

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

**Crl. Misc. No.M-21673 of 2015 (O&M)
Date of Decision: July 07, 2015.**

Subhash Chand Sharma

.....PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Ranjit Saini and Mr. Arun Gupta, Advocates
for the petitioner (s).

SURINDER GUPTA, J.

The petitioner was charge-sheeted for the offence punishable under Section 420 read with Section 120-B of Indian Penal Code (for short-IPC) vide order dated 26.03.2015 passed by Additional Chief Judicial Magistrate, Rewari. He filed revision against the order framing charge, which was also dismissed by learned Sessions Judge, Rewari vide order dated 06.06.2015.

The prosecution case, in brief, is that the revision petitioner had purchased the suit land measuring about 9 kanals 7 marlas vide sale deed No.2987 dated 22.02.1984 and had mortgaged the same with the bank while raising loan. The bank filed a suit for recovery on 04.11.1987 in which the appellant filed written statement on 26.05.1988. In connivance with the bank manager and other officials of the bank, the mortgage of the land with the bank was not got incorporated in the

revenue record and the land was sold by the petitioner on 13.12.1990 by concealing the factum of mortgage and pendency of recovery suit. It was projected while selling the land vide sale deed No.2214 dated 13.09.1990 executed in favour of one Sushil Kumar Swami (HUF) that it was free from all encumbrances like lease, mortgage or any other type of liability. The land was further transferred by vendee Sushil Kumar Swami and subsequent transfers also took place till it reached the hands of complainant.

Initially during investigation, the allegations against the petitioner were found of civil nature and cancellation report was prepared. Inspector General of Police, Rewari (South) found so many lapses in the investigation and ordered further investigation. In the further investigation, it was found that during earlier investigation, certain documents and evidence were not placed on record. It also came to the notice that the petitioner had mortgaged his land measuring 9 kanals 7 marlas in favour of State Bank of India, Rewari and the bank had filed a civil suit for recovery on 04.07.1987. This fact was in the knowledge of the petitioner that the land was lying mortgaged and the suit for recovery had also been filed. However, he sold the land vide sale deed No.2214 dated 13.12.1990 and it was mentioned in the sale deed that the land was free from all encumbrances. It was also found that the appellant in connivance with Manager, State Bank of India, Rewari had deliberately not given the information of mortgage of land to the revenue department. In case, the information had been conveyed and recorded in the revenue record, the petitioner could not alienate the land. The manager of bank

was also found guilty but no action could be taken against him as he had already died.

On presentation of challan, the trial Court found prima facie case for offence punishable under Section 420 read with Section 120-B IPC and the petitioner was charge-sheeted accordingly to which he pleaded not guilty and claimed trial. He filed revision petition against framing of charge, which was also dismissed by the Court of revision with the observations as follows:-

“10. The argument that when mutation in favour of the revisionist-accused was sanctioned in 1990, there was no question of his having mortgaged the land in 1986 is also without any substance in as much as the mortgage was created by depositing original title deeds with the bank. Even otherwise the fact remains that the Manager of the bank was hand-in-glove with the revisionist-accused. Therefore, the fact that there was no reflection of sale in favour of the revisionist-accused in the revenue record was deliberately ignored. The revisionist-accused can gain no advantage on that account.

11. From the documents available on record it is evident that the bank filed suit on 4.11.1987. The revisionist-accused filed written statement on 26.5.1990. Therefore, when he sold the land for the first time on 13.12.1990 he knew that there was dispute. He not only concealed the benefit (sic factum) of mortgage but also pendency of the suit. The facts and circumstances of the case are (by) covered by illustration (i) of section 415 of the Indian Penal Code, which reads as under:-

“A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of previous sale

and conveyance to B, and receives the purchase or mortgage money from Z. A cheats”.

Learned counsel for the petitioner has argued that the matter between the parties is of civil nature. The case filed by the bank against the petitioner in the year 1987 is still pending before the Debts Recovery Tribunal which has to record its finding as to whether the property in dispute was mortgaged with the bank. Till the final verdict is given by the Debts Recovery Tribunal, the allegation leveled by the complainant that the land in dispute was lying mortgaged with the bank and a fraud has been played with the complainant has no substance or make out a case of cheating.

Scope of interference with the order framing charge in terms of Section 482 of the Code is extremely limited and the exercise of inherent power of this Court under Section 482 in the case of this nature is an exception and not a rule.

Section 482 envisages three circumstances under which inherent jurisdiction may be exercised, namely,

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of process of the Court; and
- (iii) To otherwise secure the ends of justice.

While exercising powers under Section 482 Cr.P.C., this Court does not function as a Court of appeal or revision. The facts of the case, as discussed above, categorically shows that firstly, the appellant had deliberately made a wrong statement in the sale deed executed by him that the land was free from all encumbrances while he was fully aware that the land was under mortgage. A civil suit filed by the bank was

pending and the petitioner had already filed a written statement in that civil suit. Secondly, it was found that petitioner in connivance with then Manager of the bank had deliberately not sent the intimation to the revenue department about the mortgage in favour of the bank, thirdly, the revisional Court has also taken note of the observation of the Debts Recovery Tribunal in order dated 02.05.2008 which shows that the land was mortgaged with the bank. The above observations recorded in para 8 of the order dated 06.06.2015 passed by the Court of Revision read as follows:-

“8. In so far as the contention that there is no document on record to prove mortgage is concerned, the fact remains that the Debts Recovery Tribunal has, vide order dated 2.5.2008, held that the land was mortgaged by the revisionist-accused in favour of the bank. The relevant portion of the order reads as under:-

“The plea taken by the defendants about non-execution of documents, do not help them in any manner, since, they have admitted the signatures on blank documents alleging the same having filled up by the bank subsequently. Apart from that, the defendants have also not been able to give plausible explanation to prove as to how their original title deeds were in possession of the applicant bank. In any case, on a careful consideration of aforesaid documents, I hold that mortgage pleaded by the applicant bank stands proved and the plea taken by the defendants stands unproved.”

In a case reported as *State of Haryana Vs. Bhajan Lal*, reported as 1992 Suppl (1) SCC 335, some of the categories of cases

where this Court can exercise its inherent power to quash the criminal proceedings were enumerated as follows:-

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.”

It is well settled proposition of law that this Court can exercise its inherent power to quash the proceedings where it manifestly appears that there is legal bar against the institution or continuation of proceedings for want of some legal defect e.g. want of sanction, where the allegations in the First Information Report or the complaint taken at its face value and accepted in its entirety, do not constitute the offence alleged or where the allegations constitute an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

In view of the settled legal position as discussed above, I am of the view that this petition has no merits calling for any interference with the order of the trial Court dated 26.03.2015 framing charge against the petitioner for the offence punishable under Section 420 read with Section 120-B IPC and of the Court of Revision dated 06.06.2015 upholding the order of the trial Court.

Dismissed.

July 07, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether refer to Reporters:

√
Yes/No