

(2019) 02 P&H CK 0094

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 7749 Of 2014 (O&M)

Shyam Singh And Another

APPELLANT

Vs

State Of Haryana And Another

RESPONDENT

Date of Decision : 04-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 482
Indian Penal Code, 1860 — Section 323, 420, 452, 467, 468, 471, 506
Registration Act, 1908 — Section 17
Indian Partnership Act, 1932 — Section 11, 15, 19, 20

Citation : (2019) 02 P&H CK 0094

Hon'ble Judges : Rajbir Sehrawat, J

Bench : Single Bench

Advocate : Sanjay Vashishth, Vikas Malik, Kanwaljit Singh, Abhinav Aggarwal

Final Decision : Allowed

Judgement

Rajbir Sehrawat, J

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of FIR No.1146 dated 10.11.2012 registered under Sections 323, 420, 452, 467, 468, 471, 506 of the Indian Penal Code (for short 'the IPC'), at Police Station Civil Lines, Karnal, District Kanal; along with all subsequent proceedings arising therefrom.

Shorn of unnecessary details, the facts giving rise to the present petition are that complainant-Om Singh filed an application under Section 156 (3) Cr.P.C. before the concerned Magistrate for directing the police to register and investigate his complaint. Accordingly, the above said FIR has been registered.

As per the allegations in the FIR, the complainant and his brother-Shyam Singh, the petitioner No.1, were having joint business, being members of the joint family. The properties happened to be joint. They also decided to run the business of manufacturing and selling the agricultural implements and for that

purpose, one partnership firm with the name of M/s Shri Om Agricultural Implements, Hansi Road, Karnal was created by them. In this firm, the complainant and Shyam Singh, both were the partners. To start the business, they had applied for TIN number for the firm and accordingly, the same was received on 15.11.2010. TIN No.96522236004 was allotted to the firm of the complainant. Both the partners held 50% share each in this firm. The firm started its business on a piece of land measuring 260 Sq. yards. This land was in the joint name of the complainant and the son of petitioner No.1 Shyam Singh, namely, Kanwal Singh, the petitioner No.2. The firm started doing its business in the year 2011. As per the allegation, the business had taken-off very well. However, as per the allegations, the complainant fell ill and was not in a position to manage and supervise the affairs of the said firm. Taking advantage of the absence of the complainant, the present petitioners started misusing the accounts of the firm, sold the raw material and manufactured goods, without knowledge or consent of the complainant. Thereby, the petitioners caused wrongful loss to the complainant. In the process, the petitioners had sold produced goods and the raw materials to the tune of `30-32 lakhs. However, instead of depositing the above said amount in the account of the firm, both the accused misappropriated of the said funds for their personal gains. When the complainant recovered from the illness and he tried to know about the affairs of the firm then he came to know that the petitioners had got the RC/TIN of the above said firm surrendered without any information or consent of the complainant. This effectively closed down the business of the above said firm, though it was not dissolved. The petitioners had done this, despite the fact that the complainant had never authorized them to do so. However, the petitioners did not stop at this stage. Petitioner No.2 created another firm in the name and style of M/s Vikas Agro Industries and started doing business of manufacturing and selling of the same implements on the same factory premises. In their attempt to take over the machinery, material and the produce goods of the existing factory of the firm of the complainant, the petitioners prepared fake and false documents; including the bills showing the sale of the machinery, goods and raw materials of the firm of the complainant in the name of the new firm i.e. M/s Vikas Agro Industries. When the complainant came to know about all these happenings, he requested the petitioners to settle the account. However, the petitioners made excuse after excuse. When the complainant insisted, the petitioners started threatening him. There is also an allegation that when the complainant had asked the petitioners to settle the account, then the petitioners gave fist blows to the complainant. Consequently, the complainant had approached the police. However, the police had not taken any action. Resultantly, the proceedings were started by the complainant. Finding the petitioners not interested in rendering the accounts of the firm, the complainant has also filed a suit for rendition of the accounts of the firm, that civil suit is still pending.

While arguing this case, learned counsel for the petitioners has submitted that the case against the petitioners is totally concocted. In fact, there have been two

settlements between the parties on 10.10.2011, attached with the petition as Annexures P-5 and P-6. Out of these settlements, one pertained to the properties including agricultural land and the other pertained to the factory involved in the present FIR; as well as; some other residential/urban properties. It is submitted by the counsel for the petitioners that as per the settlement (Annexure P-6), it was agreed that the premises; on which the factory is situated; shall go to the exclusive share of petitioner No.1. So far as the goods produced and lying on the premises of the above said factory are concerned, it was settled that 64 cultivators, one paddy-sow and one Jantra will be sold and the proceeds thereof shall be shared 50% by each side. Hence, it is contended by the counsel for the petitioners that having agreed to the settlement, it does not lying in the mouth of the complainant to raise the issue regarding premises once again and to initiate the criminal proceedings. Counsel for the petitioners has further submitted that the petitioners had also filed a suit for declaration and injunction based on the above said settlements. The trial Court had recorded a positive finding regarding the fact that the parties had entered into the said settlement. The factum of the settlement between the parties is duly established from the evidence led by the plaintiff in the form of witnesses to the said settlement. However, the Civil Court had not granted a declaration of title on the basis of the settlement because the same was not registered, as required under Section 17 of the Registration Act. Learned counsel for the petitioners has submitted that even if it is taken that the title of the properties have not passed to the petitioners as per the settlement, still the fact remains that the agreement in the form of settlement has been duly proved on record. Hence, if the petitioners have acted in accordance with agreement qua the properties of the factory in question, then it cannot be said that the petitioners had committed any offence. It is submitted by the counsel that, by any means, petitioner No.2 was owner of the premises of the factory to the extent of 50% and petitioner No.1 was partner in the business of the initial partnership. Hence, if as per the agreement between the partners, the petitioner No.1, as a partner, has taken some action qua the said partnership, then it cannot be said that he had no authority to act on behalf of the partnership firm. Hence, it is submitted that; at the worst, this could be a case of exceeding of authority by a partner and have no criminal overtones. Counsel has also submitted that the petitioners had also filed another civil suit qua the electricity connection of the factory. In that civil suit also, while decreeing the suit in favour of the petitioners and restraining the Electricity Board from disconnecting the electricity supply, the civil Court had held that the agreement had, in fact, taken place between the parties.

It is further submitted by the learned counsel for the petitioners that although the TIN number of the earlier firm has been surrendered, however, the land of the factory is still joint; in the name of the complainant and petitioner No.2, as it was earlier. Therefore, the allegation that the premises of the factory has been transferred wrongly by the petitioners in favour of the new firm is factually incorrect. So far as the moveable properties and goods/raw materials of factory

are concerned, the complainant has already filed a suit for rendition of account.

It is further contended by the counsel for the petitioners that the FIR has been got lodged by the complainant by concealing all these facts; regarding the settlements having been arrived at between the parties. Even the police have not taken into consideration the said settlement. The police had not even investigated the case from the point of view; whether the said settlement was valid or not. Qua the settlement, the finding recorded by the trial Court would still be binding upon the parties. Hence, if the petitioners have taken over the properties, as per the settlement, then no offence is made out. If any dispute regarding money is left between the complainant and the petitioners; qua the properties of the factory, for that purpose, the complainant has already filed a suit for rendition of account before the appropriate Court; to go into the aspect of the funds of the partnership firm; and the Court would apportion the same between the parties, as and when the case is decided by that Court. Hence, the allegation regarding sale of moveable properties of the factory or misappropriating the funds of the partnership firm cannot be translated into criminal aspect by the complainant. In the end, it is submitted by the counsel for the petitioners that the allegation, qua the fist blows or injury, is totally a made-up story; not supported by any medical evidence or any material.

On the other hand, learned counsel for respondent No.2/complainant has submitted that the FIR has been got lodged through the intervention of the Magistrate. The ingredients of the offence, mentioned in the FIR, are duly disclosed. Hence, the present petition for quashing of the FIR is not even maintainable. So far as the merits of the case are concerned, it is submitted by the counsel for respondent No.2/complainant that the alleged settlement, as claimed by the petitioners, is a non-existent fact. Even the Civil Court had not granted any declaration of title in favour of the petitioners on the basis of the said settlement. Even qua the findings of fact recorded by Civil Court regarding settlement being arrived at between the parties, further appeal is pending before the Lower Appellate Court. Hence, that finding is not final. It is further submitted by the counsel for respondent No.2/complainant that otherwise also, the settlements as claimed by the petitioners, have never been acted upon between the parties. Neither of the petitioners has surrendered any property in favour of the complainant as per the said settlement, nor has the complainant done so. The respective properties with the parties continued to be as such, despite the above said alleged settlements. This also shows that, in fact, there have been no settlement between the parties.

Learned counsel for respondent No.2/complainant has further argued that admittedly, the firm was having a running factory involved in the business of production and sale of agricultural implements. At the relevant time, the material/goods worth ` 30-32 Lakhs, besides the machinery, were lying at the premises of the factory. However, petitioner No.1 committed a fraud and criminal breach of trust by transferring the possession of the immoveable property and the goods of

the firm; in the name of newly created firm, namely, M/s Vikas Agro Industries, which is owned by petitioner No.2 and with which the complainant has no concern. It is further submitted by the counsel for the complainant that since the original firm was a partnership firm, so the petitioner No.1 was not authorized to unilaterally dissolve the firm or to surrender the TIN number of the firm as such, much less to speak of disposing of the moveable or immoveable properties of the said firm; without the knowledge or consent of the complainant. It is also argued by the counsel for respondent No.2/complainant that since the alleged settlements, on the basis of which the petitioners have acted, were not a registered documents, therefore, the same cannot be read as evidence of the facts mentioned therein. In the end, it is submitted by the counsel for respondent No.2/complainant that no provision of Indian Partnership Act gives authority to the petitioners to dispose of the properties of the firm. Referring to Section 19 of the Indian Partnership Act, learned counsel for the complainant/respondent No.2 has submitted that, by any means, the petitioners were not entitled to transfer the immoveable properties belonging to the firm or to create any interest in the same except with express authority from all the partners. Hence, it is submitted that by giving the immoveable property, on which the factory is situated to M/s Vikas Agro Industries, the petitioners have acted in stark violation of the Partnership Act as well, besides committing the offence of cheating and misappropriation. Learned counsel for respondent No.2/complainant has also submitted that mere filing of suit for rendition of account, would be no bar for lodging an FIR or for continuing the prosecution. Since the offences are disclosed, therefore, the civil as well as criminal, both the proceedings can go side by side. In the suit for rendition of account, the complainant would only be recovering the money due to him, but that would be only after lot of efforts on the part of the complainant. On the other hand, the offences have already been completed by the petitioners. Hence, the fact that there are civil litigation between the parties, is no ground to quash the FIR.

Having heard learned counsel for the parties, this Court finds that the matter between the parties pertains, primarily, to the civil disputes. Admittedly, the land on which the initial partnership, namely, M/s Shri Om Agricultural Implements, Hansi Road, Karnal was running business is jointly owned by the complainant and petitioner No.2. It deserves to be noted that petitioner No.2 was not even a partner in the above said firm M/s Shri Om Agricultural Implements. He is not even alleged to have surrendered his land rights in favour of the firm; as such. Therefore, so far as the immoveable property, on which, the factory was situated, is concerned; undisputedly, petitioner No.2 happens to be the owner to the extent of 50% and he continued to be so throughout. The complainant was owner only to the extent of remaining 50%. Therefore, the said factory was being run on this premises, only for carrying out the business of the firm, may be by agreement between the members of the family. By no means, it could be claimed that the land under the factory was a property of or under the ownership of the 'firm'. Hence, there cannot be any allegation against the petitioners that

they have transferred or disposed of the immoveable property of the firm. As has come in the argument also, the premises on which the firm was carrying on business, was the joint property of the complainant and petitioner No.2. It remains the same even till today. Hence the allegation of having transferred the immoveable property of the firm in the name of M/s Vikas Agro Industries is non-sustainable in law. Of course; the complainant may have some grievance that petitioner No.2 is claiming the exclusive possession of the said premises, however, being, admittedly owner to the extent of 50%, the complainant has a remedy of seeking partition of the said property. Since the complainant and petitioner No.2, both are the joint owners of the property, and law presumes all the joint owners to be in possession of every inch of such property, therefore, for use of the same by one, ordinarily no criminal case can be initiated by another.

Another aspect involved in the case is regarding the moveable properties of the firm of the complainant, which included the machinery, goods produced; as well as the raw material, which was available in the factory. The allegation of the complainant in this regard are that the petitioners have misappropriated the machinery of the firm of the complainant and have sold the goods prepared by his firm and also the material, which was otherwise lying in the premises of the factory. The allegation is against petitioner No.1 that he has transferred the same in the name of the firm of petitioner No.2. In this regard also, this Court finds substance in the argument of the learned counsel for the petitioners that even if these properties are taken to be the properties of the firm, then also there was a settlement between the partners regarding these properties. It is only as per that settlement that the properties were disposed of by petitioner No.1. Although, the counsel for the petitioners submits that as per the settlement, the petitioners had paid 50% of the sale proceeds of the goods/materials to the complainant, but this fact is disputed by the complainant. However, the fact remains that the complainant has already filed a suit for rendition of the accounts. Any amount, to which the complainant is found entitled, but which is not paid to him so far, would be duly accounted for in the decision of the suit for rendition of the account. The criminal proceedings are not meant to settle this dispute between the partners.

One important aspect, which has come up during the argument of the learned counsel for the parties; is the validity and significance of settlement dated 10.10.2011 which related to the disposal of the properties of the firm of the complainant and the petitioner No.1. In this regard, although learned counsel for respondent No.2 /complainant has submitted that this document has not been relied upon by the Civil Court for transfer of rights between the parties qua the properties because it was not registered, however, this Court finds that the civil Court has recorded a categorical finding that the settlement had, in fact, taken place. The Civil Court has recorded a finding that the present petitioners, in their suit for declaration and injunction, has produced all the relevant witnesses to prove the said settlement. On appreciation of the full-fledged evidence before the Civil Court only, the finding of the fact; regarding the existence of settlement

between the parties have been recorded by the Civil Court. Needless to say that in the civil suit there was a specific issue whether the parties have entered into the said settlement or not. In this situation, although the said settlement may not be read as an evidence to confer title upon the parties pursuant thereto, however, the same can very well be read as an agreement between the parties, which had fructified in further rights or which governed the ostensible or actual capacities of the partners/parties thereto. Admittedly, petitioner No.1 was a partner in the firm M/s Shri Om Agricultural Implements. The settlement talked about the disposal of properties of this firm as well. Hence, if pursuant to this agreement, petitioner No.1 has acted qua disposal of the properties of the firm then, at the worst, it can be said that he may have exceeded his authority, but by no means, it can be said he had no authority to act regarding the disposal of the properties of the firm. In this regard, it would be apposite to have a reference to the provisions of Sections 11, 15, 19 and 20 of the Indian Partnership Act in this regard.

"11. Determination of rights and duties of partners by contract between the partners.- (1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.

Agreements in restraints of trade.-(2) Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

15. Application of the property of the firm.-Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

19. Implied authority of partner as agent of the firm.(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- (a) submit a dispute relating to the business of the firm to arbitration,
- (b) open a banking account on behalf of the firm in his own name,
- (c) compromise or relinquish any claim or portion of a claim by the firm,
- (d) withdraw a suit or proceeding filed on behalf of the firm,

- (e) admit any liability in a suit or proceeding against the firm,
 - (f) acquire immovable property on behalf of the firm,
 - (g) transfer immovable property belonging to the firm,
- or
- (h) enter into partnership on behalf of the firm."

20. Extension and restriction of partner's implied authority:-

The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner."

A bare perusal of the provisions shows that a partner has every authority to act qua the affairs of partnership. Further these rights are made subject to the contract or agreement between the parties. Although under Section 19 certain exceptions have been created to the authority of the partner, however, those exceptions also have been made subject to the other agreement or contract between the partners by Section 20 of the Act. In the present case, the settlement, which has been upheld by the civil Court confers an authority on petitioner No.1 to deal with the properties which are mentioned in the said settlement. Hence, the action of petitioner No.1 in disposal of the properties of the said firm can, legitimately, be taken to be within the scope of Section 19; read with Sections 11, 15 and 20 of the Indian Partnership Act.

Although, learned counsel for respondent No.2/complainant has submitted that once the ingredients of some offences are disclosed in the assertions made in the FIR, then the FIR cannot be quashed by the High Court, however, this Court does not find any force in the argument of learned counsel for respondent No.2/complainant. While exercising powers under Section 482 Cr.P.C. the ultimate test to be applied by the Court is the interest of justice and to see if the FIR is created for intended misuse of the process of the Court. This Court has already dealt with this proposition in case CRM-M-8766-2018 titled as Rajinder Mohan Vs. State of Haryana and another, decided on 06.12.2018. The relevant part of the judgment in the above said case, mentioned herein below, clarifies the position in this regard.

"The learned counsel for the respective parties have relied upon the judgments of the Hon'ble Supreme Court; as well as of this Court, to support their respective contentions; qua the powers of this Court while considering a petition for quashing of the FIR. As is clear; from the judgments relied upon the parties as well; the legal position regarding scope of Section 482 Cr.P.C. qua the quashing of the FIR, is no more res integra. A bare reading of the judgments relied upon by both the sides; collectively, would make the position clear that in

a case where the ingredients of the offence are disclosed in the FIR and the assertion in the FIR include the disputed questions of fact then the High Court should not, normally, interfere at the stage of investigation and should not quash the FIR. However, this is only a maxim of caution and not an absolute proposition of law. Therefore, the judgments further clarify the legal position that if the FIR is otherwise misuse of process of the Court or it is initiated as a mala fide exercise; with oblique motives, then High Court need not countenance the attempt of the complainant; by refusing to quash the FIR and thereby permit the complainant to misuse the process of the law. Still further, even if the assertions as made in the FIR do disclose some offence, but if seen in view of admitted, undisputed or un-denied documents, or in view of the documents; the veracity of which is decipherable without any further proof of anything, the FIR is found to be misuse of the process of the court, then the High Court should not be a mute spectator. Simply because the complainant has availed the draftsmanship of a legal wizard to ensure the inclusion of ingredients of some offence in the FIR, that cannot be seen as a clog upon the power of the High Court available under section 482 Cr.P.C. for quashing of the FIR. In that situation; if the court comes to a conclusion, based on reasonable grounds, that the FIR is a misuse of the process of the Court and it would otherwise defeat the ends of justice; then to secure the ends of justice, the High Court should step in and quash the FIR. In view of this so clarified legal position, this Court does not concur with the argument raised by the counsel for the complainant/respondent that, in any case, the FIR cannot be quashed at the initial stage, by exercising power under Section 482 Cr.P.C., if the ingredients of some offence are disclosed in the FIR. It is for the High Court to determine the scope of its interference; in the facts and circumstances of an individual case, by maintaining the balance between the well recognized principles for self restraint and the need for securing ends of justice."

Hence, it is clear that if the FIR is meant to misuse the process of the Court or defeat the ends of justice, then the Court is, rather under a duty, to interfere and to prevent the misuse of the process of the Court by quashing the FIR.

Another argument, which has come from the learned counsel for respondent No.2/complainant, is that the civil and criminal proceedings can very well continue in parallel, therefore, the FIR in the present case should not be quashed. There is no dispute regarding the proposition of law, and it has been amply clarified by the Hon'ble Supreme Court, that the civil and criminal proceedings can continue side by side. However, if the nature, tone and tenor of the criminal litigation is such which reflects, predominantly, the civil nature of the dispute between the parties, and the Court finds that, in the given facts and circumstances of the case, the continuation of the FIR would be misuse of the process of the Court, then the FIR would deserve to be quashed and the criminal proceedings are bound to be terminated in the bud itself. Needless to say that the right to life and liberty of an accused cannot be permitted to be trampled only for sake of completion of the procedure of the trial against him even if the Court, otherwise, finds the proceedings to be the misuse of the process of the

Court or defeating the ends of justice.

In view of the above explained prospective and seeing the facts and circumstances of the present case, this Court finds that the dispute between the parties is predominantly of civil nature. Even if the complainant questions the right of the petitioner No.1 to deal with the properties of the firm, as alleged by him, still the same would be subject matter of the Indian Partnership Act, which gives power to the petitioner No.1 to deal with the properties as per the agreement arrived at between the parties. There is no denying of the fact that the petitioner No.1, purportedly, has acted under the settlement dated 10.10.2011, and it has been even so claimed in the petition and in his arguments. The submissions of the petitioners are fortified by the findings of the Civil Court as well. Even if the Appellate Civil Court reverses the finding qua the settlement, still it cannot be denied that the action of the petitioner was duly bonafide, may be mistakenly, under the said settlement. So far as the right of the complainant qua the business, properties and the funds of the business firm are concerned, the complainant has already filed a suit for rendition of accounts. The respective rights of the complainant and petitioner No.1 shall be decided in that suit. Obviously even the petitioner No.1 would be bound by the judgment rendered by the Civil Court in the suit for rendition of accounts and under the provisions of Indian Partnership Act, he would be bound to indemnify the firm as well as the complainant. Hence, in the considered opinion of this Court, the present FIR has been filed only as a tool of pressure to gain advantage in the civil aspects of the dispute between the parties. Accordingly, the same deserves to be quashed.

However, this Court cannot be oblivious to the fact that; though there is a finding recorded by the Civil Court qua the settlement dated 10.10.2011 having been entered into between the parties, however, both the parties have filed appeal before the District Judge. Hence, any proprietary, pecuniary and financial interest of the respective parties is liable to be governed by the civil proceedings pending or to be initiated by the respective parties. Till the proceedings are finally decided by the Civil Court, none of the parties can be permitted to take a financial or pecuniary advantage over the other and, thereby, use the funds earned through such pecuniary and financial advantage; against such other party itself. Hence, the factory, regarding the premises, business and material of which the respective parties are staking their claims, should be ordered to be sealed under an independent authority/observer, till the parties arrived at some settlement for running of the factory or till the civil proceedings initiated or to be initiated by the respective parties decide the rights of the respective parties to the dispute.

In view of the above, the present petition is allowed. The FIR No.1146 dated 10.11.2012 registered under Sections 323, 420, 452, 467, 468, 471, 506 of IPC, at Police Station Civil Lines, Karnal, District Kanal and the proceedings consequent thereon, are ordered to be quashed.

However, it is further ordered that the factory; along with its machinery, goods and material; shall be sealed by the Sub-Divisional Judicial Magistrate, Karnal; in the presence of both the parties. The factory shall be kept sealed till the parties arrive at some understanding to run the said factory or till the Civil Courts finally decide the rights between the parties. It is further ordered that the entire expenses of putting the seal upon the factory; and for continuing and managing that seal by the Sub-Divisional Judicial Magistrate, Karnal, shall be borne by the petitioners only.