

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

CRL. MISC. No.M-34165 OF 2013
DATE OF DECISION : 20th July, 2015

Pardeep Kumar & another

.... Petitioners

Versus

State of Haryana & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

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Present : Mr. S. S. Siao, Advocate for
Mr. Ravinder Hooda, Advocate for the petitioners.

Mr. Vikas Chopra, Deputy Advocate General, Haryana.

Mr. Rajesh Sethi, Advocate with
Mr. Arun Biriwal, Advocate for the respondent No.2.

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SURINDER GUPTA, J. (ORAL)

This petition has been filed seeking quashing of FIR No.20 dated 11.01.2013 (Annexure P-1) registered at Police Station City Sirsa, District Sirsa, for offence punishable under Sections 406 and 506 read with Section 34 IPC.

Learned counsel for the petitioners submits that Pardeep Kumar Phully son of Kishan Chander has since died and seeks permission to withdraw the petition qua petitioner No.1.

In view of the submissions made by learned counsel for the petitioners, the petition is dismissed qua petitioner No.1.

In the FIR registered in this case on the statement of complainant-respondent No.2 Surender Kumar, it has been alleged that he

(the complainant) and his wife's sister's husband Mahinder Kumar have purchased a plot situated on Hisar Road, Sirsa, jointly with Pardeep Kumar Phully (since deceased) in the year 2001. It was decided that this plot will be sold jointly and the profit shall be shared equally. The complainant came to know that about six months before the registration of FIR that petitioner-Pardeep Kumar Phully had sold the plot and usurped the entire sale consideration. When the matter was enquired from him he agreed to pay the share of complainant but did not adhere to his undertaking. Panchayat was held 5/6 times, where also Pardeep Kumar Phully admitted that he had to pay share of complainant and his brother-in-law. He prepared the entire account in his own handwriting and gave it to the complainant. Now whenever the complainant demands their money from him he threatens to commit suicide and leave a note naming the complainant and others. He had also started misbehaving and abusing the complaint. Pardeep Kumar Phully had also taken some money from wife of complainant which was also not returned.

The complainant in the FIR requested the police to get the matter settled so that they could get their money back which they had arranged with great difficulty after selling their jewellery.

The entire allegations levelled in the FIR have been discussed in detail to have look on the allegations qua Paramjit Kaur wife of Pardeep Kumar Phully, who is seeking the quashing of this FIR against her.

On perusal of FIR it is clear that at the time of filing the complaint to the police, the complainant had neither named Paramjit Kaur nor they had any grievance against her.

Learned counsel for the petitioners argues that it was during the course of the investigation and in order to put pressure on the petitioner, Surender Kumar and his wife got recorded their statement dated 28.01.2013 wherein it was alleged that petitioner No.2-Paramjit Kaur had taken ₹65,000/- from Varsha wife of complainant. Another allegation levelled against her was that Varsha and Deepak threatened the complainant in the presence of one Deepak son of Ram Swarup and Rakesh Kumar son of Vaid Shri Niwas. It was further alleged that Paramjit Kaur had purchased a flat with Pardeep Kumar at Zirakpur, Chandigarh with the money of complainant.

Learned counsel for the petitioners further argues that petitioner No.2 is a government employee posted as Nursing Sister in General Hospital, Sirsa. As an after thought and in order to put pressure, the complainant has implicated her in this case. Even if the allegation levelled in the FIR that she had taken ₹65000/- from the wife of complainant and flat has been purchased in Zirakpur in the name of her husband and petitioner No.2, be believed, no offence under Section 406 IPC is disclosed. The allegations of giving of threat to the complainant find no mention in the FIR and her subsequent implication in this case is a blatant misuse of the process of law.

Learned State counsel and learned counsel for the complainant-respondent No.2 have admitted that petitioner No.2 is not named in the FIR but have argued that it is not required to state all the facts in the FIR. During the investigation this fact has come to the notice that she had taken the amount of ₹9,00,000/- of the joint plot of the parties from

the property dealer and had purchased a flat with her husband at Zirakpur with that amount.

On perusal of the paper book and the copy of final report submitted by the police in court, which has been supplied during the course of arguments by learned counsel for the petitioners, it is clear that the entire dispute of the complainant was with Pardeep Kumar Phully and not with Paramjit Kaur. Along with the challan, some handwritten notes have been attached, wherein the complainant has accounted for the amount given by him to Pardeep Kumar Phully. There is no mention therein that any amount was given to Paramjit Kaur. The complainant also produce before the police photocopies of the writings given by Pardeep Kumar Phully regarding the account of complainant and his wife wherein also there is no mention regarding any payment made to Paramjit Kaur.

I agree with the submissions of learned counsel for respondent No.2 that all the details of an incident, occurrence are not required to be recorded in the FIR which is a sort of information to the police about the commission of offence, but at the same time the information given in the FIR is a gist of the allegations which the complainant wants to make, corroborate and substantiate. In case Paramjit Kaur had any role in the transaction with complainant, the same must have found a reference in the FIR. In case she had given any threats to the complainant, the complainant would not have been generous enough to spare her while making complaint to the police. She has been implicated at later stage during the investigation of the case and I feel no hesitation in accepting the submission of learned counsel for the petitioners that this is an attempt by

complainant to put pressure on Pardeep Kumar Phully as petitioner No.2 is a government employee and a soft target.

The allegation of the complainant during the investigation that wife of complainant had given ₹65,000/- to petitioner No.2 or some payment was received by petitioner No.2 from the property dealer or and apartment bearing No.A-307, Tower-A, Third Floor, Kamdhenu Homes Crescent-1, Village Himatgarh, (within the area of Municipal Committee, Zirakpur) had been purchased for ₹37,00,000/- by Pardeep Kumar Phully and his wife vide sale deed dated 04.05.2012, i.e. much prior to the FIR, do not indicate commission of offence under Section 406 IPC.

Learned counsel for respondent No.2 has argued that while exercising its jurisdiction under Section 482 Cr.P.C. the Court should avoid detailed analysis of complicated documents and should take care of the following principals:

- (i) when there is specific relief provided under other provisions of law the petition under Section 482 Cr.P.C. is not maintainable. Petitioner No.2 can raise the plea of her innocence at the time of framing of charge or file a revision petition against the charge, if framed.
- (ii) The point raised by learned counsel for the petitioners requires scrutiny through adjudication process.
- (iii) While considering the case for quashing, this court should not kill a still born child and the investigation should not be shut at the threshold.

- (iv) This Court should refrain from detail analysis of complicated documents. The powers conferred under Section 482 Cr.P.C. are ought to be exercised sparingly with circumspection and in rarest of rare cases.

Hon'ble Supreme Court while defining the scope of Section 482 Cr.P.C. in the case of ***State of Punjab Vs. Kasturi Lal***, reported as ***2004 (Criminal Law Journal), 3866***, has observed as follows:

“Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in

the Section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice. While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist.”

The submissions, made by learned counsel for respondent No.2 about the caution to be exercised by this Court while exercising inherent power under Section 482 Cr.P.C., cannot be disputed, but at the same time if this Court is satisfied that there is a miscarriage of justice; abuse of process of the Court or there is failure of justice, in that event, it is the duty of this Court to have it corrected at the very inception. As is evident in this case the criminal proceedings lodged against petitioner No.2 would result in her unnecessary harassment. It is evident that at the time of registration of FIR the complainant had no complaint or grouse against petitioner No.2. No doubt, the complainant is always free to corroborate,

explain or even elucidate the allegations levelled in the FIR, but in this case an attempt has been made to raise allegations which were never levelled in the FIR dated 11.01.2013, just to get undue advantage.

In view of the above facts and circumstances, I feel no hesitation to reach the conclusion that the implication of petitioner No.2 in this case and filing of challan against her by the police is an abuse of process of law and Court. In order to prevent the said abuse and to secure the ends of justice, it is a fit case, which calls for exercise of the inherent power by this Court.

Consequently, this petition has merits and the same is allowed and FIR No.20 dated 11.01.2013, registered at Police Station City Sirsa, District Sirsa, along with all consequential proceedings, including the presentation of challan against petitioner No.2, is hereby quashed.

20th July, 2015
'raj'

(SURINDER GUPTA)
JUDGE