



CRM-M-45523-2024(O&M)

1

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-45523-2024(O&M)
Reserved on 10.12.2024
Pronounced on : 13.01.2025

Vaibhav Jain and another

..... Petitioners

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. R.S. Cheema, Senior Advocate with
Mr. Amandeep Singh Talwar, Advocate,
Mr. A.S. Cheema, Advocate and
Mr. Satish Sharma, Advocate for the petitioners.

Mr. Gaurav Bansal, DAG, Haryana.

Mr. P.S. Ahluwalia, Advocate,
Mr. Atul Sharma, Advocate,
Mr. Manav Goel, Advocate and
Mr. Keerat Dhillon, Advocate for respondents No.2 to 5.

KIRTI SINGH, J.

1. The petitioners by way of the present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 are seeking quashing of the FIR No.449 dated 06.08.2024, under Sections 406 and 420 of Indian Penal Code, 1860, registered at Police Station Suraj Kund, District Faridabad.

FACTUAL MATRIX

2. The controversy involved in the present case is that the petitioners are Directors in a company i.e. Rise Projects Private Limited and

the said Company was undertaking the construction of a Group Housing

**CRM-M-45523-2024(O&M)**

2

Project in which the complainants and their property dealing company had booked three flats as an investment. A complaint was lodged by the complainants i.e. respondents Nos.2 to 5 (arrayed in the petition) against the persons namely, Vaibhav Jain and Swati Jain (petitioners herein). The complainants alleged that in 2013 relying on the false assurances and representations made by the petitioners, they proceeded to book their apartments in the project. Acting in good faith and on the basis of promises made, the complainants made substantial payment amounting to about 87% of the total cost of the apartment in installments over time. These payments were made despite the absence of tangible progress in the projects developed as the petitioners continued to provide misleading information about the status of construction and delivery timeline.

2.1 As per the agreement, the developer was required to deliver possession of the apartment to the allottee within 42 months from the execution of the agreement, a period that expired in March 2017. However, despite no progress at the ground level, the developers continuously misled and deceived the complainants with the false assurances that the apartments are near completion and soon will be soon delivered. It is further alleged that developers were unable to complete the project within the stipulated time.

2.2 It is further alleged that the developer with an intention to defraud the complainants had siphoned the money for their personal expenses. The accused breached their trust and misappropriated their money for their personal and unjust enrichment. According to the contractual obligations, the complainants are allowed to get their deposited money back

**CRM-M-45523-2024(O&M)**

3

in case of failure on the part of the petitioners/accused in giving possession of the said units within the stipulated time period. However, the petitioners/accused were trying to manipulate the complainants for the evasion of their liability to pay them in case of failure on their part. The principal amount is Rs.6,32,59,900/- along with penal interest of Rs.13,27,90,333/- at 24% simple interest accruing annually as on 31.01.2024. On the basis of these allegations, the present FIR was registered against the petitioners.

Submissions made by learned Senior Counsel for the petitioners.

3. It has been argued by the learned Senior counsel that the impugned FIR is illegal, unsustainable and an abuse of the process of law, as the same has been lodged to settle a civil dispute by way of blackmailing the petitioners on the pretext of the criminal justice system and in the first instance deserves to be quashed on the following grounds:-

1. The impugned FIR is an attempt by the complainants to settle civil and contractual disputes. As per the FIR the only grievance is that there has been non compliance of “contractual obligations” between the parties, for which the complainant/respondent No.2 can take the recourse of civil remedies. It is a settled proposition of law that mere breach of contract does not constitute an offence under Section 406 or 420 IPC. No dishonest intention has been attributed to the petitioners since the institution of the transaction. Reliance has been placed on the judgment rendered by the Hon’ble Supreme Court in case titled as



Vijay Kumar Ghai & Ors. Vs. State of West Bengal & Ors., (2022) 7 SCC 124.

2. That previously, the complainant/respondent No.2 had filed a complaint bearing No.495 of 2019 which was closed by the Economic Offences Wing (EOW) after conducting an investigation and observing therein that the complaint did not disclose the commission of any cognizable criminal offence and that the dispute was purely civil in nature. The concealment of this complaint and its closure are fatal to the present FIR as well. The complainants have not approached the police with clean hands and have only filed the present complaint with the mala fide intention to keep the petitioners entangled in criminal prosecution.
3. That the complainants are engaging in forum-shopping, as the matter is already pending before Civil Forums and the present FIR has been registered only to give a criminal flavor to the dispute, where none exists.
4. The FIR has been registered mechanically, ignoring the essential ingredients of criminality and civil remedy available to the respondents and same has been registered in complete violation of the guidelines issued by the Hon'ble Supreme Court in the case of ***Lalita Kumar Vs. Government of U.P. (2014) 2 SCC 1***. In the present case, not only is the transaction purely commercial in nature, but the alleged occurrence has been stated to be of the year 2013.



5. Further, reliance has been placed upon the judgment rendered by the Hon'ble Supreme Court in **Mohammad Ali & Ors. Vs. State of U.T. & Ors., 2023 SCC OnLine SC 950, Ramev Food Products Pvt. Vs. State of Gujarat (2015) 6 SCC 439, A.P. Mahesh Cooperative Urban Bank vs. Ramesh Kumar Bung & Ors. (2021) 9 SCC 151 and Ajay Mitra vs. State of M.P. & Others, (2003) 3 SCC 11.**

Submissions made by learned counsel for private the respondents.

4. Learned counsel for private the respondents has vehemently opposed the present petition and has made the following submissions:-

1. There has been an inordinate delay of more than seven years since the due date for delivery of possession of the allotted units as the company was supposed to hand over the possession of the allotted units of the Project in 2017.
2. The actions of the petitioners clearly fall within the definition of Cheating as defined under Section 420 of the Indian Penal Code. The petitioners, with full knowledge of the actual status of the construction, deliberately misled the Respondent Nos. 2 to 5 by providing false assurances that the project was progressing according to schedule and was near completion. These misrepresentations were not accidental; rather, they were part of a calculated scheme to deceive and defraud the respondents No.2 to 5. By creating a false sense of progress and urgency, the petitioners dishonestly induced the respondents to make significant



payments, amounting to approximately 87% of the total project cost.

3. The petitioners have repeatedly made false promises regarding the delivery of possession of the booked units in the Project. A simple perusal of the quarterly progress reports of the Project clearly show that, under no circumstances, could the petitioners have legitimately offered possession of the said units in 2019.
4. Petitioners have miserably failed to disclose before this Court that even as on date, the petitioners cannot transfer a clear title of the booked units to the respondent Nos. 2 to 5. The petitioners in a complaint bearing Complaint No. 1160/2021 titled as 'HRERA, Panchkula vs. Rise Projects Private Ltd.' pending adjudication before the Haryana Real Estate Regulatory Authority, Panchkula (hereinafter referred to as "HRERA, Panchkula") have themselves admitted that Municipal Corporation of Faridabad has not granted a completion certificate for the said Project and hence, possession of the units in the Project cannot be handed over to the allottees in the Project,
5. That the previous complaint was closed by the Commissioner of Police, Faridabad, without appreciating the fact that the Petitioners misappropriated the money of the complainant therein which was entrusted by the respondent Nos. 2 to 5 on the basis of false promises of the Petitioners. The petitioners made false promises to deliver the possession, however, no possession was allotted to them despite making the substantial payment of the consideration.



Reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in the case of **Mahendri & Ors. vs State of Uttar Pradesh & Anr. (2015) 14 SCC 653.**

6. The petitioners have failed to appreciate the fact that the proceeding before the Hon'ble NCLT was initiated with the sole motive of resolution of the company, i.e. Rise Projects Pvt. Ltd. The contention of the petitioners is baseless, as the aforesaid proceedings initiated before the Hon'ble NCLT was on the basis of different cause of action, therefore, the contention of the petitioners that the respondent Nos. 2 to 5 approached different forums on the basis of same of cause of action is false and deserves to be rejected. As the only prayer of the answering respondents before the Hon'ble NCLT was to initiate the Corporate Insolvency Resolution Process (CIRP) of the company, Rise Projects Pvt. Ltd. The NCLT is not an appropriate forum to seek monetary compensation and to initiate criminal trial against the petitioners, hence, the present FIR was lodged against the petitioners in furtherance of the fraudulent acts and deeds of the petitioners and it is essential to initiate investigation against the petitioners.

5. **Submissions made by learned State counsel**

- (1) Learned State Counsel while relying upon the status report filed by way of affidavit of Assistant Commissioner of Police, EOW, Faridabad, submits that the petitioners are directors of Rise Project Pvt. Ltd. who had promised the investors that the project would be completed within 42 months from January 2014 including 6



months grace period and possession of the flats would be handed over by 2018, but even after about 6 years of the expiry of the time period, the flats have not been prepared and possession has not been given to the complainant. The Completion and Occupation Certificate was not obtained from the concerned authorities. Petitioners have deliberately used the money of the complainants for their other works or other projects as it reflected that transactions worth about Rs.20 crores were found suspicious, which were transferred to the accounts of petitioner No. 1 and Rishabh Buildwell and other projects to the tune of about 8-9 crore from the accounts of Rise Project Pvt Ltd. The detailed investigation is necessary regarding these transactions for the just investigation of the present case.

2. It is also submitted that pursuant to registration of the present FIR the statements of the complainants were recorded and relevant documents including the allotment letters and payment details were obtained by the investigation agency. The investigation agency had issued notice to the concerned banks for obtaining the bank statements of the company and to the Municipal Corporation Faridabad for obtaining the record pertaining to the ownership of the land.

3. The investigation of the present FIR is at premature stage and the accused persons were not even issued notices to join the investigation of the present FIR till date as the investigation agency is obtaining the relevant record from various offices regarding the embezzlement of the amount to the tune of Rs.6,32,59,900/- of the

**CRM-M-45523-2024(O&M)**

9

complainants. The amount of Rs.6,32,59,900/- is yet to be recovered from the petitioners. That prima facie, during the investigations, there were irregularities in the accounts of the company and the same are to be investigated.

4. The matter is being fairly investigated by the investigating agency and the needful is being done and thus this being so, the present petition is filed at very early stage of the investigation of the present FIR and the same can hamper the investigation and the present petition is wholly misconceived and hence liable to be dismissed at this stage.

ANALYSIS AND CONCLUSION

6. I have heard the rival submissions made by learned counsel for the parties.

7. The petitioners herein have approached this Court, by invoking jurisdiction of this Court under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 for the purpose of seeking quashing of the FIR registered against them, on the basis of complaint filed by the respondents No.2 to 5. The law with respect to exercise of power under Section 528 of BNSS, insofar as quashing of an FIR is concerned, is well-settled. The Hon'ble Apex Court, through a catena of judgments, has also laid down several guidelines and summed up principles to be followed by the Courts while deciding a petition seeking quashing of FIRs and criminal proceedings. Before advertng to the merits of the present case, it shall be thus appropriate to first take note of few such important decisions.



8. In case of *State of Haryana v. Bhajan Lal, 1992 SCC (Cri) 426*, the Hon'ble Apex Court had observed that except in exceptional circumstances, where non-interference would result in miscarriage of justice, the Courts ought not to interfere at the stage of the investigation of an offence. Further, the principles which were laid down by the Hon'ble Apex Court, to be followed while adjudicating a petition seeking quashing of criminal proceedings, are as under:

“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 extra-ordinary 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 F.I.R. 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 F.I.R. 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.”*

9. The Hon'ble Apex Court in case of ***Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195*** has held that the Courts should not interfere with the investigation or during the course of investigation i.e. till the filing of a report under Section 173 of Cr. P.C., by exercise inherent jurisdiction.

The relevant observations in this regard are extracted hereunder:



“20. Thus the legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the police station in court under Section 173(2) CrPC, this field being exclusively reserved for the investigating agency.”

10. Recently, it has been held by the Hon’ble Supreme Court in ***Criminal Appeal No.4190 of 2024 (Arising out of SLP (Criminal) No.6583 of 2024*** titled as ***‘Somjeet Mallick vs. State of Jharkhand and others’, 2024 All SCR (Crl) 1937*** that FIR is not an encyclopedia and is not expected to contain all details of the offence. During judicial examination of a prayer for quashing of an FIR, the cognizance order, or subsequent proceedings, Courts must evaluate the allegations and material collected during investigation at face value. The primary focus at this stage is to determine that whether a *prima facie* case for investigation or proceedings against the accused exists. The correctness or truthfulness of the allegations is not assessed at this juncture. The relevant observation in this regard are extracted hereunder:-

“16. Before we proceed to test the correctness of the impugned order, we must bear in mind that at the stage of deciding whether a criminal proceeding or FIR, as the case may be, is to be quashed at the threshold or not, the allegations in the FIR or the police report or the complaint, including the materials collected during investigation or inquiry, as the case may be, are to be taken at their face value so as to determine whether a prima facie case for investigation or proceeding against the accused, as the case may be, is made out. The correctness of the allegations is not to be tested at this stage.



17. *To commit an offence, unless the penal statute provides otherwise, mens rea is one of the essential ingredients. Existence of mens rea is a question of fact which may be inferred from the act in question as well as the surrounding circumstances and conduct of the accused. As a sequitur, when a party alleges that the accused, despite taking possession of the Truck on hire, has failed to pay hire charges for months together, while making false promises for its payment, a prima facie case, reflective of dishonest intention on the part of the accused, is made out which may require investigation. In such circumstances, if the FIR is quashed at the very inception, it would be nothing short of an act which thwarts a legitimate investigation.*

18. *It is trite law that FIR is not an encyclopedia of all imputations. Therefore, to test whether an FIR discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the gravamen of the accusations contained therein to find out whether, prima facie, some cognizable offence has been committed or not. At this stage, the Court is not required to ascertain as to which specific offence has been committed. It is only after investigation, at the time of framing charge, when materials collected during investigation are before the Court, the Court has to draw an opinion as to for commission of which offence the accused should be tried. Prior to that, if satisfied, the Court may even discharge the accused. Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR.*

19. *No doubt, a petition to quash the FIR does not become infructuous on submission of a police report under Section 173 (2) of the CrPC, but when a police report has been submitted, particularly when there is no stay on the investigation, the Court must apply its mind to the materials submitted in support of the police report before taking a call whether the FIR and consequential proceedings should be quashed or not. More so, when the FIR alleges an act which is reflective of a dishonest conduct of the accused.”*



11. The principles governing quashing of FIRs and criminal proceedings were summed up by the Hon'ble Supreme Court in case of ***Neeharika Infrastructure (P) Ltd. v. State of Maharashtra, (2021) 19 SCC 401*** after analysing catena of judicial precedents. The relevant observations of the decision are extracted hereunder:

“13. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad, the following principles of law emerge:

13.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

13.2. Courts would not thwart any investigation into the cognizable offences;

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

13.4. The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

13.5. While examining an 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 in the FIR/complaint;

13.6. Criminal proceedings ought not to be scuttled at the initial stage;

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;



13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr. P.C.

13.9. The functions of the judiciary and the police are complementary, not overlapping;

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

13.13. The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

13.14. However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the



selfrestraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

13.15. When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

12. In all the aforesaid decisions, the Hon'ble Supreme Court has clearly laid down that the recourse to quashing of an FIR has to be taken in rarest of rare cases, and this power should be used sparingly moreso when the investigation of a case is at its initial stage.

13. In the present case, the learned Senior counsel for the petitioners has taken this Court through various documents and agreements entered between the parties and has argued that from the bare perusal of the same, it is clear that no case is made out either under Section 406 or Section 420 of IPC. This Court, having gone through the judgments of the Hon'ble Supreme Court and the principles laid therein, is of the opinion that the investigation in the present case is at its initial stage. The police after conducting preliminary enquiry had registered the FIR since *prima facie*, it appeared that cognizable offences were committed by the petitioners herein.

14. This Court has also gone through the contents of the FIR, agreement(s) entered between the parties, and the status report filed on record by the State.

15. The investigation is at a nascent stage and without investigation, it cannot be ascertained as to whether or not there was intention on part of the accused persons i.e. the petitioners to dupe the complainants of their hard-earned money by making false promises. The accused persons have allegedly refused to honor the agreement, causing significant financial loss to the complainants, who allege that the accused persons had no intention of fulfilling their obligations. There has been an inordinate delay of more than 7 years from the due date of delivery of possession of the allotted units.
16. Accordingly, guided by principles laid down by the Hon'ble Supreme Court (*supra*), this Court is of the considered opinion that the FIR in question cannot be quashed at this stage and the investigation by the police will only bring out the clarity, including the issue as to whether any case is made out under the relevant sections of law or not.
17. Thus, in view of the forgoing discussion, the present petition is dismissed. It is however clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.
18. Needless to say, if no such commission of offence will be made out, the police will be at liberty to file an appropriate report under Section 173 of Cr. P.C.

(KIRTI SINGH)
JUDGE

13.01.2025
Kapil

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