

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

CRM-M No.31014 of 2013 (O&M)

Date of decision: 18th August, 2015

Tilak Raj

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. R.S. Randhawa, Addl. Advocate General, Punjab.

Mr. Jasneet Mehta, Advocate for
Mr. L.M. Gulati, Advocate
for respondent No.2.

FATEH DEEP SINGH, J.

In this petition preferred under Section 482 Cr.P.C., a prayer has been sought by the accused/petitioner Tilak Raj for quashment of order framing charges dated 14.08.2012 (Annexure P13) passed by learned Sub Divisional Judicial Magistrate, Phagwara as well as the chargesheet (Annexure P14) along with the order passed by the revisional Court of learned Additional Sessions Judge, Kapurthala dated 14.08.2013 (Annexure P19) thereby dismissing the revision against this order.

The brief background that needs to be highlighted is that the petitioner happens to be in occupation of two rooms of the first floor of the property in question whereas respondent No.2 Inderjit was in occupation of the ground-floor as a tenant and which premises was owned by one and the same person. The owner, as the averments goes, had alienated the property and which respondent No.2 claims was under his ownership and with a view to get the upper floor in possession of the petitioner vacated, had offered a sum of ₹18.00 lacs, which was accepted by the petitioner and an agreement dated 10.09.2009 was executed between them by way of Annexure P1. As per the terms of the agreement, out of the total consideration amount of ₹18.00 lacs, a sum of ₹8.00 lacs was paid in advance and the balance amount of ₹10.00 lacs was to be paid on or before 31.12.2009 and it was thereupon the petitioner would hand over vacant possession of the premises under his occupation to respondent No.2. It is during the course of events, differences developed between the petitioner and respondent No.2, as a consequence of which claims and counter-claims were raised and thus, the dispute led to an imbroglio. The petitioner filed civil suit/plaint (Annexure P3) against the threatening acts of respondent No.2 in taking illegal and forcible possession of his premises. The stand of this agreement between the two was duly accepted in the written reply by respondent No.2 by way of Annexure P4. The trial Court passed orders dated 10.02.2010 (Annexure P6) in favour of the petitioner and which, as has been brought to the notice of this Court, has since then never been agitated

before the higher courts. It is worthwhile to refer here that during the course of Civil Court proceedings, on the application of respondent No.2 (Annexure P7) payment of ₹8.00 lacs so received by the petitioner was repaid by way of Annexure P8, regarding which an order dated 08.03.2010 (Annexure P9) was passed based on the statements (Annexures P10 and P11). It is in between these events, a complaint was preferred by respondent No.2 leading to registration of the FIR in question (Annexure P12) against the petitioner for which the petitioner has come up before this Court.

Heard Mr. Prateek Pandit, Advocate representing the petitioner; Mr. R.S. Randhawa, Addl. Advocate General, Punjab on behalf of the State/respondent No.1 and Mr. Jasneet Mehta, Advocate appearing on behalf of Mr. L.M. Gulati, Advocate for the complainant/respondent No.2 and perused records of the case.

Undisputedly, the learned trial Court had framed charges through impugned orders dated 14.08.2012 only under Section 420 IPC. Cheating has been defined under Section 415 IPC, which reads as follows:

“415. Cheating

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or

harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation- A dishonest concealment of facts is a deception within the meaning of this section."

Thus, it clearly lays down presence of some mala fide and fraudulent act. It is own stand of the complainant of the FIR that they have entered into an agreement (Annexure P1) whereby the present petitioner has undertaken to vacate the premises and which could not materialize. Thus, to the mind of this Court, such an arrangement between the two parties being a pure civil contract needs to be enforced through a Civil Court. Parties have voluntarily executed this agreement and if one backs out of such an arrangement, the only recourse that is left to the other party is to approach the Civil Court for its enforcement or damages. Rather what is emancipating from all this is that the complainant with an intention of using an arm-twisting tactics has sought the refuge of the police in registering an FIR, fully aware that it was in violation of the terms of a contract which could be easily enforceable in a Court of law through Civil means and by mala-fidely and illegally giving it the colour of a criminal offence has sought to bring about an illegal and illegitimate pressure upon the petitioner to accede upon the wishes of the complainant.

No doubt, exercise of powers by this Court under the provisions of Section 482 Cr.P.C. is something of a rarity and has to be sparingly used where the ends of justice demands and seeking support from the ratio laid down in '**State of Haryana and others v.**

Ch.Bhajan Lal and others' 1992 AIR SC 604 holding that such powers can be exercised by this Court either to prevent abuse of the process of the Court or otherwise to secure the ends of justice, lays down though not exhaustive but following eventualities under which the same can 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 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 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.

Thus, appreciating the case of the complainant and the prima-facie allegations and the evidence based on the report under Section 173 Cr.P.C. shows that even if they are taken on the face value uncontroverted in their entirety, prima-facie no case to constitute an offence of cheating is made out against the petitioner nor disclose commission of any cognizable offence which could justify the investigations and trial of the accused/petitioner. Therefore, the instant case certainly qualifies the tests laid down in **Ch. Bhajan Lal's case**

(**ibid**) and which has escaped the trial Court's attention at the time of framing of charges and so of summoning the petitioner/accused.

In the light of what has been discussed above, trial of the accused/petitioner is certainly a misuse of the process, unwarranted in law and impugned orders are certainly untenable and which as such are set aside by way of acceptance of the instant petition thereby quashing the FIR (Annexure P12) and all subsequent proceedings including the chargesheet etc.

Records be sent back forthwith.

(FATEH DEEP SINGH)
JUDGE

August 18, 2015

rps