3. Analysis

On perusal of the pleadings, it is evident that the impugned order dated 05.04.2023 (Annexure P-2), passed by the Learned Additional Chief Judicial Magistrate, Gurugram, whereby the Court has straightway ordered for registration of the FIR No.242 (Annexure P-1) dated 11.04.2023 P.S. Gurgaon Sadar, Gurugram under Sections 120-B, 406, 420 of the Indian Penal Code, 1860. This Court has gone through the impugned order before this Court wherein neither any reference has been made qua the inquiry conducted by the police on an earlier complaint made by the respondent No.2/complainant nor it made any attempt to examine the same which was brought on record dated 08.10.2022 (Annexure P-18).

This Court has no reason to disbelieve and in fact has no hesitation to hold that the respondent/complainant deliberately concealed the fact qua the prior complaint dated 26.07.2022 (Annexure P-17) on the same set of allegations, which was due enquired into by the police. The said complaint was closed after categorical finding that no cognizable offence is found to have been committed to proceed against the present petitioners. This prior inquiry and closure report, dated 08.10.2022 (Annexure P-18), was a material circumstance which ought to have been disclosed before the Magistrate, which the complainant has not. The suppression of this crucial fact renders the complaint an abuse of the process of law.

Furthermore, the procedural safeguards enshrined under Sections 154(3) and 156(3) Cr.P.C. have not been followed. The respondent directly approached the Magistrate without first exhausting the remedy under Section 154(3) before the Superintendent of Police. The Magistrate, in turn, entertained the complaint and passed the impugned order dated 05.04.2023

(Annexure P-2) without ensuring procedural compliance or ordering any preliminary inquiry, in violation of settled judicial precedent, including the guidelines laid down by the ***Hon'ble Supreme Court in Priyanka Srivastava vs. State of U.P. [(2015) 6 SCC 287]***.

Another issue of prime importance relates to the power of the High Court in exercising its inherent jurisdiction under Section 482 Cr.P.C.

In this regard, it would be apt to quote the celebrated decision of Supreme Court in ***State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335***, wherein the scope of the High Court powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR was considered and while referring to several judicial precedents, categorized the nature of cases, reproduced below, wherein the High Court can exercise its inherent powers under Section 482 CrPC either to prevent abuse of the process of the court, or otherwise, to secure the ends of justice:-

(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.

In ***Gorige Pentaiah vs. State of AP & Ors. (2008) 12 SCC 531***, the Supreme Court held that the inherent powers of the High Court under Section 482 CrPC is to act ex debito justitiae to do real and substantial justice for the administration of which alone it exists, or to prevent abuse of the process of the court, to give effect to an order under the Code or to secure the ends of justice. Such inherent powers, though wide, ought to be exercised sparingly, carefully and cautiously and only when such exercise is justified by the tests specifically laid down in this Section itself.

In ***M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Ors., 2021 AIR SC 1918***, the Supreme Court held that in cases where it is found that non-interference would result into miscarriage of justice, the High Court, in exercise of its inherent powers under Section 482

CrPC and/or Article 226 of the Constitution of India, may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. It further cautioned that the Courts should be slow in interfering the criminal proceedings at the initial stage, i.e., quashing petition filed immediately after lodging the FIR/complaint and when no sufficient time is given to the police to investigate into the allegations of the FIR/complaint, which is the statutory right/duty of the police under the provisions of the Code of Criminal Procedure.

Moreover, it is a settled law that judicial orders must contain cogent reasons demonstrating application of mind. In the absence of such reasoning, the order stands vitiated and cannot be sustained.

In view of the above, it can be culled out that the FIR is registered pursuant to the said impugned order, being FIR No. 242 dated 11.04.2023 under Sections 120-B, 406, and 420 of IPC, is a direct consequence of the impugned order and is equally liable to be quashed. The continuation of investigation or proceedings on the basis of such an FIR would result in grave injustice, harassment, and irreparable injury to the petitioner.

4. Conclusion

In the light of above said discussions as well as analytical thought applied by this Court, the complaint alongwith impugned order dated 05.04.2023 (Annexure P-2), is legally unsustainable, as the same has been passed in a mechanical, non-reasoned, and perfunctory manner, without application of judicial mind or adherence to the settled procedure prescribed under law. The complainant/respondent No.2 has apparently filed the impugned complaint, which is based on false, malicious and vague allegations

and it is also riddled with material suppression of facts, which crystallize not only the complaint to be false but conduct of respondent no.2/complainant as well, who is guilty of not approaching the court below with clean hands and in fact made valiant attempt, who actually succeeded in doing so in getting the impugned order dated 05.04.2023 (Annexure P-2) passed by the trial Court.

The proceedings before the trial Court in the impugned complaint and all subsequent proceedings thereto alongwith impugned order dated 05.04.2023 (Annexure P-2) are hereby stands vitiated and tantamount to an abuse of process of law.

In the light of above, the impugned order dated 05.04.2023 (Annexure P-2) passed by learned Addl. Chief Judicial Magistrate, Gurugram alongwith FIR No.242 (Annexure P-1) dated 11.04.2023 registered at Police Station Gurugram Sadar, Gurugram under Sections 120-B, 406, 420 of IPC, are hereby quashed.

The petition is allowed with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

25.04.2025

Meenu

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| 1. Whether speaking/ reasoned : | Yes /No |
| 2. Whether reportable : | Yes /No |