

CRM-M-11815-2009

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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision: 15.09.2015

Paramjit Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. P.S. Goraya, Advocate,
for the petitioners.

Mr. A.S. Sidhu, AAG, Punjab.

Mr. A.S. Manaise, Advocate,
for respondent No.3.

SABINA, J.

Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.33, dated 28.02.2008, under Sections 420 and 120-B of the Indian Penal Code, 1860 ('IPC' for short) registered at Police Station City Batala, District Gurdaspur.

Learned State counsel for the petitioners has submitted that so far as petitioner No.1 is concerned, this petition has become infructuous as he has since died. Consequently, petition qua petitioner No.1 is disposed of as having been rendered infructuous.

Learned counsel on behalf of petitioners No.2 and 3,

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has submitted that sale deed (Annexure P-2) was executed by Paramjit Singh (petitioner No.1 since deceased) in favour of petitioner No.3. Petitioner 3 was a *bona fide* purchaser for consideration. In fact petitioners No.2 and 3 could themselves be said to be victims as they have been involved in criminal as well as in civil litigation, although, they had purchased the property in question for consideration. Petitioner No.3 had no knowledge as to whether Paramjit Singh had sold land more than his share as alleged in the FIR.

Learned State counsel, on the other hand, has opposed the petition and has submitted that all the accused in connivance with each other had cheated the complainant.

Learned counsel for respondent No.3-complainant has opposed the petition and has submitted that petitioners No.2 and 3 also had knowledge that Paramjit Singh vendor had already sold his share out of the suit land. The sale deed Annexure P-2, had been executed by Paramjit Singh in favour of petitioner No.3 with a view to cheat the complainant.

Prosecution story, in brief, is that Paramjit Singh was joint owner of land measuring 171 kanals 8 marlas to the extent of 1/4th share. Complainant and his son has purchased 5 kanals 4 marlas of land bearing khasra No.29, rectangle No.38/1/2 from Hardial Singh and has, thus,

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become co-sharer qua the land in question along with Paramjit Singh. Paramjit Singh in connivance with Kulwant Singh and his wife Sukhraj Kaur executed a fictitious sale deed dated 05.08.2004 qua 1 kanal land out of khasra No.29, rectangle No.38/1 with a view to cheat the complainant.

In the case of **State of Haryana** vs. **Bhajan Lal,** **1992 Supp(1) Supreme Court Cases 335**, the Apex Court has held as under:-

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. Can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information report or the complainant/respondent No.2, even if they are taken at their face value and accepted in their entirety do not prima facie

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constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent

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person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or

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otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

Annexure P-2 is the sale deed executed by Paramjit Singh in favour of Sukhraj Kaur on 05.08.2004. A perusal of the same reveals that 1 kanal land bearing khasra No.29, rectangle No.38/1 had been sold for a total consideration of ₹55,000/-. The amount of consideration as per the sale deed was paid by the vendee to the vendor before the Sub Registrar. Thus, it is evident from the sale deed that petitioner No.3 had purchased the land in question for consideration. Petitioner No.3 could be said to have purchased the land in question from Paramjit Singh after going through the revenue record. Petitioner No.3, however, cannot be said to be having the knowledge that Paramjit Singh had sold land more than his share.

During the course of arguments, it has transpired that so far as sale deed, Annexure P-2, is concerned, the same is not a matter of challenge before the Civil Court. In order to constitute a criminal offence the most important ingredient is *mens rea*. In case the petitioners No.2 and 3 had the intention to cheat the complainant, they could be said to have

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committed the offence of cheating. However, petitioners No.2 and 3 can themselves be said to be victims as they have purchased land vide sale deed Annexure P-2 for consideration but have been involved in criminal as well as civil litigation.

So far as vendor Paramjit Singh is concerned, he has died during the pendency of this petition. So far as petitioners No.2 and 3 are concerned, they cannot be criminally prosecuted qua sale deed executed in their favour by the vendor as the sale deed was executed in favour of petitioner No.3 by Paramjit Singh for consideration.

In the facts and circumstances of the present case, continuation of criminal proceedings against the petitioner Nos.2 and 3 would be nothing but an abuse of process of law.

Accordingly, this petition is allowed. FIR No.33, dated 28.02.2008, under Sections 420 and 120-B IPC, registered at Police Station City Batala, District Gurdaspur and all consequential proceedings arising therefrom qua petitioner No.2 and 3, are quashed.

September 15, 2015
kapil

(SABINA)
JUDGE