Before Mehinder Singh Sullar, J.

EAST INDIA UDYOG LTD.—*Petitioner*

versus

STATE OF HARYANA & ANOTHER—*Respondents*

Crl. M. No. M-8765 of 2010

January 3, 2012

Code of Criminal Procedure, 1973 - S.482, 173(2), 468 - Indian Penal Code, 1860 - S.406 - Quashing of FIR sought on ground that dispute is civil in nature - Proceedings before Arbitrator for recovery of money - Held, Arbitration proceedings separate matter - No legal ground to quash FIR - Many cheatings committed in course of commercial transactions - Quashing of FIR only in rare cases - Dismissed.

Held, that the mere fact that the petitioner-company is stated to be entitled to recover some amount from the HSEB, pertaining to some entirely different transactions pending before the arbitrator, ipso facto, is not a legal ground to quash the present FIR (Annexure P1) in this connection.

(Para 9)

Further held, that the scope and jurisdiction of this Court for quashing an FIR as envisaged under section 482 Cr.PC is not res integra and is well recognized. It is well settled proposition of law that in case on the bare reading, the offences are made therefrom, no order can be made for quashment. The FIR can only be quashed in the rarest of the rare cases, only if it is proved that the same was lodged maliciously or vexatiously in order to wreck vengeance and only in that eventuality, the FIR amounts to abuse of process of the Court and not otherwise, which is totally lacking in the present case.

(Para 17)

Sumeet Goel, Advocate, *for the petitioner.*

Amit Rana, Deputy Advocate General, Haryana for respondent No.1.

Narender Hooda, Advocate for respondent No.2.

MEHINDER SINGH SULLAR, J. (ORAL)

(1) The compendium of the facts, which needs a necessary mention for the limited purpose of deciding the sole controversy involved in the instant petition and emanating from the record, is that the petitioner East India Udyog Limited (for brevity "the petitioner-company") was engaged in manufacturing and repairing of electric transformers. It supplied over 5000 transformers to Haryana State Electricity Board (for short "the HSEB"). It was supposed to rectify the defects during the guarantee period in normal routine. About 50 transformers of complainant Dakshin Haryana Bijli Vitran Nigam Limited (in short "the DHBVNL") (respondent No.2) were found defective/burnt and petitioner-company was required to remove the defects. The estimated cost of these transformers was stated to be Rs. 6 lacs.

(2) According to the DHBVNL that petitioner-company picked up the indicated defective transformers on 14.12.1998 for repair, which were required to be returned in a working condition within a period of 45 days. The petitionercompany has neither repaired nor returned the transformers within the stipulated period, causing huge loss to it (DHBVNL).

(3) Levelling a variety of allegations and narrating the sequence of events, in all, the complainant-DHBVNL claimed that petitioner-company has cheated it, illegally retained its transformers, which were neither repaired nor returned, causing huge loss to it. That being the position and in the wake of complaint by the complainantAssistant General Manager of DHBVNL, the present case was registered against the petitioner-company, by means of FIR, bearing No.650 dated 4.12.2008 (Annexure P1) on accusation of having committed the offence punishable under section 406 IPC by the Police of Police Station Sector 7, Faridabad. After completion of investigation, the police has already submitted the final police report against the petitioner-company.

(4) Instead of repairing and returning the transformers to the DHBVNL or submitting itself to the jurisdiction of the Magistrate, the petitioner-company has straightway jumped to file the present petition for quashing the FIR (Annexure P1), invoking the provisions of section 482 Cr.PC, inter-alia pleading that the dispute in question is of civil nature and no criminal proceedings can be initiated against it at this belated stage. According to petitioner-company that since its amount over Rs. 97 lacs has

been withheld by the DHBVNL and the matter is pending before the arbitrator, so, it (petitioner-company) is not required to repair and return the transformers. On the basis of aforesaid allegations, the petitionercompany sought to quash the FIR in the manner indicated hereinbefore.

(5) The respondents refuted the prayer of petitioner-company and filed their respective written statements, inter-alia pleading certain preliminary objections of maintainability of the petition and locus standi of petitionercompany. It was claimed that after completion of the investigation, the final police report under section 173 (2) Cr.PC/challan was presented in the Court. As the petitioner-company has dishonestly, mis-appropriated the entrusted property, committed breach of trust and cheated the DHBVNL, therefore, no ground for quashing the FIR is made out. Instead of reproducing the entire contents of the replies and in order to avoid repetition, suffice it to say that the respondents reiterated the allegations contained in the FIR (Annexure P1). However, it will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the petition and prayed for its dismissal.

(6) Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant petition in this respect.

(7) *Ex facie* the main argument of learned counsel that petitionercompany has been falsely implicated in the present case and since the matter of recovery of amount in some other transaction between the parties is pending before the arbitrator, so, no offence punishable under section 406 IPC is made out against it, in view of the observations of Hon'ble Apex Court in case ***Bal Kishan Das*** versus ***P.C.Nayar (1),*** is not only devoid of merit but misplaced as well.

(8) As is clear that in Bal Kishan Das's case (supra), the paddy was entrusted for shelling and heavy shortage was found in the stock. There was an arbitration agreement between the parties at the relevant time. One of the clauses of the agreement was that a shortage to the extent of 1.25 kgs. qtl. of 'paddy' procured should be permitted and beyond that shortage, the petitioner would be liable for payment of penalty at the rates

(1) 1991 (3) RCR (Criminal) 374

prescribed in the agreement. The matter was referred to the arbitrator. The matter was also examined by the Vigilance Department. On the final report submitted by the Vigilance Department, the case was dropped. On the peculiar facts and in the special circumstances of that case, the proceedings were quashed. Possibly, no one can dispute with regard to the aforesaid observations, but to me, the same would not come to the rescue of the petitioner-company in the present controversy in this regard.

(9) As is evident from the record that the DHBVNL has entrusted 50 defective/burnt transformers to petitioner-company on 14.12.1998 for repair, to remove the defects and to return within the stipulated period of 45 days. The estimated cost of indicated transformers was assessed as Rs. 6 lacs. The petitionercompany has neither repaired nor returned and mis-appropriated the property/transformers, causing huge loss to the DHBVNL. The said misappropriation by the petitioner-company amounts to a criminal breach of trust as defined under section 405 and punishable under section 406 IPC. The mere fact that the petitioner-company is stated to be entitled to recover some amount from the HSEB, pertaining to some entirely different transactions pending before the arbitrator, ipso facto, is not a legal ground to quash the present FIR (Annexure P1) in this connection.

(10) This is not the end of the matter. Assuming for the sake of argument (though not admitted), the different matter is pending between the parties before the arbitrator. It is not at all relevant in the present situation. An identical question came to be decided by Hon'ble Supreme Court in case ***Rajesh Bajaj*** versus ***State NCT of Delhi (2),*** wherein it was observed that commercial transaction or money transaction is hardly a reason for holding that the offence of cheating will elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.

(11) Again, Hon'bleApex Court in case ***Trisuns Chemical Industry*** versus ***Rajesh Agarwal and Ors. (3),*** ruled as under:-

> *"9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a*

(2) (1999) 3 SCC 259
(3) (1999) 8 SCC 686

criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in ***State of Haryana v. Bhajan Lal, 1991(1) RCR (Crl.) 383 : (1992) Supp (1) SCC 335)"*** *(Underlined for emphasis).*

(12) The same view was reiterated by Hon'ble Supreme Court in cases ***Gurcharan Singh & Anr.*** versus ***M/s Allied Motors Ltd. & Anr. (4), State of Punjab*** versus ***Pritam Chand and Ors. (5)*** and by this Court in case ***Pawan Kumar*** versus ***State of Haryana (6).***

(13) Not only that, the next feeble submission of learned counsel that no cognizance can be taken against the petitioner-company at this belated stage, again lacks merit. As indicated earlier, there are direct allegations of mis-appropriation and cheating against the petitioner-company. What kind of offence was committed by the petitioner-company would be a moot point to be decided after receiving the evidence by the trial Court during the course of trial. Be that as it may, but the offence of mis-appropriation and criminal breach of trust is punishable for three years or fine or both as contemplated under section 406 IPC, whereas the offence of cheating is punishable for imprisonment of seven years and fine under section 420 IPC. Therefore, if any offence is punishable with imprisonment for a term of three years, then, question of limitation did not arise at all as envisaged under section 468 Cr.P.C. Therefore, the contrary arguments of learned counsel for petitioner-company "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

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(4) (2005) 10 SCC 626
(5) (2009) 16 SCC 769
(6) 2006(2) RCR (Criminal) 162

(14) There is another aspect of the matter, which can be viewed from a different angle. What cannot possibly be disputed is that Code of Criminal Procedure is a compendium of law relating to criminal procedure. Its provisions are required to be interpreted keeping in view the well recognized rule of construction that procedural prescriptions are meant for doing substantial justice. Chapter XIV postulates the conditions for initiation of proceedings. Section 190 further posits that a Magistrate can take cognizance of any offence either on receiving a complaint of facts which constitute an offence or upon police report of such facts or upon receipt of information from any person other than a police officer or upon his own knowledge, that such an offence has been committed. Chapters XV & XVI further contain various procedural provisions which are required to be followed by the Magistrate for taking cognizance in criminal cases.

(15) Meaning thereby, when a police report is forwarded to the Magistrate either under sub-section (2) or sub-section (8) of Section 173 Cr.PC, it is for the Magistrate at the first instance to apply his mind to the police report and to take a definite view whether to take or not to take cognizance of offence against an accused person.

(16) A conjoint and meaningful reading of these provisions would reveal that if there is no material/evidence, then the accused would be discharged by the Magistrate, otherwise charge would be framed against him and the trial will commence. In the present case, the Magistrate, before whom, the final police report has been filed, has not yet applied his mind to the merits of the case or otherwise and in that eventuality, the FIR cannot be quashed in exercise of power under section 482 Cr.PC of this Court, in view of the law laid down by Hon'ble Apex Court in case ***Dharmatma Singh*** versus ***Harminder Singh and others (7).***

(17) Above all, the scope and jurisdiction of this Court for quashing an FIR as envisaged under section 482 Cr.PC is not res integra and is well recognized. It is well settled proposition of law that in case on the bare reading, the offences are made therefrom, no order can be made for

(7) (2011) 6 SCC 102

quashment. The FIR can only be quashed in the rarest of the rare cases, only if it is proved that the same was lodged maliciously or vexatiously in order to wreck vengeance and only in that eventuality, the FIR amounts to abuse of process of the Court and not otherwise, which is totally lacking in the present case. Reliance in this regard can be placed on the celebrated judgment of Hon'ble Supreme Court in case ***State of Haryana and others*** versus ***Ch.Bhajan Lal and others (8),*** which was again reiterated in case ***Som Mittal*** versus ***Government of Karnataka*** **(9).**

(18) Thus, it would be seen that if the nature of accusation of misappropriation, material evidence, legal position and totality of the facts and circumstances of the case, as discussed hereinabove, are put together, then, to me, the conclusion is inescapable and irresistible that there is an ample evidence on record against the petitioner-company and no ground for quashing the FIR (Annexure P1) is made out in the obtaining circumstances of the case. The ratio of the law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of the present case and is the complete answer to the problem in hand.

(19) No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

(20) In the light of aforesaid reasons, thus seen from any angle and without commenting further anything on merits, lest it may prejudice the case of either side during the course of the trial of the main case, as there is no merit, therefore, the instant petition is hereby dismissed as such.

(21) Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits of the main case, as the same has been so recorded for a limited purpose of deciding the present petition in this relevant direction.

A. Aggarwal

(8) AIR 1992 Supreme Court 604

(9) 2008 (2) R.C.R.(Crl.) 92