

(2015) 10 P&H CK 0189
In the Punjab And Haryana At Chandigarh
Case No : CRM-M-9122-2015 (OandM)

Rajinder Pal Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120-B, 420

Citation : (2015) 10 P&H CK 0189

Hon'ble Judges : Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : Shashikant Gupta, Advocate, for the Appellant; Daljit Singh Virk, AAG, for the Respondent

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.—Petitioners seek quashing of impugned FIR No. 198 dated 06.07.2013 (Annexure P-1) under Sections 420 , 120-B of Indian Penal Code ("IPC" for short), registered at Police Station Civil Lines, District Amritsar and all the consequential criminal proceedings arising therefrom, by way of instant petition under Section 482 of the Code of Criminal Procedure ("Cr.P.C." for short).

2. Notice of motion was issued. Neither any reply was filed nor anybody came present on behalf of the complainant-respondent No. 2 despite having been granted three opportunities. However, reply by way of affidavit dated 31.07.2015 has been filed on behalf of the respondent-State.

3. Learned counsel for the petitioners submits that allegations levelled by the complainant were enquired into by conducting a fresh detailed enquiry. Report is (Annexure P-2), running from page 22 to 28 of the paper book. It was conducted by an officer of level of Additional Deputy Commissioner of Police (HQ), Amritsar City. Allegations levelled by the complainant against the petitioners were found

baseless. The matter was found purely of civil nature, there being a money dispute between the parties. Petitioners were found innocent and accordingly cancellation report was recommended. He further submits that another enquiry had been conducted by the officer of the level of Senior Superintendent of Police, Amritsar City vide Annexure P-5. On the basis of the enquiry, no cognizable offence was found to be made out. He also refers to an order dated 18.07.2013 passed by the learned Additional Sessions Judge, wherein it was observed that the matter between the parties seems to be of civil nature and the complainant in connivance with the police, has taken recourse to the extra-judicial means to affect the recovery from the petitioner. He concluded by submitting that in such a situation, even if the allegations levelled against the petitioners in the impugned FIR, are taken to be true on their face-value, no offence would be made out against the petitioners. He prays for quashing the impugned FIR as well as the consequential criminal proceedings arising therefrom, by allowing the present petition.

4. On the other hand, learned counsel for the State submits that finally a cognizable offence was found to have been made out against the petitioner because of which the impugned FIR was registered. So far as the enquiry reports Annexures P-2 and P-5 are concerned, learned counsel for the State submits that since the complainant did not agree with the enquiry reports and moved an application for re-enquiry of the matter, the same was conducted and finally the impugned FIR was registered because a cognizable offence was found disclosed against the petitioners. He refers to the enquiry report Annexure R-1 in this regard and prays for dismissal of the present petition.

5. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar fact situation obtaining in the present case, noticed hereinabove, instant one has been found to be a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. Impugned FIR as well as consequential criminal proceedings arising therefrom cannot be sustained. To say so, reasons are more than one, which are being recorded hereinafter.

6. Gist of the enquiry report (Annexure P-5) which was conducted by Deputy Superintendent of Police, Civil Lines, Amritsar, at page 36 of the paper book, reads as under:--

"On the basis of the enquiry, it has found that no cognizable offence is found to have been made out. Both the parties have a money dispute and the police has nothing to interfere. Both the parties have been asked to maintain peace and avail their remedies before the Courts. In addition to this, during enquiry the allegation of illegal confinement of the wife of the applicant, harassment and the other allegations against the police, which were alleged in writ No. 705-M-2008 and 13615-M of 2008 and the Hon'ble High Court has already dismissed the said

writs. No further action is required in the applications."

7. The abovesaid enquiry report is a matter of record and is not in dispute.

8. In spite of the said enquiry report, impugned FIR came to be registered on 06.07.2013. Investigation was entrusted to a senior officer of the level of Additional Deputy Commissioner of Police (HQ), Amritsar City. A detailed investigation was conducted and finally cancellation report was recommended to be submitted. Relevant part of the enquiry report (Annexure P-2) from page 25 to 28 of the paper book, reads as under:--

"Earlier to that in 2008 the applicant Rajinder Pal Singh and complainant Maninder Singh had a dispute regarding some payment, then in this regard Rajinder Pal Singh had filed a complaint No. 2443/AHRC dated 5.11.2008 in Punjab State Human Rights Commission, Chandigarh and the said application was enquired into by the then DSP Civil Lines, Amritsar and the report was sent to SSP Amritsar through Addl. Director General of Police, IVC-cum-Human Rights, Punjab, Chandigarh, in which the enquiry officer had stated that both the parties have a dispute of payments and no offence is found to have been made out, where police should interfere and it was stated that it would be appropriated that both the parties should pursue their remedies before the Court. During enquiry, Rs. 30 lacs, which the complainant has alleged that he had given to Rajinder Pal Singh, the said facts are not believable. That the complainant had paid Rs. 30 lacs without any writing to Rajinder Pal Singh side, whereas both the businessmen and no money dealing is done in the business without writing. The cheque No. 360671 dated 6.1.2007 for an amount of Rs. 5 lacs, the said cheque was dishonoured from the bank on 10.1.2007, the complainant could have proceeded under Section 138 of the Negotiable Instruments Act before the learned Courts, but the complainant did not do so. From my so far enquiry, one fact has come forward that firm Chandan Pain Store, Hall Bazar and Ravindra Export Pvt. Ltd. had a business of purchase of thread in the year 2006. Chandan Paint Store in support of its business dealing had perused the following documents, which include certificate of Importer-Export Code (IEC), Sale Confirmation, Shangjiagang Longma Fancy Yarn Company Ltd. Regional Container Lines, Bill of Exchange, Indian Customs, Marry Time Service Pvt. Ltd., High Seas Sale contract, State Rahdari Pass, Certificate of Punjab National Bank. In regard to the said business of threads, firm Ravindra Export had paid a sum of Rs. 9,50,000/- to Chandan Paint Store firm. In addition to this, in regard to the four cheques of Rs. 15 lacs the applicant had stated that they had given the said cheques to Chandan Paint Store Firm as security and he is also stating that after the payment had been given, they have demanded the said cheques from Chandan Paint Store Firm, however they did not return the said cheques on the pretext that the cheques had been misplaced. Firm Rajindra Exports had also given a statement that they did not pursue much about the misplacement of the said cheques, because the tenure of the said cheques is only six months, which had expired. In addition to this, during enquiry, the earlier enquiry report in

regard of which an enquiry report which was sent to Addl. Director General of Police, IVC-cum-Human Rights, Punjab, Chandigarh, and keeping in view the order passed by the Hon"ble Sessions Judge, Sh. Kuldeep Singh, while granting bail and in view of all the facts comes forward and on the basis of documents and evidence, it had been found that the case FIR No. 198 dated 6.7.2013 under Sections 420 /120-B of IPC, P.S. Civil Lines, Amritsar has not been registered on true facts. In my enquiry, it is found that Rajinder Pal Singh and Ravinder Pal Singh are innocent. As such if you recommend that cancellation report be submitted. In case FIR No. 198 dated 6.7.2013 under Sections 420 /120-B of IPC, P.S. Civil Lines, Amritsar an appropriate orders be passed to SHO P.S. Civil Lines, Amritsar.

Sd/- Addl. Deputy Commissioner of Police, Headquarter, Amritsar City."

9. A bare combined reading of the abovesaid two detailed enquiry reports would show that no cognizable offence was found to be made out against the petitioners and cancellation report was rightly recommended. However, it seems that complainant again put unwarranted pressure on the investigating agency for conducting the investigation for the 3rd time, which was patently illegal action. It is so said because the only reason for conducting the investigation for the 3rd time, was that complainant did not feel satisfy with the abovesaid two enquiry reports. However, this Court is of the considered view that the investigating agency must not have succumbed to the pressure of the complainant for conducting 3rd investigation, only for the reason that the complainant was not satisfied with the result of two enquiry reports conducted earlier. Having said that, this Court feels no hesitation to conclude that the dispute between the parties being purely of civil nature, no offence would be made out against the petitioners and continuation of the criminal proceedings arising out of the impugned FIR would certainly amount to abuse of process of Court and would result in miscarriage of justice, thus, cannot be sustained.

10. The Hon"ble Supreme Court in its celebrated judgment in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , laid down the following broad principles of law:--

"(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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"

11. Coming back to the fact situation obtaining in the present case and respectfully following the law laid down by the Hon''ble Supreme Court, in Bhajan Lal's case (supra), which has been consistently followed by the Hon''ble Supreme Court in its later judgments, it can be safely concluded that since the present case clearly falls within the scope of more than one out of abovesaid principles of law, the impugned FIR and the criminal proceedings arising therefrom, are liable to be quashed, for this reason also.

12. Once it was found to be a case of civil nature arising out of money dispute between the parties, the investigating agency ought not to have converted itself into a recovery agency for the complainant. It was rightly observed by one of the senior police officers, while conducting the abovesaid investigation that if the cheque was dishonoured, complainant ought to have filed a complaint under Section 138 of the Negotiable Instruments Act, but he did not so, for the reasons best known to him.

13. On the other hand, complainant was bent upon to put unwarranted and illegal pressure on the petitioners by way of this short-circuit method, while misusing the process of law. Such an extra-judicial and unhealthy practice is neither in the public interest nor permissible in law. In fact, such an unwarranted tendency is liable to be deprecated, at every level of the litigation. Any money dispute between the parties which is purely of civil nature should not be permitted to be converted into a criminal litigation, until and unless, a cognizable offence is found to be made out. Since the dispute in the present case has been found to be a simple dispute of civil nature, impugned FIR and the criminal proceedings arising therefrom are liable to be quashed, for this reason as well.

14. No other argument was raised.

15. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be allowed. Consequently, FIR No. 198 dated 06.07.2013 (Annexure P-1) under Sections 420 , 120-B of Indian Penal Code ("IPC" for short), registered at Police Station Civil Lines, District Amritsar as well as the consequential criminal proceedings arising therefrom are ordered to be quashed, however, only qua the petitioners.

16. Resultantly, with the abovesaid observations made, present petition stands allowed, however, with no order as to costs.