

(2018) 02 RAJ CK 0005
In the Rajasthan High Court
Case No : 1119 of 2017

Rajendra Singh S/o Bhanwar Singh

APPELLANT

Vs

The State of Rajasthan & Anr

RESPONDENT

Date of Decision : 17-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 120B](#),
[Section 420](#), [Section 420](#)

Citation : (2018) 02 RAJ CK 0005

Hon'ble Judges : Sandeep Mehta

Bench : Single Bench

Advocate : Aditya Sharma, V.S. Rajpurohit, Mahaveer Bishnoi, Dilip, P.S. Makrana

Judgement

1. By way of the instant misc. petition under Section 482 Cr.P.C., the accused Rajendra Singh has approached this Court seeking quashing of the

FIR No.82/2017 registered at the Police Station Makrana, District Nagaur for the offences under Sections 420, 406 and 120B IPC.

2. Facts in nutshell are that the respondent No.2 complainant lodged the above mentioned FIR alleging inter alia, that he and the present petitioner

executed an agreement for taking a mine owned by Smt. Bhanwar Kanwar and Ritendra Kanwar on lease for a period of ten years. A written

contract was executed between the parties to this effect on 28.08.2012. Various heavy equipments and vehicles viz. LNT Machines, PCN

Machine, tractor, motorcycles, wire saw machines, cranes, etc. were purchased by partnership firm to carry out the mining operations. After

executing the agreement, the complainant and the petitioner started operating

the mine jointly. After the mine had been operated for about 5 years, the complainant felt constrained in continuing business in collaboration with the petitioner on which, an agreement dated 26.02.2016 was executed stipulating certain terms and conditions for exit of the complainant from the joint mining operations. Claiming that the petitioner failed to fulfill his obligations under the said agreement dated 10.06.2016 and fraudulently disposed of the machinery, etc. without accounting for the complainant's share who was inflicted huge loss owing to the fraudulent activities of the petitioner. The complainant Bhanwarlal (respondent No.2) lodged the abovementioned FIR at the Police Station Makrana against the petitioner for the offences under Sections 420, 406 and 120B IPC. Investigation was commenced and the I.O. collected the relevant documents during the course of investigation. The petitioner has approached this Court by way of the instant petition under Section 482 Cr.P.C. seeking quashing of this FIR.

3. Looking to the nature of the dispute, this Court directed the parties to make an attempt of settlement through mediation which proved unsuccessful. Thereupon, the matter was heard on merits.

4. Shri Aditya Sharma, learned counsel representing the petitioner relied upon the following Supreme Court decisions:-

(1) International Advanced Research Centre for Powder Metallurgy and New Materials (Arci) & Ors. vs. Nirma Cerglass Technics Private

Limited & Anr., reported in (2016)1 SCC 348,

(2) Vesa Holdings P. Ltd. & Ors. vs. State of Kerala & Ors., reported in 2015(2) Crimes 114 (SC),

(3) Devendra & Ors. vs. State of Uttar Pradesh & Anr., reported in (2009)7 SCC 495, and

(4) Binod Kumar & Ors. vs. State of Bihar & Anr., reported in (2014)10 SCC 663

5. and urged that ex-facie, the dispute inter-se between the parties pertains to a simple breach of terms of contract and that it is the complainant

who is primarily responsible for the fall out of the partnership business. He further alleged that the I.O., while conducting investigation, found that

owing to the dispute between the parties, the lease holder Smt. Bhanwar Kanwar prematurely cancelled the lease deed which was executed for a

period of ten years. However, as per Shri Sharma, the petitioner made fervent attempts and managed to get the lease renewed and had to bear

extra expenses for this purpose. The I.O. also concluded that Bhanwar Lal, the complainant voluntarily opted out from the partnership vide written settlement dated 26.02.2016 whereunder, a total amount of Rs.1,01,00,000/- was agreed to be paid to Bhanwarlal. He received a sum of Rs.50,00,000/- upfront in cash from the petitioner Rajendra Singh. The balance amount of Rs.51,00,000/- was agreed to be paid later on. He urged that once the agreement dated 26.02.2016 was executed and Bhanwarlal voluntarily opted out from the joint business, the petitioner herein impliedly was conferred absolute rights over the mine and the equipments installed thereupon. He thus urged that the case set up by the complainant in the FIR that the petitioner committed the offences of fraud and breach of trust by selling the machinery, etc. is absolutely untenable because the petitioner had been conferred all the rights on the machinery installed at the mine and had the liberty to use/dispose of the same as per his convenience. He thus implored the Court to accept the misc. petition and quash the impugned FIR which as per him, discloses a dispute of purely civil nature.

6. Per contra, learned Public Prosecutor and Sri Mahaveer Bishnoi, learned counsel representing the complainant vehemently opposed the submissions advanced by the petitioner's counsel. They urged that under the agreement dated 26.02.2016, the petitioner was required to mandatorily clear off the due amount to the tune of Rs.51,00,000/- payable to Bhanwarlal, the complainant herein before conducting mining operations and disposing of the equipments. However, the petitioner failed to fulfill his obligations and fraudulently disposed of the machinery jointly owned by the partnership and misappropriated the sale proceeds thereof. They thus urged that the Court should not exercise its inherent powers so as to interfere in the impugned FIR which ex-facie discloses the ingredients of offences alleged.

7. I have given my thoughtful consideration advanced at Bar and have perused the material available on record.

8. It is undisputed that Bhanwarlal prematurely volunteered out of the mining lease after executing an agreement dated 26.02.2016. It was clearly stipulated in the agreement that all the rights over machinery, equipments, vehicles jointly purchased for running of the mine were being conferred

upon the petitioner herein and who, in turn, was obliged to pay a sum of Rs.1,01,00,000/- to the complainant. It is further admitted that the

petitioner paid a sum of Rs.50,00,000/- to the complainant upfront while executing the above agreement. Therefore, even from the admitted

allegations of the complainant, the case is one of failure to make full payment of the amount settled between the parties under an agreement.

9. The I.O.'s factual report reveals that after the fall out of the agreement between the petitioner and the complainant, the mine owner i.e. Smt.

Bhanwar Kanwar cancelled the lease agreement and in probability, the petitioner must have been compelled to sell the machinery so that he could

get the lease renewed afresh. Manifestly thus, no criminal motive or mens-rea can be attributed to the petitioner by his act of selling the equipment,

etc. if any, because otherwise also, the ownership thereof had been vested in the petitioner when the agreement dated 26.02.2016 was executed.

10. In these circumstances, if the petitioner failed to make good the balance payment falling due to the complainant under the same agreement then,

manifestly, the dispute assumed the character of purely civil nature and by no stretch of imagination, can the ingredients of the offences of fraud,

cheating and criminal misappropriation be applied so as to justify the registration and continued investigation of the impugned FIR. The allegations

levelled in the FIR and the material collected by the I.O. during investigation is not sufficient to satisfy the Court that the intention of the accused

was to cheat the complainant right at the inception of the contract. If the intention of the accused changes at a subsequent point of time, the

offences of fraud and cheating cannot be applied as has been held by the Hon'ble Supreme Court in the case of International Advanced Research

Centre for Powder Metallurgy and New Materials (supra). In view of the discussion made hereinabove, this Court is thoroughly convinced that it is

a fit case requiring invocation of the inherent powers conferred upon it by Section 482 Cr.P.C. so as to quash the impugned FIR and all

subsequent proceedings sought to be taken thereunder against the petitioner as the same amount to a gross abuse of process.

11. Hence, the instant misc. petition filed by the petitioner Rajendra Singh under Section 482 Cr.P.C. is allowed. The impugned FIR No.82/2017

registered at the Police Station Makrana, District Nagaur and all subsequent proceedings sought to be taken thereunder are hereby quashed.