

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

**Criminal Misc. No. M-37010 of 2013
Date of Decision: 12.10.2015**

Dev Raj and others

--Petitioners.

Vs.

State of Haryana and another

--Respondents.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Gautam Dutt, Advocate
for the petitioners.

Mr. M.K.Sangwan, DAG, Haryana.

Mr. C.M.Munjhal, Advocate
for respondent No.2.

- 1. To be referred to the Reporters or not? Yes**
- 2. Whether the judgment should be reported in the Digest?**

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seek quashing of FIR No. 156 dated 11.3.2013 under Sections 420/467/468/471/120-B of Indian Penal Code ('IPC' for short) registered at Police Station Nuh, District Mewat and criminal consequential proceedings arising therefrom.

Notice of motion was issued and pursuant thereto, separate replies were filed on behalf of both the respondents.

Learned counsel for the petitioners submits that a suit for declaration impugning the validity of mutation qua this very land,

which is the bone of contention in the present case, was filed by petitioners on 9.11.2012 (Annexure P-3). On 14.12.2012, learned court of competent jurisdiction granted status quo in favour of the petitioners, which had been continuing throughout. Petitioners also filed a criminal complaint against the private respondents and others, vide Annexure P-7, wherein learned court of competent jurisdiction issued the summoning order dated 30.1.2013 (Annexure P-2). Thereafter, the complainant, in the present case, got the impugned FIR registered on 11.3.2013 as a counter blast to the abovesaid civil as well as criminal litigation, concealing the material fact about pendency of the civil as well as criminal litigation. He further submits that the same mutation has been made the only basis of registration of the impugned FIR.

Learned counsel for the petitioner would next contend that, if at all, it was only a case of civil nature. Complainant has proceeded on a malafide approach, while misusing the process of law. In such a situation, even if the allegations levelled against the petitioners in the impugned FIR are taken to be true on their face value, no offence whatsoever, would be made out against the petitioners. He prays for quashing the impugned FIR alongwith consequential criminal proceedings arising therefrom, by allowing the present petition.

On the other hand, learned counsel for the State as well as learned counsel for the complainant would submit that a clear cut case had been made out against the petitioners. They got the mutation sanctioned by impersonation and committing forgery,

besides committing offence of cheating. Learned counsel for the complainant also submits that since the complainant already submitted his representation on 21.6.2012 before the police, there was no occasion for the complainant to disclose the fact about pendency of the abovesaid civil as well as criminal litigation initiated by the petitioners. They pray for dismissal of the present petition.

After hearing learned counsel for the parties at considerable length, careful perusal of record of the case and giving anxious consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, instant one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that civil as well as criminal litigation initiated by the petitioners against the complainant were already pending before registration of the impugned FIR. The same mutation was the subject matter of the civil suit for declaration and permanent injunction, which is the only basis of the impugned FIR. This civil suit was filed by the petitioners on 9.11.2012 (Annexure P-3). The learned trial court granted status quo order, at the instance of the petitioners on 14.12.2012, which had been going on throughout.

Similarly, petitioners filed a complaint on 9.11.2012, vide Annexure P-7 and the accused therein, including the present

complainant-respondent, had been summoned vide order dated 30.1.2013 (Annexure P-2). Despite knowing fully well about the pendency of abovesaid civil as well as criminal litigation between the parties, qua same land and mutation, complainant concealed the abovesaid fact situation from the notice of the investigating agency, at the time of registration of the impugned FIR. Having said that, this Court feels no hesitation to conclude that since the complainant has tried to misuse the process of law, coupled with the fact that if, at all, it was a case of only that of civil nature, the impugned FIR as well as criminal proceedings arising therefrom cannot be permitted to continue any further. Civil litigation between the parties is still pending.

Contention raised by learned counsel for the complainant that complainant had moved a representation on 21.6.2012 and there was no occasion for him to disclose the fact regarding pendency of the abovesaid criminal as well as civil litigation has been found to be wholly misplaced and the same is noted to be rejected, being factually incorrect. A bare perusal of the report under Section 173 (2) Cr.P.C., (Annexure P-8), at page 251 of the paper book, would show that complainant, for the first time, moved an application on 11.3.2013.

Had the complainant proceeded on a bonafide approach, it was least expected from him that he would disclose the truth about pendency of the abovesaid criminal as well as civil litigation between the parties. However, he did not do so for the reasons best known to him, which, in any case, cannot be said to be bonafide reasons. In

fact, he misled the police authorities and got the impugned FIR registered withholding the material facts. Had the complainant disclosed the abovesaid facts, the impugned FIR might not have been registered. Under these circumstances, it can be safely concluded that even if the allegations levelled by the complainant in the impugned FIR are treated to be true on their face value, no offence whatsoever, would be made out against the petitioners.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Velji Raghavji Patel Vs. State of Maharashtra, 1965 AIR (SC) 1433, State of Haryana versus Bhajan Lal and others, AIR 1992 SC 604, V.R. Dalal and others Vs. Yougendra Narranji Thakkar and another, 2008 AIR (SC) 2793 and Devendra Vs. State of Uttar Pradesh, 2009 (7) SCC 495.**

The broad principles laid down by the Hon'ble Supreme Court in **Bhajan Lal' case (supra)**, for quashing the criminal proceedings, which can be gainfully followed in the present case, read as under:-

- (a) 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;*
- (b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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”

Coming to the peculiar facts and circumstances of the case noted above and respectfully following the law laid down by the

Hon'ble Supreme Court in the cases referred to hereinabove, particularly in Bhajan Lal's case (supra), which has been consistently followed by the Hon'ble Supreme Court in its later judgments, including in the recent case of Rishi Pal Singh Vs. State of U.P. and another, 2014 (7) SCC 215, it is unhesitatingly held that continuation of the impugned FIR and criminal proceedings arising therefrom would certainly amount to glaring abuse of process of Court, thus, the criminal proceedings arising out of the impugned FIR cannot be allowed to continue, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be accepted.

Consequently, FIR No. 156 dated 11.3.2013 under Sections 420/467/468/471/120-B of Indian Penal Code registered at Police Station Nuh, District Mewat and consequential criminal proceedings arising therefrom are hereby ordered to be quashed, so as to prevent any further abuse of process of court and also to secure the ends of justice, however, only qua the petitioners.

Resultantly, with the abovesaid observations made, present petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

12.10.2015
AK Sharma