

(2022) 05 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 723, 724 Of 2022

Mohinder Nath And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 02-05-2022

Acts Referred:

Indian Penal Code, 1860 — Section 406, 420

Code Of Criminal Procedure, 1973 — Section 91, 156(3)

Citation : (2022) 05 SHI CK 0003

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Shrawan Dogra, Ajay Sipahiya, Tejasvi Dogra, Desh Raj Thakur, Gaurav Sharma, N.S. Chandel, Vinod Gupta

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. Both these petitions arise out of the same FIR and involve identical questions of facts and law, therefore, both the petitions are being disposed of by a common order.

2. Petitioners are accused in case FIR No. 25/2020, dated 07.03.2020, under Sections 420 and 406 of the Indian Penal Code (for short 'IPC'), registered at Police Station Dharampur, District Solan, H.P.

3. The case was registered on 07.03.2020 and is still under investigation. An application under Section 156(3) Cr.P.C. filed by complainant was the source for registration of the FIR. It is alleged against petitioners that petitioner Mohinder Nath Sofat was allotted a Petrol Pump at Dharampur, District Solan H.P. on 16.01.2002. He associated complainant for the purpose of investment of resources. An oral partnership came into being between petitioner Mohinder Nath Sofat and complainant. Later a partnership deed was executed 25.04.2013. Complainant had 49% shares and petitioner Mohinder Nath Sofat had 51%

shares. Complainant invested approximately Rs. 34 lacs. Later a dispute arose between the parties. Various litigations including Writ Petition, Criminal Proceedings, Civil Suit and Arbitration proceedings came to be instituted by the respective parties.

4. The allegations relevant to present case are that the complainant was maintaining account No.1177 with Jogindra Central Cooperative Bank, Dharampur. Petitioners used to withdraw amount from the said account by using blank signed withdrawal forms of complainant. In 2006, a cheque book containing 25 leaves bearing No. 0861851 to 0861875 was got issued by the petitioner Mohinder Nath Sofat against aforesaid account of complainant by forging her signature. Thereafter, he got all 25 blank leafs signed from complainant at one time under the pretext of withdrawing the amount of rent which was received by him in the bank account of complainant.

5. It is in respect of some of the cheques out of aforesaid cheque book that the allegations of misuse and misappropriation have been leveled against the petitioners. It is alleged that an amount of Rs. 5,32,000/- was transferred from the SBI account of M/s Jai Hind Filling Station to the aforesaid account of complainant between 06.02.2010 to 20.03.2012 and thereafter, 11 cheques out of blank cheques signed by complainant were used to withdraw the amount from the account of complainant. Transfer of money from SBI account of M/s Jai Hind Filling Station to the account of complainant was shown in lieu of liquidation of loan. It is further alleged that with intent to deceive, petitioner Mohinder Nath Sofat misused three more cheques and presented them in the bank knowing fully well that balance was not enough to honour the cheques and accordingly said cheques were dishonoured.

6. Petitioners have approached this Court for grant of pre arrest bail under apprehension of arrest in above noted case, on the grounds that there is long standing dispute of civil nature between the parties. Complainant with a purpose to put pressure and harass the petitioners has been filing frivolous complaints against them. An Arbitration proceeding is pending between the parties and the mechanism adopted by complainant by putting the police machinery into motion is to prejudice the ongoing Arbitration proceedings. It is submitted that FIR has been got registered against the petitioners by misrepresentation of facts. The bail petitioners have no criminal history. The petitioners are permanent residents of Sofat House near Radha Swami Bhawan, Anji Solan, Himachal Pradesh and have respect in the society. There is no likelihood of their fleeing from the course of justice. No recovery is to be effected from them. Petitioners have undertaken not to make any inducement, threat or promise to any person acquainted with the facts of the case. They have further undertaken to abide by all the conditions, as may be imposed against them.

7. The bail application has been opposed primarily on the ground that the unused blank cheques signed by the complainant are yet to be recovered from the petitioners. The status report filed on behalf of the respondent reveals that

despite issuance of notice under Section 91 Cr.P.C., petitioners have failed to handover the unused cheque leafs. It is further mentioned in the status report that after obtaining a cheque book with 25 leafs against account no. 1177 of complainant maintained with Jogindra Central Cooperative Bank, Dharampur, petitioners used 11 cheques and thereby withdrew a sum of Rs. 5,32,000/- from the account of complainant. This conduct of the petitioners is attributed to the period between the years 2010-2012. Further three cheques in the sum of Rs. 75 lacs are alleged to have been misused by petitioners by presenting such cheques in the bank despite knowledge that the account of complainant did not had sufficient balance.

8. I have heard learned counsel for the petitioners as well as learned Additional Advocate General and also learned counsel for the complainant and have also gone through the status report.

9. It is not in dispute that there is a long standing civil litigation between the parties, which necessarily has emanated from the partnership once entered between the complainant and petitioner Mohinder Nath Sofat. It is evident from the contents of status report that an Arbitration proceeding is presently pending between the parties and there had been civil litigations between the parties in the past including filing of Writ Petition and Civil Suit etc. Evidently, the overtones of dispute between the parties are of civil nature.

10. As per allegations, the cheque book was got issued by petitioner Mohinder Nath Sofat against the account of complainant in the year 2006. The fact that complainant signed 25 blank cheques and handed over the same to petitioner Mohinder Nath Sofat, speaks for itself. As per allegations, 11 cheques were used in between 2010-2012 and thereafter, three other cheques were allegedly misused. In her complaint, the complainant has stated that she came to know about such misfeasance on the part of petitioner in the year 2014. The complaint was filed by the complainant on 25.12.2019 for the first time. All these facts prima facie lead to inference that the transactions inter se the parties at one stage were clearly consensual.

11. It is not uncommon that in a dispute, which predominantly is of civil nature, tentacles involving criminal investigation or/ and prosecution also emerge. Be that at it may, the issue which requires consideration is, whether petitioners should be denied pre arrest bail in the given facts and circumstances of the case?

12. Though, this Court while dealing with bail petition will not minutely scan the evidence collected during investigation, it is only with a view to assess the seriousness and gravity of allegations against petitioners, the material as noticed above has been taken into consideration.

13. There is nothing in the status report of respondent-State to suggest that petitioners have not associated themselves in the investigation as and when required. Noticeably, the investigation is pending for more than two years. Nothing has been proved on record to suggest, as to what imminence required

arrest of petitioners at this stage, which earlier was missing during the investigation for more than two years. The only projected ground is recovery of remaining blank cheques signed by complainant. In my considered view, this ground was available with the investigating agency right from first day and there is no evident and justifiable reason to rake up this issue at such a belated stage. The complainant is armed with more than one legal recourse to prevent apprehended misuse of blank signed cheques.

14. The custodial interrogation cannot be prayed for extracting confession. It is not the case of the respondent-State that in case of enlargement of petitioners on pre arrest bail, there is any real apprehension of tampering with the evidence. As borne out from the contents of status report, the investigating agency is already in possession of the documentary evidence in respect of allegations against the petitioners.

15. Petitioners are the permanent residents of Sofat House near Radha Swami Bhawan, Anji Solan, Himachal Pradesh and there is no apprehension of their fleeing from course of justice. In the given facts of the case, this Court is of the view that pre trial incarceration of the petitioners is neither warranted nor justified.

16. In the peculiar facts and circumstances of the case, the petitions are allowed and petitioners are ordered to be released on bail, in the event of their arrest, in case FIR No. 25/2020, dated 07.03.2020, under Sections 420 and 406 of the Indian Penal Code, registered at Police Station Dharampur, District Solan, H.P., on their furnishing personal bond in the sum of Rs. 25,000/- each with one surety each in the like amount to the satisfaction of learned trial court. This order shall, however, be subject to the following conditions:-

- i) That the petitioners shall continue to join investigation as and when required;
- ii) That the petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer;
- iii) That the petitioners shall not in any manner tamper with the prosecution evidence.
- iv) That the petitioners shall not leave India without prior permission of this Court till completion of investigation and thereafter of the trial court, if any.

17. Any expression of opinion herein-above shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of this petition.