

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRM-M-34213-2014 (O&M)

Date of Decision: January 8, 2015

Iqbal Singh Sabharwal and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. P.S. Hundal, Senior Advocate, with
Mr. Dinesh Trehan, Advocate,
for petitioner No. 1.

Mr. D.S. Bali, Senior Advocate, with
Mr. Amrinder Vir Singh, Advocate,
for petitioner No. 2.

Mr. Shilesh Gupta, Addl. AG, Punjab,
for the respondent.

Mr. Hemant Saini, Advocate,
for the complainant.

NARESH KUMAR SANGHI, J. (Oral)

1. Present petition, under Section 482, Cr.P.C., has been
filed for setting aside the order dated 20.8.2014 (Annexure P-1),
passed by learned Additional Sessions Judge, S.A.S. Nagar,

whereby the revision petition filed by the petitioners challenging the order dated 3.7.2014 (Annexure P-3), passed by learned Judicial Magistrate Ist Class, Kharar, declaring the petitioners as proclaimed offenders in a case arising out of FIR No. 239, dated 17.7.2007, for the offences punishable under Section 420, IPC, registered at Police Station, Kharar, District S.A.S. Nagar, was dismissed.

2. The main thrust of the arguments of learned counsel for the petitioners is that the petitioners were residents of House No. 582, Sunny Enclave, Kharar, District S.A.S. Nagar, but at no point of time they (petitioners) were intimated/informed or served with notices or warrants – bailable or non-bailable, with regard to the pendency of the criminal case before learned Judicial Magistrate Ist Class, Kharar.

3. To elaborate their arguments, learned senior Advocates contended that the matter was investigated multiple times by different police authorities including the Special Investigation Team and the petitioners were declared as innocent and, as such, the cancellation report was presented before learned Area Judicial Magistrate. The complainant being a man of means, used his influence and persuaded the higher police authorities to file a charge-sheet for prosecution of the

petitioners for the offence punishable under Section 420, IPC, and learned Area Judicial Magistrate issued the process for summoning the petitioners at the old address of their residence, i.e. House no. 1975, Phase X, S.A.S. Nagar. At no point of time, the intimation was sent at the latest address of the petitioners and, as such, without following the correct procedure, the learned Trial Court vide its order dated 3.7.2014 (Annexure P-3), wrongly declared the petitioners as proclaimed offenders. Even the revisional Court/learned Additional Sessions Judge, S.A.S. Nagar, without going into the factual aspects of the case, dismissed the criminal revision petition, preferred by the petitioners, vide order dated 20.8.2014 (Annexure P-1).

4. On the other hand, learned counsel for the State, assisted by the learned counsel for the complainant, submits that on the applications of the petitioners or of the complainant, the matter was investigated multiple times. At one point of time, the cancellation report was submitted before learned Area Judicial Magistrate, which was remitted to the police for further investigation. On the report of the Special Investigating Team, the charge-sheet for prosecuting the petitioners for the offence punishable under Section 420, IPC, was presented and the process was issued. The complainant filed a petition before this

Court for redressal of his grievance to the effect that the petitioners were liable to be prosecuted for the offence punishable under Sections 120-B, 406, 467, 468 and 471, IPC, in addition to Section 420, IPC. The said petition was disposed of by this Court with a direction to the Senior Superintendent of Police, S.A.S. Nagar, to look into the grievance of the complainant. Thereafter the matter was further investigated and it was decided to file supplementary challan for prosecution of the petitioners for the offences punishable under Sections 120-B, 406, 420, 467, 468 and 471, IPC. Learned Magistrate continued to issue the process for summoning of the petitioners, but when they failed to appear in spite of exhausting the coercive method, then there was no other option left with learned Area Judicial Magistrate, but to declare the petitioners as proclaimed offenders. It has come on record that ASI Randhir Singh visited twice at the Sunny Enclave address of the petitioners and informed the servant of the petitioners with regard to the pendency of the case, but they (petitioners) failed to appear before the learned Court below. He further submitted that at every stage, the petitioners were tracking the proceedings pending before the learned Court below. After filing of the charge-sheet, the petitioners had once again approached the

Senior Superintendent of Police, S.A.S. Nagar, for further investigation of the matter, which clearly spell out that the petitioners were aware of the pendency of the case before the learned Court below. He further contended that it is not the question that the petitioners were served at the correct address, but the crux of the matter is that in spite of knowledge of the pendency of the case before the learned Court below, the petitioners deliberately avoided their appearance and, as such, learned Area Judicial Magistrate was well within his jurisdiction to declare them (petitioners) as proclaimed offenders. He further submitted that the said order of declaring the petitioners as proclaimed offenders was challenged before learned Additional Sessions Judge, S.A.S. Nagar, but by passing a speaking order the said criminal revision petition was dismissed. Under the garb of Section 482, Cr.P.C., the petitioners cannot be permitted to file second revision petition.

5. I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

6. The petitioners had entered into an agreement with complainant, Sukaran Kumar Jain, for selling their land measuring 55 Kanals and 03 Marlas for total consideration of Rs.

112.50 crores and executed a Memorandum of Understanding (MoU), dated 21.04.2006, and the deed of confirmation, dated 09.09.2006, in that regard. It was disclosed by the petitioners that they were the absolute owners of the land in dispute, which was duly partitioned. The complainant paid a sum of Rs. 25 crores to the petitioners as earnest money. Later on, the complainant learnt that the petitioners were neither absolute owners nor the land in dispute was partitioned. The petitioners had intentionally misrepresented the facts to the complainant so that by their fraudulent intention he (complainant) could part with the hefty amount. After knowing that the petitioners had committed fraud and cheating with him (complainant), he reported the matter to the police. After registration of the FIR, the matter was investigated, reinvestigated and further investigated at different levels. The Investigating Agency filed the charge-sheet for prosecution of the petitioners for the offence punishable under Section 420, IPC. The complainant was not satisfied with the said charge-sheet and, as such, he filed a petition before this Court for issuing a direction to the Investigating Agency for presenting a proper charge-sheet for prosecution of the petitioners for committing forgery etc. as well. The said petition was disposed of with a direction to the

Senior Superintendent of Police, S.A.S.Nagar, to look into the grievance of the complainant. The Senior Superintendent of Police directed for further investigation and, as such, the supplementary charge-sheet for prosecution of the petitioners for the offences punishable under Sections 120-B, 406, 466, 467 and 471, IPC, was presented. The process for summoning of the petitioners had already been initiated by the learned Area Judicial Magistrate. After knowing the fact that the supplementary charge-sheet was also filed by the Investigating Agency for prosecution of the petitioners for additional offences, the petitioners presented an application before the senior officials of the Police and a cancellation report was also presented before the Area Judicial Magistrate. The said report was not accepted by the learned Area Judicial Magistrate and he continued with the process of summoning of the petitioners. When the petitioners failed to appear before the learned Trial Court, then coercive methods were adopted and ultimately by initiating the proceedings under Section 82, Cr.P.C., the petitioners were declared as proclaimed offenders. The said order declaring the petitioners as proclaimed offenders was challenged by way of criminal revision petition before learned Court of Session, but the same was dismissed vide order dated

20.8.2014 (Annexure P-1) passed by learned Additional Sessions Judge, S.A.S. Nagar.

7. On 3.7.2014, learned Judicial Magistrate Ist Class, Kharar, passed the following order:-

“ Proclamation against accused Harpreet Singh Walia and Iqbal Singh Sabharwal was duly effected on dated 27.05.2014 by C. Kuldeep Singh and his statement to this effect has been recorded on dated 28.05.2014 and he tendered the copy of Proclamation as Ex. P1 and his report on the back side of the proclamation Ex.P2. Statutory period of 30 days has already been elapsed. It is already 3.30 pm. Accused persons, namely, Harpreet Singh Walia and Iqbal Singh Sabharwal, have not come present in the Court. Hence, they are declared as Proclaimed Offenders in this present case. Necessary intimation be sent to the SHO concerned police station. Now to come up on 08.08.2014 for consideration on charge against the accused Arvinder Singh Bedi.”

8. The material available on record would reveal that the petitioners had filed a petition under Section 482, Cr.P.C., for quashing of the FIR of the case in hand wherein both the petitioners gave their residential address as House No. 1975, Phase X, S.A.S. Nagar, and the present address as House No. 582, Sunny Enclave, Kharar, District S.A.S. Nagar. The filing of

the said petition for quashing of the FIR would reveal that the petitioners were very much aware of the criminal proceedings pending before learned Judicial Magistrate Ist Class, Kharar. For the first time, the report under Section 173, Cr.P.C, was presented before learned Area Judicial Magistrate, Kharar, on 13.9.2011 and since then the petitioners were tracking the proceedings. After declaring them proclaimed offenders on 3.7.2014, immediately after 14 days, i.e. on 18.7.2014 the petitioners filed a petition for grant of anticipatory bail and thereafter the revision petition on 5.8.2014, impugning the order dated 3.7.2014 passed by learned Judicial Magistrate Ist Class, Kharar. Though the learned Trial Court had issued the proclamation at House No. 1975, Phase X, S.A.S. Nagar, but from the material available on record, this Court is of the firmed opinion that the petitioners were fully aware of the pendency of the criminal case against them and they deliberately avoided their appearance. It has also emerged on record that ASI Randhir Singh had twice visited at their Sunny Enclave address and informed the servant of the petitioners with regard to the pendency of the criminal proceedings before the Court at Kharar. The two Courts, i.e. learned Area Judicial Magistrate as well as the Revisional Court have already passed adverse orders

against the petitioners declaring them as proclaimed offenders and this Court is fully in consonance with the view expressed by the said Courts. There is no sound ground before this Court on which the orders passed by both the learned Courts below can be quashed while exercising the jurisdiction under Section 482, Cr.P.C. and, as such, the present petition sans merits and is hereby dismissed.

January 8, 2015
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(NARESH KUMAR SANGHI)
JUDGE