IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.35843 of 2018 (O&M)
Reserved on: 22.05.2026
Pronounced on: 26.05.2026
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Whether only operative part of the judgment is Pronounced or the full judgment is pronounced: operative part/full judgment

Cotton County Retail Limited and another
...Petitioners

Versus

M/s S.B. Garments
...Respondent

***CORAM:* HON'BLE MS. JUSTICE MANDEEP PANNU**

Argued by:- Mr. Aalok Jagga, Advocate with
Mr. Karan Inder Singh, Advocate
for the petitioners.

Mr. N.K. Vadehra, Advocate
for the respondent.

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MANDEEP PANNU, J.

1. In the present petition titled '*Cotton County Retail Limited and another versus M/s S.B. Garments*', the petitioners have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. seeking quashing of complaint bearing No.11 of 2016 dated 11.03.2016 titled '*M/s S.B. Garments versus M/s Cotton County Retails Limited and another*' under Sections 406 and 420 IPC pending before the Court of learned Judicial Magistrate Ist Class, Gurdaspur as well as summoning order dated 20.07.2018 whereby the petitioners have been summoned to face trial under Section 406 IPC.

2. Briefly stated, the facts of the case are that petitioner No.1-company entered into a franchise agreement dated 23.10.2007 with the respondent-firm for sale of garments manufactured by the petitioner-company. As per the terms of the agreement, the respondent was appointed as franchisee and was required to furnish a bank guarantee equivalent to the value of stocks supplied by the petitioner-company for onward sale. The stocks remained in the property of the petitioner-company and the respondent was entitled to commission on sales. The agreement also contained an arbitration clause for resolution of disputes between the parties. It is the pleaded case of the petitioners that the respondent furnished a bank guarantee of Rs.12 lakhs in favour of the petitioner-company, which was renewed from time to time. According to the petitioners, the respondent failed to regularly deposit the sale proceeds and concealed part of the sale amount, resulting in outstanding liability against the respondent. As per the ledger account maintained by the petitioner-company, an amount of Rs.15,92,251.35/- was due and payable by the respondent as on 13.07.2015. Consequently, the petitioner-company invoked the bank guarantee on 02.09.2015 and adjusted the amount towards the outstanding liability. It has further been pleaded that the respondent had instituted a civil suit seeking injunction against encashment of the bank guarantee and had also invoked arbitration proceedings in terms of the arbitration clause contained in the agreement. The petitioners have asserted that despite pendency of civil and arbitration proceedings, the respondent instituted the present criminal complaint dated 11.03.2016 alleging commission of offences under Sections 406 and 420 IPC on

account of invocation and encashment of the bank guarantee.

3. Learned counsel for the petitioners has argued that the entire dispute between the parties arises out of a purely commercial and contractual transaction governed by the franchise agreement and the bank guarantee executed pursuant thereto. It is contended that the respondent has attempted to give a criminal colour to a civil dispute only to pressurize the petitioners and avoid adjudication of disputes through arbitration proceedings already initiated between the parties. It has further been contended that the petitioner-company was legally entitled to invoke the bank guarantee in view of the outstanding recoverable amount against the respondent and the same was invoked strictly in accordance with the terms and conditions of the agreement and bank guarantee. Learned counsel submits that the amount received upon invocation of the bank guarantee was duly adjusted against the outstanding liability of the respondent reflected in the running ledger account and, therefore, no element of dishonest misappropriation or criminal breach of trust is made out. He further submits that the respondent neither obtained any interim stay nor invoked remedies available under Section 9 of the Arbitration and Conciliation Act, 1996 for restraining invocation of the bank guarantee. Therefore, according to the petitioners, invocation of the bank guarantee cannot constitute any criminal offence. It is also argued that the allegations made in the complaint, even if taken at their face value, disclose at best a civil dispute regarding reconciliation of accounts and recovery of money, which is already subject matter of arbitration proceedings. Learned counsel submits that the essential ingredients of offences under Sections 406 and

420 IPC are completely absent and continuation of criminal proceedings would amount to abuse of the process of law. Lastly, learned counsel for the petitioners has contended that learned trial Court failed to appreciate that the respondent itself had admitted existence of arbitration clause and had already sought appointment of arbitrator for adjudication of disputes between the parties. Therefore, the impugned complaint and summoning order are liable to be quashed being unsustainable in law.

4. Learned counsel for the respondent, on the other hand, has argued that the present petition is not maintainable inasmuch as the petitioners have directly invoked the jurisdiction of this Court under Section 482 Cr.P.C. without availing the statutory remedy of revision against the impugned summoning order dated 20.07.2018. It is contended that neither the summoning order nor the order taking cognizance has been challenged before the Revisional Court and, therefore, the present petition seeking quashing of the complaint and summoning order is liable to be dismissed on this ground alone. Learned counsel for the respondent has further argued that the petitioners are attempting to portray the dispute as purely civil in nature, whereas the allegations levelled in the complaint clearly disclose commission of cognizable offences, particularly offence punishable under Section 406 IPC. It is submitted that the respondent had entrusted goods and valuable property to the petitioners in terms of the franchise arrangement and the petitioners, instead of rendering proper accounts and acting in accordance with the agreement, dishonestly invoked and encashed the bank guarantee amount. It has further been argued that the mere existence of civil proceedings or arbitration proceedings does not

bar criminal prosecution where the allegations disclose ingredients of criminal offences. Learned counsel submits that the civil suit earlier filed by the respondent was not withdrawn merely because of existence of arbitration clause. Rather, the arbitration proceedings ultimately culminated in favour of the petitioners only on the ground that the claims raised by the respondent were held to be barred by limitation and not on merits of the controversy. Learned counsel for the respondent has further contended that the question whether any amount was legally recoverable from the respondent, whether the bank guarantee was lawfully invoked, whether the accounts maintained by the petitioners are genuine and whether the petitioners acted dishonestly are all disputed questions of fact which can only be adjudicated upon after the parties lead evidence before the trial Court. It is also argued that the complaint specifically alleges dishonest intention and misuse of the bank guarantee amount by the petitioners and, therefore, the necessary ingredients constituting criminal breach of trust are *prima-facie* made out. Learned counsel submits that at the stage of summoning, the Court is only required to see whether a *prima-facie* case exists and meticulous appreciation of evidence is not permissible. Lastly, learned counsel for the respondent has argued that learned trial Court, after considering the preliminary evidence adduced by the complainant, found sufficient grounds to summon the petitioners for offence under Section 406 IPC and, therefore, no ground for interference is made out in exercise of inherent jurisdiction under Section 482 Cr.P.C. The petition, thus, deserves dismissal.

5. I have heard learned counsel for the parties and have gone

through the record of the case carefully.

6. Before adverting to the merits of the controversy, this Court deems it appropriate to deal with the objection raised by learned counsel for the respondent regarding maintainability of the present petition on the ground that the petitioners have not availed the remedy of revision against the impugned summoning order.

7. In ***Amit Mittal and another versus Punjab Government, Criminal Appeal No.326 of 2025*** decided on 22.01.2025, the Hon'ble Supreme Court has held that the High Court cannot conclude that a petition under Section 482 Cr.P.C. is not maintainable unless there exists a statutory bar for exercise of such power and that merely because a remedy of revision is available would not by itself bar exercise of inherent jurisdiction under Section 482 Cr.P.C. Likewise, in ***Daljit Singh and others versus Sukhwinder Kaur and another, 2016(4) RCR (Criminal) 694***, this Court has held that availability of remedy of revision against summoning order does not constitute a bar for entertaining a petition under Section 482 Cr.P.C. where continuation of criminal proceedings would amount to abuse of process of law. In view of the settled legal position, the objection regarding maintainability of the present petition is rejected.

8. Coming to the merits of the case, it is not disputed that the relationship between the parties emanates from a franchise agreement dated 23.10.2007 executed between petitioner No.1-company and the respondent-firm. The said agreement governed the commercial dealings between the parties and specifically contemplated furnishing of a bank guarantee by the respondent towards stocks supplied by the petitioner-company. The

agreement further contained an arbitration clause providing for adjudication of disputes through arbitration.

9. It is also borne out from the record that the respondent had itself instituted a civil suit on 19.08.2015 seeking injunction against invocation of the bank guarantee and had prayed that the defendants therein be restrained from invoking and encashing the same. Significantly, before invocation of the bank guarantee on 02.09.2015, the petitioners had already filed a caveat petition on 28.08.2015 and the respondent was fully aware about the proposed invocation thereof. Despite such knowledge, the respondent neither pressed the application for interim injunction nor obtained any restraining order from the competent Court.

10. Rather, the civil suit itself was ultimately withdrawn by the respondent with liberty to avail remedy in terms of the arbitration clause contained in the agreement. Thereafter, arbitration proceedings were initiated by the respondent itself. The very fact that the respondent elected to invoke arbitration mechanism arising out of the contractual relationship clearly demonstrates that the dispute between the parties was essentially civil and commercial in nature.

11. The record further reveals that the arbitral proceedings culminated against the respondent and the claims raised by it were dismissed as being barred by limitation. Though the claims were not adjudicated on merits, the proceedings unmistakably show that the respondent itself had treated the dispute as one arising out of contractual and commercial obligations between the parties.

12. In the considered opinion of this Court, mere invocation and

encashment of a bank guarantee in terms of a commercial agreement, particularly when disputes regarding outstanding liability and reconciliation of accounts exist between the parties, would not *ipso facto* constitute the offence of criminal breach of trust. The material placed on record *prima-facie* shows that the petitioners invoked the bank guarantee asserting recoverable dues against the respondent. Whether such recovery was justified or whether any amount was actually due are matters essentially falling within the realm of civil adjudication.

13. The Hon'ble Supreme Court in ***Sarabjit Kaur versus State of Punjab and another, 2023(2) R.C.R.(Criminal) 52***, has categorically held that breach of contract does not give rise to criminal prosecution unless fraudulent or dishonest intention is shown right from the inception of the transaction and that criminal proceedings cannot be permitted to be used for settling civil disputes or exerting pressure upon the opposite party. It has further been held that mere failure to keep up promise would not be sufficient to initiate criminal proceedings.

14. Applying the aforesaid principles to the facts of the present case, this Court finds that the allegations levelled in the complaint predominantly arise out of contractual obligations and financial adjustments between the parties under a franchise agreement. No material has been placed on record to *prima-facie* indicate that the petitioners had dishonest or fraudulent intention at the inception of the transaction. The invocation of bank guarantee was an act traceable to contractual rights claimed by the petitioners under the agreement and cannot, in the facts and circumstances of the present case, be elevated to the offence of criminal

breach of trust.

15. This Court is of the considered view that continuation of the criminal proceedings in the present case would amount to abuse of the process of the Court and would unnecessarily subject the petitioners to criminal prosecution in a matter which is overwhelmingly civil in nature.

16. Consequently, the present petition is allowed. Complaint bearing No.11 of 2016 dated 11.03.2016 titled '*M/s S.B. Garments versus M/s Cotton County Retails Limited and another'* under Sections 406 and 420 IPC pending before the Court of learned Judicial Magistrate Ist Class, Gurdaspur and summoning order dated 20.07.2018 passed pursuant thereto are hereby quashed.

17. However, nothing observed herein shall be construed as an expression on the merits of the case.

18. All pending applications, if any, also stand disposed of.

(MANDEEP PANNU)
JUDGE

26.05.2026
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Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*