

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

**Crl. Misc. No. M-14537 of 2014
Date of Decision: 10.8.2015**

Kamal Mehra

.....Petitioner

Vs.

Manish Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Mayank Mathur, Advocate
for the petitioner.

Mr. Ankit Jindal, Advocate for
Mr. Tanmoy Gupta, Advocate
for the respondent.

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SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of complaint dated 13.2.2010 titled 'Manish Kumar vs. Kamal Mehra' bearing No. RBT-355 of 15.2.2010 (Annexure P-2) and all the subsequent proceedings arising therefrom including the summoning order dated 12.11.2013 (Annexure P-1).

Case of the complainant as per the complaint Annexure P-2, in brief, is that petitioner had entered into an agreement to sell with the complainant on 26.2.2007 qua his land and had received ₹ 5,00,000/- by way of earnest money. In this regard, receipt had been executed by the petitioner. However, the petitioner had failed to return the amount paid by the complainant-respondent. Hence, the complaint in question

was filed by the complainant-respondent.

In support of his complaint, respondent led his preliminary evidence. The Trial Court vide impugned order dated 12.11.2013 ordered the summoning of the petitioner qua commission of offence punishable under Section 420 of the Indian Penal Code, 1860. Hence, the present petition by the petitioner.

Learned counsel for the petitioner has submitted that a perusal of the receipt (Annexure P-3) showed that it could not be described as an agreement to sell. In fact, as per Annexure P-3, petitioner had agreed to sell his shares of Company M/s Arlington Spinning and Weaving Mills Limited for a consideration of ₹ 6,00,00,000/-. The dispute between the parties could be described to be purely civil in nature.

Learned counsel for the respondent, on the other hand, has opposed the petition and has submitted that in fact, an oral agreement to sell had been executed by the petitioner in favour of the respondent qua his land and receipt Annexure P-3 was executed in this regard.

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 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 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 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-3 receipt in question reads as under:-

“I Mr. Kamal Mehra s/o Late Shri. P.L. Mehra R/o 26/100 Shakti Nagar is selling the total shares of Company M/s Arlinton Spinning and Weaving Mills Limited and power of attorney of M/s Speedline Exports. Total sale consideration is 6 Cr. and total time of deed is two months. Purchaser Mr. Manish Kumar R/o Faridabad

Payment schedule is as agreed.

Tokan -5 Lacs payment done

After 10 days of tokan

Advance -20% Agreement to sell

Part payment after 10 days of advance

Part payment-30% of total consideration

Total payment after 30 days.”

A perusal of the above receipt does not lead to the inference that the same had been executed qua agreement to sell executed by the petitioner in favour of the respondent qua the land owned by the petitioner. As per Annexure P-3, petitioner had agreed to sell his total shares of company M/s Arlington Spinning and Weaving Mills Limited to the respondent. ₹ 5,00,000/- were paid by way of token money whereas the remaining payment was to be made in terms of Annexure P-3. The dispute between the parties can be said to be purely civil in nature. The respondent could have filed suit for recovery of ₹ 5,00,000/- received by the petitioner in terms of Annexure P-3, if so advised. However, continuation of criminal proceedings

against the petitioner would be nothing but an abuse of process of law.

Accordingly, this petition is allowed. Complaint dated 13.2.2010 titled 'Manish Kumar vs. Kamal Mehra' bearing No. RBT-355 of 15.2.2010 (Annexure P-2) and all the subsequent proceedings arising therefrom including the summoning order dated 12.11.2013 (Annexure P-1), are quashed.

**(SABINA)
JUDGE**

August 10, 2015
Gurpreet