

Court No. - 2

Case :- CRIMINAL MISC. WRIT PETITION No. - 7685 of 2022

Petitioner :- Mohar Pal And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Harikesh

Counsel for Respondent :- G.A.

Hon'ble Dr. Kaushal Jayendra Thaker,J.

Hon'ble Gautam Chowdhary,J.

Heard learned counsel for the petitioner and learned counsel for the State.

By way of this petition, the accused-petitioners pray for quashment of the impugned first information report dated 25.02.2022 in Case Crime No. 120 of 2022 under Sections 420, 406, 120B India Penal Code (I.P.C.), Police Station Sungarhi, District Pilibhit and also for staying their arrest in respect of the aforesaid first information report.

Both the petitioners have alleged to have committed what can be said to be offences under Sections 420, 406, 120B of IPC.

The allegations in the FIR are very categorical that the first informant is aged about 28 years and he is doing business. The petitioner no.1, namely, Mohar Pal and the petitioner no.2, namely, Suresh have also into business. The first informant moved to the Magisterial Court, who after verifying the facts, issued direction to the police officer to investigate and took cognizable case as the informant had get machines on concessional rates by the petitioner no.1. The bank transaction of Rs.2,03,280/- from the bank of the informant was made to the petitioner, Mohar Pal. Despite the money being given by way of bank account, no machine was supplied to the

informant. This itself shows the culpable mind of the accused Mohar Pal and therefore, the complainant has alleged commission of offence under Section 420, 406, 120B IPC. Thereafter, Kamlesh Singh to whom the money was also sent, issued a cheque after deducting commission. The amounts could not be realized and therefore, the informant again requested both the accused along with his brother but they have locked the premises and are not available. On 22.06.2021, a first information was given to the Superintendent of Police, Pilibhit but no action was taken and therefore, the informant moved the Court which has directed investigation as it is prima facie found that cognizable offence has been committed by the accused.

It is submitted by learned counsel for the petitioners that the alleged incident occurred on 25.08.2020 but the FIR was lodged on 25.02.2022 without any proper explanation. It is further submitted by learned counsel for the petitioners that Sections 4 and 5 of the Cr.P.C. would be applicable as according to the petitioner's counsel, the offence alleged to be committed under the Negotiable Instrument Act

These facts go to show that it is not a matter which falls under the Negotiable Instrument Act as sought to be canvassed by learned counsel for the petitioners. The provisions of Section 4 of Cr.P.C. read with Section 5 relate to procedure where commission of offence under the Special Act. In the present case, the informant has invoked the criminal jurisdiction and not the jurisdiction under Section 138 of the Negotiable Instrument Act and therefore, Section 5 cannot be made applicable.

Sections 4 and 5 Cr.P.C. read as follows:-

*"4 Cr.P.C. Trial of offences under the Indian Penal Code and other laws.-
(1) All offences under the Indian Penal Code (45 of 1860) shall be*

investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

"5 Cr.P.C. Saving.- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

Recently the Apex Court in **Noorulla Khan Vs. Karnataka State Pollution Control Board, AIR 2021 SC 3438**, has held that Section 5 of Cr.P.C. applies to the proceedings under the Special Act. The Act specifies certain procedural justice and protection. Proceedings under the Indian Penal Code would be governed by the Criminal Procedure Code only and therefore, the provisions of Section 5 of Cr.P.C. and 468 Cr.P.C. read with contours for invoking Article 226 of the Constitution will not permit us to interfere in the investigation as prima facie, facts go to show that the ingredients of Section 406, 420 and 120-B IPC are made out against the accused. The actus reus is also prima facie proved to dupe the informant.

The decision of the Apex Court in **State of Andhra Pradesh Vs. Gourishetty Mahesh [2101 (6) SC 588]** read with the recent judgments in **State of Telangana vs. Habib Abdullah Ilahi, 2017 2 SCC 779**, **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, AIR 2021 SC 1918** and **State of Maharashtra v. Pankaj Jagshi Gangar, AIR 2022 SC 114**, will not permit this Court to interfere in the Article 226 of the Constitution of India.

The FIR cannot be said to be belated as Sections 420, 406, 120B India Penal Code permits lodgment of the FIR within a period as prescribed by Section 468 Cr.P.C. which reads as follows.

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

Therefore, it cannot be said that the offence lodged is belated.

In that view of the matter, the registered case cannot be said to be such which is beyond the period of limitation and that there is a abuse of process of law.

Accordingly, the petition is devoid of merit and is **dismissed** with the costs of Rs.5,000/- as Sections 4 and 5 of Cr.P.C. cannot be made applicable to the facts of this case as we have elaborately discussed that the complainant/informant has not invoked the provisions of the special Act (N.I. Act) but the alleged commission of offences punishable under the Indian Penal Code triable as per procedural law i.e. Criminal Procedure Code, the investigation cannot be quashed.

Order Date :- 21.6.2022

Vivek Kr.