

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

**Crl. Misc. No.M-18615 of 2013 (O&M)
Date of decision : 24.07.2015**

Charanjit Kaur and another

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. C.S. Bakshi, Advocate
for the petitioners.

Mr. Deep Singh, AAG, Punjab.

Mr. S.P.S. Sidhu, Advocate
for respondent no.2.

ANITA CHAUDHRY, J(ORAL)

The instant petition has been filed under Section 482 Cr.P.C. and the petitioners are seeking quashing of FIR registered under Section 420, 465, 467, 468, 469, 471, 120-B IPC at Police Station City Jagraon, Ludhiana Rural.

Briefly a narrative of the complaint. First Deepak Maria, GPA of Balaur Singh alleged that the persons named by him namely Nirmal Singh, Gurdev Singh, Jagjivan, Baljit and Jagjivan's wife Charanjit Kaur and Gurcheen Singh had prepared a fake power of attorney and had sold three acres of land owned by Balaur Singh, (a resident of Germany) to Gurdev Singh on 27.06.2012 and a fraud

had been committed. The fact came to the notice of the attorney when he went to get the Jamabandi. The Patwari had disclosed that the land had been sold on the basis of another power of attorney.

Acting on the FIR, the police filed the challan.

The role attributed to Charanjit Kaur wife of Jagjivan was that she had called up Balaur Singh and had told that they would not leave the brick kiln, the allegations were that she in collusion with Jagjivan Singh son of Gurdev Singh had executed the sale deed.

The petitioners have called in question the legality of the FIR and the subsequent proceedings qua them. The main stand is that on bare reading of the FIR, it was clear that no offence was made out so far as the appellants were concerned and the allegations against them were that they had threatened the complainant with dire consequences. It was pleaded that petitioner no.2 had not been named in the FIR and the challan had not been filed under Section 506 IPC and the continuation of the proceedings qua them would be an absolute abuse of the process of law. It was pleaded that the reason for including them was to arm twist as Gurcheen Singh was an accused/beneficiary and petitioner no.2 was Gurdev Singh's son also accused of being a beneficiary.

Notice was given to the respondent and State has filed the reply pleading that both the petitioners had conspired in the fraud and after completion of investigation both the petitioners had been challaned.

It was pleaded that inquiry was held on the complaint and it was found that a forged power of attorney of Balaur Singh had been

prepared and the land has been sold and Balaur Singh had never given any power of attorney to Nirmal Singh and the accusation against Charanjit Kaur and accused Jagjivan Singh were that they had spoken to Balaur Singh on telephone and they had told him that they had bought this land and he could do what he liked.

The submission on behalf of the petitioners is that the only accusation against the petitioners is that they had made a telephone call to Balaur Singh and had threatened him but no challan has been filed under Section 506 IPC. It was urged that no details of the call had been given in the FIR nor any detail has been given in the reply and the continuation of the proceedings against them would be an abuse of the process of law. It was urged that the petitioners have been named and challaned with a view to harass the relatives of Gurdev Singh and Gurcheen Singh. It was urged that the Charanjeet Kaur was the sister of Gurcheen while Jagjivan was the son of Gurdev and Jagjivan's name does not figure in the FIR. It was urged that they had filed an application under the RTI Act and they have received the copy of the GPA Annexure P-4 executed by Balaur Singh in favour of Nirmal Singh. It was urged that Balaur Singh's photograph is affixed on the GPA and the identity card of Nirmal Singh is also attached and though this does not concern them but factually the position is otherwise. The counsel seeks support from ***Md. Ibrahim & Ors. Vs. State of Bihar & Anr. 2009(4) RCR (Criminal) 369 Manjula Sinha Vs. State of U.P. & Ors. Crl. Appeal No.860 of 2007 (S.C.) and Keki Hormusji Gharda & Ors. Mehervan Rustom Irani & Anr..***

On the other hand, the submission made is that the powers vested in the Court for quashing the FIR can only be exercised if the FIR does not disclose a prima facie offence and it is a matter of evidence and the prosecution would lead evidence before the trial Court as to show that the call was made and threats were given.

Broad guidelines have been framed by the Hon'ble Apex Court for exercise of powers under Section 482 Cr.P.C. in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, which read as under:-

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 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 F.I.R. 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 F.I.R. 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.”

In ***Bhajan Lal's*** case (supra), the Hon'ble Supreme Court of India has specifically held that the power vested in the High Court for quashing of an FIR can be exercised where the allegations made in the FIR even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence.

The Hon'ble Supreme Court has further held that in cases where allegations made in the FIR 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, the FIR and proceedings should be quashed.

Still further, the Hon'ble Apex Court has held in this case that where a criminal proceeding is manifestly attended with malafide or where the proceeding is maliciously instituted with an ulterior motive, the FIR should be quashed.

In ***State of Karnatka Vs. L. Munniswamy and others (1997) 2 SCC 699***, the Hon'ble Supreme Court of India had held that the High Court is entitled to quash a proceeding when it comes to the

conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or where the ends of justice require that the proceeding ought to be quashed. It has further been held that the High Courts have been invested with inherent powers both in Civil and Criminal matters to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment of prosecution. The Court further observed that the ends of justice are higher than the ends of mere law through justice must be administered according to laws made by the legislature.

It is well established that inherent jurisdiction can be exercised for quashing the proceedings to prevent the abuse of the process of the Court and even to secure the ends of justice. It is true that ordinarily criminal proceedings instituted against an accused must be tried under the provisions of Criminal Procedure Code and the High Court should be reluctant to interfere but at the same time there are some cases where the inherent jurisdiction can and should be exercised in quashing the proceedings where it is found that the FIR or the complaint even if taken at their face value does not disclose or constitute an offence and the present case is one of such cases.

The police has challaned Charanjit Kaur, sister of Gurcheen and the allegations against her are that she had made a call to Balaur Singh and had threatened him. Arjan Singh's name does not figure in the FIR. Arjan Singh is the son of Gurdev Singh. It appears that the names of the relatives had been introduced with a view to exert pressure but in doing so, the magnitude of the offence is

lost. No doubt, there are allegations against the other accused but the FIR does not contain any allegations nor it constitutes any offence. The police did not collect any material or phone recording to show that any call was made by Charanjit Kaur. Balaur Singh was in Germany. The police would have collected some material. The police had failed to show that any material was collected to show that the petitioners were involved.

There is a growing tendency of complainants attempting to give the cloak of criminal offence to matters which are confined only to some of the accused with a view to pressurize the other party. The petitioners have been named with that view in mind. The allegations in the complaint do not constitute an offence and it is a fit case where the FIR should be quashed qua the petitioners.

Therefore, the instant petition is allowed. Consequently, impugned FIR and all other consequent proceedings thereto, qua the petitioners are quashed.

24.07.2015
sunil

(ANITA CHAUDHRY)
JUDGE