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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM no.M-11954 of 2013(O&M)
Decided on : 19-03-2015**

Sewa Singh and another

....Petitioner

VERSUS

State of Punjab and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE MAHESH GROVER

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

Present:- Mr. Vikas Singh, Advocate for the petitioners

Mr. Deepak Garg, AAG, Punjab

Mr. Ajay Pal Singh, Advocate for respondent no.2.

MAHESH GROVER, J

CRM no. 9110 of 2015

Allowed as prayed for.

Main case

This is a petition under Section 482 Cr.P.C praying for quashing of FIR no. 385 dated 22.12.2012 registered under Sections 420, 120-B at Police Station City Sangrur and all consequent proceedings arising therefrom.

The petitioners are said to have facilitated an agreement to sell where Kuldeep Singh agreed to sell the disputed property to the complainant, even though Kuldeep Singh himself was not the owner. This fact was duly recorded in the agreement to sell which stated that Kuldeep

Singh had entered into agreement to sell with original owner and was ready to alienate the property in favour of the complainant on payment of Rs.4.2 lacs.

The agreement did not fructify into a sale leading to filing of a civil suit by the complainant which has been decreed in his favour with the Appellate Court affirming the same. The transaction is said to have taken place in the year 2005 and the FIR was registered in the year 2012.

Learned counsel for the petitioners contends that a bare reading of the FIR does not disclose the commission of any offence by them and besides the FIR has been registered after 7 years of the alleged transaction to sale. Besides the reading of the FIR did not even remotely suggest any misrepresentation on the part of the petitioners.

Learned counsel for the complainant – respondent no.2 on the other hand would contend that the petitioners had persuaded the complainant to enter into a transaction which was not intended to be fulfilled which resulted in loss of Rs.4.2 lacs only on account of the fraudulent act of the petitioners.

To the same effect is the argument of the learned counsel for the State - respondent who suggests that all these pleas can be raised by the petitioners before the learned Trial Court at the time of framing of charge.

I have heard learned counsel for the parties.

Section 482 Cr.P.C is intended to thwart any abuse of the process of law if the facts of the case indicate so far.

Numerous judgments on this aspect would suggest an uninhibited power of the High Court to quash proceedings if the bare reading of the FIR or the complaint does not indicate the commission of any offence

and the facts largely indicate an abuse of the process of law.

In case State of Haryana and others versus Bhajan Lal and others AIR 1992 SC 604 following principles were laid down for considering the quashing of a complaint:-

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie 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 a 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 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 a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding 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.”

If the aforesaid proposition of law is evaluated in the backdrop of the facts it would indicate that the petitioners' role in an agreement to sell which went awry is that of a facilitator. The agreement itself clearly disclosed that Kuldeep Singh its propounder was not the owner but was in an agreement to sell with the original owner. This singular fact would indicate that no pretences were made about the transactions. The complainant on his part has rightly taken recourse to the civil proceedings by filing a suit for recovery which stands decreed in his favour and affirmed by the appellate Court. He has thus protected his rights and is at liberty to get the recovery effected through the Court of law by execution of the decree.

However, by no stretch of imagination the allegations against the petitioners even if taken to be correct would lead to their conviction and

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finding so as also the fact that the FIR was registered after 7 years of the transaction, I am of the view that it is a case where abuse of the process of law is writ large on the face of it thus making it to be a fit case warranting interference of this Court in the exercise of its jurisdiction under Section 482 Cr.P.C. Hence, instant petition is accepted. It is directed that FIR no. 385 dated 22.12.2012 registered under Sections 420, 120-B at Police Station City Sangrur and all consequent proceedings arising therefrom are quashed qua the petitioners.

March 19, 2015
rekha

(Mahesh Grover)
Judge