IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-27754 of 2015 (O&M)

Date of decision : 20.8.2015

Sat Narain Sharma

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vivek Khatri, Advocate for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

1. This is a petition under Section 482 of Cr.P.C. for quashing of FIR No.1530 dated 27.12.2013 under Sections 406, 420 IPC registered at Police Station City Panipat, District Panipat.

2. Contends that Criminal proceedings ought to be stayed in view of the fact that complainant on similar grounds has filed civil suit (Annexure P-8) which will determine the rights of the parties.

He has placed reliance on the following judgments:

1. ***Manisha Goyal Vs. State of Punjab 2006(1) RCR (Criminal) 162***
2. ***Deegh Ram Vs. Shoe Narain @ Sheo Narain 2015(1) RCR(Criminal) 960;***
3. ***Madan Lal and another Vs. State of Haryana and another 2012(3) RCR(Criminal) 643;***
4. ***Raghbir Singh Vs. State of Punjab and another 2011(3) RCR (Criminal) 157;***
5. ***G.V.Bhaskar Rao and others Vs. State of Punjab and***

another 2013(1) RCR(Criminal) 841;

In ***Manisha Goyal's case (supra)***, it is held as under:

> "The failure to return earnest money, in the facts and circumstances of the present case, cannot be termed as "misappropriation" as defined under Section 405 of the Indian Penal Code. In so far as Section 420 of the Indian Penal Code is concerned, the ingredients of Section 415 of the Indian Penal Code that constitute an offence, under Section 420 of the Indian Penal Code, are missing. For a person to cheat, dishonest, intention, must arise at the inception of the transaction. The ingredients of offences of cheating and/or misappropriation, set down by the Hon'ble Supreme Court, in the judgments, referred to herein above, are singularly missing in the present case. In the case in hand, the FIR does not disclose any facts that would lead to a prima facie conclusion that the petitioner harboured a dishonest intention at the inception of the transaction, or in any manner committed an offence of criminal breach of trust."

In ***Deegh Ram's case (supra***), it is held as under:

> "As indicated here-in-above, in the present case, the dispute between the parties is purely of civil nature and parties are already before the civil court in the wake of civil suit filed by the petitioner for specific performance of pointed agreement to sell. Therefore, to my mind, the criminal prosecution cannot legally be maintained against the respondent-accused. Otherwise, it will amount to misuse of process of law, which is not legally permissible in this relevant connection. Hence, the ratio of law laid down in the aforesaid judgments "mutatis mutandis" is applicable to

the facts of the instant case and is the complete answer to the problem in hand and the contrary submissions of counsel for complainant "strict sensu" deserve to be and are hereby repelled under the present set of circumstances."

In ***Madan Lal's case (supra)***, it is held as under:

"Not only that, the same very view was again reiterated by the Hon'ble Apex Court in case ***Joseph Salvaraja v. State of Gujarat and others, 2011(4) Recent Apex Judgments (RAJ) 157 : 2011(3) RCR(Criminal) 632 : (2011) 3 SCC (Crl.) 23***, in which it was ruled as under:

"In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in ***Devendra v. State of U.P., 2014(4) RCR (Criminal) 448 : 2010(6) Recent Apex Judgments (RAJ) 105: (2009) 7 SCC 495***, in which it was held (para 27) that a distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."

In ***Raghbir Singh's case (supra)*** it is held as under:

"Applying the test laid down in all the above said cases for

> the purpose of establishing an offence of cheating, complainant is required to show that the accsued had fraudulent or dishonest intention."

In ***G.V.Bhaskar Rao's case (supra)*** it is held as under"

> "Finding that the allegations made in the FIR do not reveal any offence even if accepted at face value, the FIR and all subsequent proceedings taken thereon deserve to be quashed. Ordered accordingly."

Learned counsel states that criminal and civil proceedings in a suit for the same cause of action can not run simultaneously.

3. I have heard the learned counsel for the petitioner and have gone through the case file carefully.

4. In the later judgment, the Hon'ble Supreme Court in Guru ***Granth Saheb Sthan Meerghat Vanaras Vs. Ved Prakash and others 2013(2) RCR(Civil) 924 (SC)*** has observed as under :

> "The ratio of the decision in *M.S.Sheriff* is that no hard and fast rule can be laid down as to which of the proceedings – civil or criminal – must be stayed. It was held that possibility of conflicting decisions in the civil and criminal courts cannot be considered as a relevant consideration for stay of the proceedings as law envisaged such an eventuality. Embarrassment was considered to be a relevant aspect and having regard to certain factors, this Court found expedient in M.S.Sheriff to stay the civil proceedings. The Court made it very clear that this, however, was not hard and fast rule; special considerations obtaining in any particular case might make some other course more expedient and just M.S.Sheriff does not lay down an invariable rule that simultaneous prosecution of criminal proceedings and civil suit

will embarrass the accused or that invariably the proceedings in the civil suit should be stayed until disposal of criminal case."

"In *K.G.Premshanker*, the effect of the above provisions (Sections 40 to 43 of the Evidence Act) has been broadly noted thus: If the criminal case and civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of the Sections 40 to 43 are satisfied but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein. Moreover, the judgment, order or decree passed in previous civil proceedings, if relevant, as provided under Sections 40 or 42 or other provisions of the Evidence Act then in each case the Court has to decide to what extent it is binding or conclusive with regard to the matters decided therein. In each and every case, the first question which would require consideration is, whether judgment, order or decree is relevant; if relevant, its effect. This would depend upon the facts of each case."

5. On the facts and circumstances it is a fit case, where both civil and criminal proceedings can proceed together. The case law cited by the learned counsel are distinguishable on the facts and has no application to the facts of this case.

6. Dismissed.

(JITENDRA CHAUHAN)
JUDGE

20.8.2015
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