IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No.M-34793 of 2011
Date of Decision: 06.01.2015

Ms. Sonica Malhotra and others ....Petitioners

Versus

State of Punjab and others ....Respondents

Crl. Misc. No.M-37911 of 2011

Balwant Sharma and another ....Petitioners

Versus

State of Punjab and others ....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspapers may be allowed to see the judgment ?**
2. **To be referred to reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

Present:- Mr. J.S. Bedi, Sr. Advocate
with Ms. Diya Sodhi, Advocate
for the petitioners.

Ms. Rita Kohli, Addl. A.G., Punjab
for the respondent-State.

Mr. S.S. Narula, Advocate
for respondent No.2.

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DAYA CHAUDHARY, J.

By this judgment, both the petitions bearing ***Criminal Misc. No.M-34793 of 2011*** and ***Criminal Misc. No.M-37911 of 2011*** shall be disposed of as common question of law and facts are involved in both the

cases. However, for the sake of convenience, the facts are being extracted from ***Criminal Misc. No.M-34793 of 2011.***

The present petition has been filed under Section 482 Cr.P.C for quashing of FIR No.180 dated 04.11.2011 registered under Sections 420, 467, 468, 471 and 120-B IPC at Police Station Division No.4, Jullunder.

The FIR, in question, was registered at the instance of complainant/respondent No.2-Gurcharan Singh Syal alleging therein that certain meetings, which took place on 01.09.2011, 02.09.2011, 05.09.2011, 26.09.2011, 29.09.2011 and 30.09.2011 at Delhi and Jalandhar, were against the interest of complainant-party. It is also the allegation in the FIR that in said meetings, the persons who participated and signed the Minutes of the Meeting by taking various decisions were not even present at the place of meeting and decisions were taken on the basis of mobile phone records.

The FIR as well as other proceedings arising therefrom have been challenged by raising various grounds.

Learned senior counsel for the petitioners submits that as per allegations in the FIR, no offence is made out against the petitioners and keeping in view the provisions of Section 628 of the Companies Act (here-in-after referred to as `the Act'), only the complaint is maintainable under Section 621 of the Act. Learned counsel also submits that no document has been forged and on the basis of filing of Minutes of Meeting before the Registrar of Companies or filing of document in pursuance of decision taken in the meeting, it cannot be said that any forgery has been committed. The allegations levelled against the petitioners are more or less identical, which have been alleged by the petitioners against the complainant party. It was alleged by the petitioners' party that non-service

of advance notice of meetings and the consequential holding of meetings and decisions taken therein are invalid. Learned counsel also submits that no preliminary inquiry was conducted before lodging of the FIR, whereas, it was necessary in view of ratio of judgment of Hon'ble the Apex Court in case ***Lalita Kumari vs Government of U.P and others 2013(4) RCR (Crl.) 979,*** as the allegations in the FIR are relating to commercial dispute and a pre-registration enquiry is necessary. There is also a delay of three months in reporting the matter and the same has not been explained. Learned counsel also submits that as per allegations in the FIR, the grievance raised by the complainant side relates to Section 628 of the Act, 1956 and the offences under the Act are to be cognizable only on a complaint made in writing. On the basis of allegations in the FIR, no offence is made out under any of the provisions of Indian Penal Code as no cognizable offence is made out and no investigation is permitted by the police officer without having any order of a Magistrate and the same is liable to be quashed only on this ground. At the end, learned counsel for the petitioners submits that lodging of FIR against the petitioners is not only an abuse of process of law but it does not even fall within a realm of criminal law being purely civil in nature.

Learned counsel for the petitioners while relying upon the judgments of Hon'ble the Apex Court in cases ***R.P. Kapur vs State of Punjab AIR 1960 SC 866*** and ***State of Haryana vs Ch. Bhajan Lal AIR 1992 SC 604*** also submits that this Court has inherent powers to quash the FIR as well as other proceedings arising therefrom.

Learned counsel for the petitioners has also relied upon the judgments of Hon'ble the Apex Court in cases ***Dilawar Singh vs Parvinder Singh @ Iqbal Singh and another 2005(4) RCR (Criminal) 855, Narcotics Control Bureau vs Kishan Lal and others 1991(1) RCR***

(Criminal) 338, A.K. Roy vs State of Punjab 1986(2) RCR (Criminal) 569 and ***Md. Ibrahim and others vs State of Bihar and another 2009(4) RCR (Criminal) 369***, judgments of this Court in cases ***Satish Chand vs State of Haryana 2003(4) RCR (Criminal) 851, Rakesh Kumar vs State of Haryana 2011(3) RCR (Criminal) 629*** as well as judgment of Kerala High Court in case ***Municipal Commissioner, Thalasserry Municipality vs B. Abdurahiman 1996 Crl. L.J. 1075***, in support of his contentions.

Learned Senior counsel for the State-Ms. Rita Kohli, Additional Advocate General, Haryana submits that the allegations in the FIR are matter of evidence and the same can be considered during trial. She further submits that the petitioner can raise all pleas, as raised herein, either at the time of framing of charge or thereafter.

Learned counsel for respondent No.2 opposes the submissions made by learned counsel for the petitioners and has also raised a preliminary objection that petition under Section 482 Cr.P.C is not maintainable as the validity of documents, which is under dispute, can be considered only by the trial Court during trial. The challan, in the case, was presented on 16.08.2013 and the matter is being delayed by the petitioners by addressing arguments on charge. Learned counsel also submits that in case, any document is not a part of challan, the same cannot be taken into consideration by the Court. The remedy under Section 628 of the Act is totally separate from the provisions of the Indian Penal Code. The petitioners have forged the valuable security documents just to cheat the complainant. Neither any notice of the meeting was given to the complainant party nor they were aware about holding of such meeting. Even some of the decisions were taken in the back date just to defraud the complainant party. He further submits that not only the documents were forged but there was forging with the accounts also. He also submits that it

is a well settled proposition of law that the criminal proceedings can go simultaneously with the civil proceedings. He further submits that one more petition bearing ***Criminal Misc. No.M-18949 of 2014*** was filed by the petitioners before this Court , which was dismissed vide order dated ***28.05.2014*** and the petitioners were given liberty to raise all the issues before the trial Court. Thereafter, the petitioners filed SLP before Hon'ble the Apex Court and the same was dismissed as withdrawn.

Learned counsel for respondent No.2 has relied upon the judgment of Hon'ble the Apex Court in case ***State of Bihar and another etc. Vs Shri P.P. Sharma and another etc. AIR 1991 Supreme Court 1260, State of Orissa vs Debendra Nath Padhi 2005(1) RCR (Criminal) 297, Chand Dhawan vs Jawahar Lal 1992(3) RCR (Criminal) 534, A.A. Mulla vs State of Maharashtra 1997(1) RCR 44, Sangeetaben Mahendrabhai Patel vs State of Gujarat and another 2012(2) RCR (Criminal) 757, Trisuns Chemical Industry vs Rajesh Aggarwal 1999(4) RCR (Criminal) 223, N. Devindrappa vs State of Karnataka 2007(3) RCR (Crl.) 70, Kamaladevi Agarwal vs State of West Bengal 2001(4) RCR (Criminal) 522, Sh. Vishnu Dutt Sharma vs Smt. Daya Sapra 2009 (3) RCR (Criminal) 493, Vinay Tyagi vs Irshad Ali @ Deepak and others 2013(2) RCR (Criminal) 197, Sanghi Brothers (Indore) Pvt. Limited vs Sanjay Choudhary and others 2008(4) RCR (Criminal) 640, State of Maharashtra vs Priya Sharan Maharaj 1997(2) RCR (Criminal) 634, State of Delhi vs Gyan Devi 2000(4) RCR (Criminal) 517, State of Rajasthan vs Thakur Singh 2014(8) JT 50, Sachida Nand Singh vs State of Bihar 1998(1) RCR (Criminal) 823*** as well as judgment of this Court in case ***Karnail Singh vs The State of Punjab 1983(1) RCR (Criminal) 38***, in support of his contentions.

Heard the arguments of learned counsel for the parties and

have also perused the allegations in the FIR as well as other documents on the file.

Briefly, the facts of the case are that ***Krishna Real Estate Enterprises Private Limited*** was established in the year 1997. Both the parties i.e ***Malhotra Group*** from the accused side and ***Syal Group*** from the complainant side, were having equal shares and equal representation. Initially, Prem Singh Syal and Gurcharan Singh Syal were having 100 shares each and Ashok Kumar Malhotra and Satish Bala Malhotra were also having 100 shares each. Ashok Kumar Malhotra expired on 30.12.2009 and he was survived by his wife and two daughters. Said Ashok Kumar Malhotra bequeathed his shareholding and petitioners were allotted the shares by virtue of resolutions duly adopted by the Board of Directors of the Company.

As per allegations in the FIR, there were amendments in the Articles of Association. The decisions were taken by the petitioners without communicating the same to the complainant party. Those decisions were taken only on the basis of talks on mobile/telephone. As per case of the petitioners, no offence is made out under Sections 452/447/506/379/148/149 IPC as no forgery was committed by the petitioners and before lodging of the FIR, no preliminary inquiry was conducted which was necessary in view of ratio of judgment of Hon'ble the Apex Court in ***Lalita Kumari's*** case (supra). In case, any grievance is there, that is, covered by Section 628 of the Act and no offence is made out under any provisions of Indian Penal Code.

Learned counsel for respondent No.2 has brought to the notice of this Court that the petitioners also filed ***Criminal Misc. No.M-18949 of 2014*** before this Court, which was dismissed vide order dated 28.05.2014. A specific observation has been made, while dismissing the petition filed by

the petitioners, on 28.05.2014 that legality, validity and admissibility of the documents, attached with the report, is to be adjudged while appreciating that report for taking further action thereon, which can be seen by the trial Court at the appropriate state. However, the petitioners were given liberty to raise all the pleas, as raised in the petition, before the trial Court at the time of consideration of report under Section 173(8) Cr.P.C.

Learned counsel for the petitioners made all efforts to justify that the present petition has been filed after filing of supplementary challan and order passed by this Court in earlier petition is not relevant at this stage as the Court has power under Section 482 Cr.P.C even after changed circumstances. The prayer in the earlier petition was for issuance of direction to the trial Court not to consider the investigation report dated 02.05.2014 under Section 173(8) Cr.P.C and that petition was dismissed on 28.05.2014 with liberty to the petitioners to raise all issues before the trial Court as validity of documents can be seen only by the trial Court at the time of appreciation of final report. Similarly, while challenging the said order, even Hon'ble the Apex Court was not inclined to interfere with the order and ultimately, the counsel appearing for the petitioners opted to withdraw the petition, reserving liberty to redress their grievance before the trial Court. The matter is pending for consideration of charge before the trial Court and the petitioners can raise all pleas, as raised before this Court, before the trial Court at the time of framing of charge.

It is also a well settled proposition of law that any material, which is not a part of challan, cannot be taken into consideration, as has been held by Hon'ble the Apex Court in ***State of Bihar's*** case (supra).

Similar view has been held in another judgment of Hon'ble the Apex Court in ***State of Orissa's*** case (supra). In the said judgment, it was held that any material, which is not attached with the challan by the police

during the investigation, is not within the scope of petition under Section 482 Cr.P.C.

As far as contention of learned counsel for the petitioners that only the provisions of Section 628 of the Act are attracted and not the provisions of Indian Penal Code is concerned, Section 628 of the Act relates to only filing of reports, records, balance sheet, statements or documents, which are false material particulars or omit any material fact. That remedy is completely different and separate and it cannot be said that the provisions of Indian Penal Code are attracted.

Moreover, it is also a well settled proposition of law that separate and distinct offences can be tried separately and it would not overlap each other. There is no bar as per provisions of Section 300(1) Cr.P.C or Article 20(2) of the Constitution of India. This view has been held in judgment of Hon'ble the Apex Court in ***A.A. Mulla's*** case (supra), wherein, it has been held that there may be some overlapping of facts in both the cases but ingredients of offences are entirely different. It has also been held in various judgments of Hon'ble the Apex Court as well as of this Court that civil proceedings and criminal proceedings can go on simultaneously. For the purpose of consideration of charge, it is not necessary that the evidence to be produced by the party is to be considered.

Learned counsel for the petitioners has raised argument that no document has been forged and filing of minutes of meeting before the Registrar of Companies or filing of documents in pursuance of decision taken in the meeting would not amount to forgery under any circumstances.

The judgments relied upon by learned counsel for the petitioners are not applicable, keeping in view the facts and circumstances as well as stage of case as it cannot be said at this stage as to whether the

offence is made out or not as the petitioners are having liberty to raise all the pleas before the trial Court at the time of framing of charge. Moreover, the earlier petition i.e ***Criminal Misc. No.M-18949 of 2014*** has already been dismissed and SLP has also been dismissed as withdrawn.

There is no merit in the contentions raised by learned counsel for the petitioners and the petition, being devoid of any merit, is hereby dismissed at this stage.

However, the petitioners are at liberty to raise all pleas, as raised herein, before the trial Court.

(DAYA CHAUDHARY)
JUDGE

06.01.2015
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