

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

CRM-M-29811 of 2013
Date of Decision: August 04, 2015

Diwan Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. G.N. Malik, Advocate
for the petitioner.

Mr. J.S. Brar, AAG, Punjab.

FATEH DEEP SINGH, J.

Before venturing into the very merits of this petition under Section 482 Cr.P.C. whereby, the petitioner-accused Diwan Singh son of Tara Singh had sought quahsment of FIR registered by way of FIR No.59 dated 3.5.2012 registered under Sections 420,467,468,465,471, IPC with Police Station Sadar Dhuri, District Sangrur and all consequential proceedings. It is essential to highlight the consanguinity of the parties including the complainant Bhan Singh which has led to this litigation.

It was out of the wedlock of Mohinder Kaur (also referred to as Mohinder Singh) and Ram Ditta, the petitioner Diwan Singh, complainant Bhan Singh and two sisters were born. As per the averments, Ram Ditta died about 35-36 years ago prior to the filing of the petition and at that time the petitioner was aged

around 7-8 years. As per the customs, the widow entered into a *Kreva* with Tara Singh, paternal uncle (Chacha) of the petitioner. It is in pursuance of certain differences within the family certain lands stood transferred in the name of the petitioner through registered sale deeds including land bearing Khata No.413/671, Khasra No.2877/988 (0-12), 2879/989 (0-10), Khata No.413/672, Khasra No. 2876/960 (8-1), Khata No.416/680, Khasra No.962 (0-5), 963 (0-8) in which an electric connection of tubewell under account No.DG-26 stood installed. It is admitted stand that Tara Singh died on 8.1.2009, whereas, Mohinder Kaur died subsequently on 12.11.2010. It is subsequently, the complainant and the accused had disputed the very ownership of the electric connection on which the tubewell was running. The allegations against the petitioner are that he has got from the Electricity Department this connection transferred in his name by way of affidavit dated 7.1.2011 Annexure P/5 to which the complainant Bhan Singh had no title, right or interest and it was on the basis of his complaint the present case was got registered in which the instant petition for quashment of FIR and subsequent proceedings have come up before this Court.

Heard, learned counsel for the parties.

The sole question that has been agitated is whether an electric connection which admittedly by both the sides falls within the definition of property is the ownership of either the petitioner-accused or complainant-respondent No.2 and if by this transfer in the name of petitioner-accused an offence of cheating as defined in Section 415 of the IPC is made out or not.

No doubt, the contentions of the learned counsel

for respondent-State that the provisions of Section 482 Cr.P.C. are to be sparingly used has been rightly held so in the case of **State of Haryana and others vs. Ch. Bhajan Lal and othes 1992 AIR (S.C.) 604** where the Hon'ble Apex Court has laid down the eventualities when such a power can be used which is 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 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 made 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 of 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.

Reverting back to the instant case under the provisions of Section 55 of the Indian Electricity Act 2003, and rules framed thereunder an electric connection belongs to the Board, supplier of the electricity, who is the licensee of the State, undertaking supply of electricity to various consumers under the Indian Electricity Act 2003. It is the prerogative of the Board to cancel, transfer, disconnect, reconnect so on and so forth any such electric connection within the framework of provisions applicable to it. Learned counsel for the respondent, to the very query of the Court, could not satisfactorily answer under what provisions of law a wrongful gain has been made by the petitioner causing undue wrongful loss to the complainant and, thus, covered under the definition of cheating as enshrined in Section 415 of the IPC. No doubt, there could be a case of a civil injury but it cannot be legitimately claimed how there has been fabrication of the record and when it is admitted stand that the petitioner is one of the heirs of the deceased Tara Singh, the original owner of the connection in question. Neither any argument worth accepting on behalf of the respondent nor any allegations of forgery or in what manner the petitioner has used any forged document as genuine one to make undue advantage could be made out. The electric connection as has been brought to the notice of the Court is very much installed in the same very land in which it was originally there and it is only on the representation of the petitioner it has

been transferred in his name. Thus, the claim, if any, of the complainant falls by way of civil nature and nothing criminal can be made out of it. Especially, in the light of the fact when even report Annexure P/8 sent by S.H.O is in favour of the petitioner are matters which sufficiently enunciates that even if the trial is allowed to proceed ahead will not culminate into either conviction or something material and would be a pure misuse of process and wastage of the precious time of the Court. Thus, the instant petition stands allowed. FIR No.59, dated 03.05.2012 under Sections 420,467,468,465,471 IPC at Police Station, Sadar Dhuri, District Sangrur and consequential proceedings arising therefrom are hereby quashed.

(FATEH DEEP SINGH)
JUDGE

August 04, 2015
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