

**THE HIGH COURT OF MADHYA PRADESH BENCH GWALIOR
(Single Bench – Rajendra Mahajan J.)**

Miscellaneous Criminal Case No.9082/2016.

Jagdish Valecha
S/o Kishanchand Valecha,
aged 55 years,
Resident of 4th Floor, Valecha
Chambers, New Link Road,
Oshiwara, Mumbai.

- Petitioner.

Versus

- 1.** State of Madhya Pradesh,
Principal Secretary, Home,
Vallabh Bhawan, Bhopal (M.P).
- 2.** Superintendent of Police,
district Gwalior (M.P).
- 3.** City Superintendent of Police,
Maharajpura, district Gwalior (M.P).
- 4.** Station House Officer/Thana In-
charge Police Station Maharajpura,
Gwalior, (M.P).
- 5.** Yatendra Singh Chauhan S/o Raj
Bahadur Singh Chauhan,
R/o DH/89, DD Nagar, Maharajpura
Gwalior, M.P.

- Respondents

For petitioner :- Shri Vivek Kedar and Shri Arpit Agarwal, learned counsel,

For respondent No.1 :- Shri Rajendra Singh Yadav, to 4. learned Public Prosecutor.

For respondent No.5 :- Shri Awdhesh Singh Bhadoria learned counsel.

ORDER.

(Passed on the 4th day of January, 2018)

The petitioner has filed this petition under Section 482 of the CrPC seeking quashment of the First Information Report in respect of him registered at Crime No.155 of 2016 in Police Station Maharajpura Gwalior against him and three other accused persons for the offences punishable under Sections 420, 406, 506, 294 and 34 of the I.P.C.

2. The brief facts leading to the filing of this petition as disclosed in the F.I.R are thus :- On 5.5.2016, complainant Yatendra Singh Chauhan, who is respondent no.5 herein, lodged the written complaint with police station Maharajpura Gwalior stating that he is the owner of the M/s Yatendra Chauhan Contractors and Suppliers. Petitioner Jagdish Valecha and his

brother Dinesh Valecha are the Directors of the Valecha Engineering Pvt. Ltd Co. (for short "the company"). Kapil Valecha and Karan Valecha are the sons of the petitioner. M.H.Mehta is the General Manager of the company. On 10.10.2014, on behalf of the company, M.H.Mehta had entered into a written agreement with him in his residence at DH 89 DD Nagar Gwalior. According to the agreement, he had to supply 2,50,000/- metric tons "crushed stones aggregate" at the work site of the company as it has got the contract of construction of four lane road of Etawah-Mainpuri Purawali at that time. As per the agreement, he supplied crushed stones worth Rs.68,00,000/- (sixty eight lac) during the period from November-December 2014 and January 2015. The company paid him only 10,00,000/- (ten lac) rupees against the aforesaid amount. The company gave him two cheques bearing Nos.69999 and 993058. Both the cheques were dishonored by the drawee bank of the company. The directors and the employees of the company fled away from the work site. One Navin

Bajaj also lodged an FIR at Police Station Jhansi Road Gwalior for the similar type of the offences having been committed by them. In that case, the police arrested Dinesh Valecha from Mumbai. When he was being brought to Gwalior, he escaped from the custody of the police at Railway-Station Bina. Now, the aforesaid persons would hurl at him various kinds of filthy abuses and would give him death threats on phones. Upon the complaint, Police Mahajarajpura Gwalior registered the FIR at Crime No.155 of 2016 and have made the petitioner, Dinesh Valecha, Kapil Valecha and Karan Valecha the accused persons of the case for committing the offences punishable under Sections 420, 406, 506, 294 and 34 I.P.C.

3. Learned Counsel for the petitioner submitted that as per the F.I.R, M.H.Mehta had entered into an agreement on behalf of the company for the supply of crushed stones. The police have not made him an accused of the case, whereas he is the main accused. He further submitted that the complainant has stated in the FIR that the company had given him two

cheques towards the outstanding amount. But, he had mentioned in the FIR only cheque numbers without the dates on which the cheques are issued, amount of each of the two cheques, the name(s) of drawee bank (s), the name(s) of signatory(s) of the cheques and the date(s) of dishonour of the cheques. He further submitted that Kapil Valecha and Karan Valecha are neither directors of the company nor the employees of the company. He further submitted that the complainant has made general and vague allegations against them for giving abuses and life threats to him because in the FIR the dates, timings of the telephone calls, telephone number(s) through which they would give him abuses and death threats and the telephone number(s) on which he had received the same are not given. He further submitted that the complainant has made Kapil Valecha and Karan Valecha accused of the case with an ulterior motive to bring pressure upon the petitioner and Dinesh Valecha for payment of the outstanding amount. He further submitted that there is no iota of facts in the FIR to prove prima facie that

the petitioner and Dinesh Valecha had intention to cheat him or commit breach of trust against him before the execution of the agreement. He further submitted that the real dispute between the company and the complainant is that he had supplied the crushed stones of poor quality to the company resulting in non-payment of the amount as demanded by him. Thus, the dispute between the complainant on one side and the accused persons and the company on the other is of purely monetary dispute of civil nature. Thus, no offence against the petitioner under Sections 420 (for cheating), 406 (for breach of trust), 294 (giving filthy abuses) and 506 (for giving life threats) I.P.C are made out. Therefore, the FIR be quashed in respect of the petitioner. In support of the submissions, he placed reliance on the decisions rendered in the case of State Of Haryana And Ors Vs Ch. Bhajan Lal And Ors, AIR 1992 SC 604, International Advanced Research Centre for Powder Metallurgy and new Materials (ARCI) & Others Vs. Nimra Cerglass Technics Private Ltd & another, (2016)

1 SCC 348, M.Cr.C.No.1942 of 2004 and M.Cr.C.No.2005 of 2004, cause-title Wolfgang Rein & ORS Vs. State and ANR, date of orders dated 2.7.2012 passed by the Delhi High Court and a few orders passed by this High Court and the Bombay High Court under Section 482 CrPC in unreported cases.

4. In reply, learned counsel for the complainant submitted that at the relevant time the offences of similar nature are registered against the petitioner, Dinesh Valecha, Kapil Valecha and Karan Valecha and others in police station University Gwalior at Crime No.98 of 2016, police station Jhansi Road at Crime No.315 of 2015 and Civil Lines Etawah at Crime No.103 of 2015. In all these cases, gravamen of accusations against them are that they had entered into agreements with the complainants for supply of crushed stones and thereafter they did not make payments and they and their employees fled away from the work site. He further submitted that the police of police station University arrested Dinesh Valecha in said Crime No.98 of 2016 at Mumbai. When

he was being brought by the police, he escaped from the custody of police at Railway-Station Bina. Thereupon, Crime No.355/2015 against him is registered at G.R.P police station Bina under Section 224 I.P.C. He further submitted that the registrations of the aforesaid cases upon the complaints of the different complainants in the aforestated police stations are prima facie proofs that the petitioner and the three other accused of the present case had intention to cheat the complainant or commit criminal breach of trust against the complainant at the time of execution of the written agreement which had been entered into with him on behalf of the company by its General Manager M.H.Mehta. He further submitted that the petitioner had also filed M.Cr.C.No.8307 of 2016 for the quashment of the FIR registered against him and others in Crime No.98 of 2016 at police station University Gwalior. A co-ordinate coordinate Bench of this High Court had dismissed his petition vide order dated 27.4.2017 in which on behalf of the petitioner, the arguments had been raised almost on the similar

lines as are in the present case. He further submitted that the investigation in the present case has not so far been taken off and in the course of it, the complainant would give details of the cheques mentioned in the FIR and the evidences to the investigating officer as to how the petitioner and the other accused persons of the present case had malafide intention prior to the execution of the written agreement with him and the abuses and death threats given by them when he had asked them to make payment of outstanding amount. He further submitted that it is well settled in law that the criminal proceedings cannot be quashed merely on the ground that the civil remedy is available. He further submitted that the petitioner would have an opportunity to prove before the investigating officer that the dispute of the present case is of purely monetary dispute of civil nature. He further submitted that in case, the investigating officer files the charge-sheet in the present case, then the petitioner would have an opportunity to convince the trial court and the higher

court (s). He further submitted that it is true that at present the FIR is not registered against M.H.Mehta, the General Manager of the company. However, the investigating officer may make him an accused in the present case if in the course of investigation, the evidence comes to fore against him. In this backdrop it is not a ground that since the police have not made him an accused, the petitioner is entitled to get the FIR registered against him quashed. He lastly submitted that after full investigation in the present case it ought to be decided whether it is a case of cheating or breach of criminal trust or mere breach of contract. In support of these submissions, he placed reliance on the decisions rendered in the cases of Lee Kun Hee, President, Samsung Corporation, South Korea and Others. Vs. State of Uttar Pradesh and Others, (2012) 3 SCC 132 and V.C.Raam Sukaesh and Ors Vs. State of M.P. & Ors 2008 (4) Crimes 10 (M.P).

5. On behalf of the respondent Nos.1 to 4 learned Public Prosecutor supported the arguments advanced by learned counsel for the complainant.

6. It is pertinent to mentioned at this stage that Kapil Valecha and Karan Valencha have jointly filed M.Cr.C.No.8773 of 2016 for quashment of the FIR registered against them in present case, which is also being decided by a separate order at the same time.

7. I have given my anxious consideration to the rival submissions made at the Bar and perused the entire material on record and the case-law cited before me.

8. Upon the perusal of the FIR of the present case and the FIRs registered in the aforestated crime numbers against the petitioner, Dinesh Valecha, Kapil Valecha and Karan Valecha at the aforestated police stations, I find that the FIRs are registered against them for the offences of similar nature by and large at the same time and the gravamen of the accusations in these cases are that they had entered into written agreements for supply of crushed stones with the complainants and later, they had not made payments to them and they and their employees ran away from the aforestated work site. If the contents of the aforesaid FIRs and the escape of Dinesh Valecha from

the custody of police are considered together, I find that there are prima facie ingredients of criminal breach of trust and cheating in the acts of the petitioner as defined under Sections 405 and 415 of the I.P.C, which are cognizable offences under Sections 406 and 420 of the I.P.C. However, it is to be decided first, by the investigating officer and later the court (s) as to which offence of the two, has been committed by the petitioner. Therefore, it cannot be said that the dispute of the present case is of purely civil nature. Hence, the parameters laid down by the Supreme Court in the decisions rendered in the cases of State of Haryana (supra), [Amit Kapoor Vs. Ramesh Chander](#), (2012) 9 SCC 460, [Taramani Parakh Vs. State of M.P. and Ors.](#), (2015) 11 SCC 260 and in [Prashant Bharti Vs. State of NCT of Delhi](#), AIR 2013 SC 275, for quashment of the FIRs and complaints are not applicable in the present case to quash the FIR against the petitioner. This court has held in the case of V.C.Raam Sukaesh (supra) on the basis of a catena of pronouncements of the Supreme Court that the criminal proceedings cannot be

quashed merely on the ground that the civil remedy is available. For the sake of arguments raised on behalf of the petitioner, if it is accepted that the dispute between the petitioner on one side and the complainant on the other has the colour of civil dispute, despite that the FIR in the present case cannot be quashed against the petitioner in view of the aforesaid case-law.

9. Following rulings laid down the legal positions as to the quashment of FIR in a given case at the initial stage of the investigation:-

(9.1). In the case of Kurukshetra University and another Vs. State of Haryana and another, AIR 1977 SC 2229=(1977) 4 S.C.C 451, the Supreme Court held as under:-

“Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. Thus, the High Court in exercise of inherent powers under Section 482, Criminal Procedure Code cannot quash a first information report more so when the police had not even commenced the investigation and no proceeding at all is pending in any Court in pursuance of the said F.I.R.”

Similar views were expressed by the Supreme Court

in the case of State of Orissa and another Vs. Saroj Kumar Sahoo, 2006 Criminal Law Reporter (SC) 63, and this Court in the case of V.C. Raam Sukaesh (supra).

(9.2). In the case of MCD Vs. Ram Kishan Rohtagi 1983 (1) SCC 1, the Supreme Court held thus;

"The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 Cr.P.C."

(9.3). In the case of State of W.B. Vs. Swapan Kumar Guha 1982 (1) SCC 561, emphasising that the High Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence to be completed, the Supreme Court in para 65 and 66 of the decisions observed thus;

"65. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in

escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice required that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed.

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence."

(9.4). In case of Rishipal Singh Vs. State of U.P. and another, 2014 (3) SCC 2015, the Supreme Court deprecated the quashing of FIR at the initial stage of investigation and stated that at this stage the FIR can be quashed only when the uncontroverted allegations made in the FIR, do not disclose any offence.

(9.5). More recently, the Supreme Court in the case of N. Soundaram Vs. P.K. Pounraj and Another, 2014 (10) SCC 616 held that the power under Section

482 Cr.P.C. should not be exercised to stifle a legitimate prosecution.

(9.6). In the case of State of Punjab through Secretary Home Vs. Subhash Kumar and others, 2014 (13) SCC 437, the Supreme Court held that the High Court cannot quash the FIR by entering into the factual arena. It cannot act as an investigating agency at a stage when the case is under the investigation.

10. As has been held that the F.I.R of the present case prima facie discloses the commission of the cognizable offences by the petitioner. Upon the perusal of case diary of the present case, it is crystal clear that the investigation is in initial stage. Therefore, in the light of the aforestated case-law, this court is bound to allow the investigation in the present case and the power of the police to investigate it cannot be interfered with by the exercise of power under Section 482 Cr.P.C.

11. For the foregoing reasons and discussions, I come to the ultimate conclusion that no ground is made out for the quashment of the FIR insofar as the petitioner is concerned. Therefore, this petition is devoid of merits and substance, is liable to be

17

MCRC.9082/2016.

dismissed and is hereby dismissed.

(Rajendra Mahajan)
Judge

Rks.