

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

CRM-M-41056-2012 (O&M)

Date of Decision: February 2, 2015

Teja Singh and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Sherry K.Singla, Advocate
for the petitioners.

Mr.Shilesh Gupta, Additional Advocate General,
Punjab, for respondent No.1.

Mr.Harsh Aggarwal, Advocate
for respondent No.2.

Mr.Manoj Pundir, Advocate
for respondent Nos.3 and 4.

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Naresh Kumar Sanghi, J.(Oral)

The present petition has been filed by petitioners Teja Singh and Balwinder Singh for quashing of FIR No.97, dated 07.07.2012, for the offences punishable under Sections 120-B, 420, 465, 467, 468 and 471, IPC, registered at Police Station, Dirbha, District Sangrur, and all the consequential proceedings

arising therefrom being the abuse of process of law.

Mr.Sherry K.Singla, learned counsel for the petitioners submits that the informant, Amrik Singh, Jagdev Singh, Gurmail Singh and Malkiat Singh were in an unauthorized possession of a piece of land measuring 86 kanals and 5 marlas. The real owner of the said piece of land were Gurtej Kaur, Iqbal Singh @ Parampal Singh, Dhirpal Singh, Paramjit Singh and others. They had entered into an agreement to sell with Teja Singh (petitioner No.1) on 12.06.2009 regarding the above said piece of land. They had received ₹2 lacs as earnest money out of the total sale consideration of ₹8,75,000/- (Rupee Eight lacs and seventy five thousand). The sale deed was to be executed on or before 30.12.2009 in favour of petitioner No.1 and his other co-purchasers. Since a dispute regarding the mutation of the said land was pending before the revenue authorities, therefore, the sale deed could not be executed in favour of the petitioners and his co-purchasers. The mutation was sanctioned by Assistant Collector, First Grade, Sangrur, vide his order, dated 27.02.2012 in favour of the executants of the agreement to sell. When the sale deed could not be executed on the basis of an agreement to sell, dated 12.06.2009, then the owners of the above stated land

executed General Power of Attorney in favour of the petitioners on 14.06.2010. Thereafter, the petitioners executed the sale deed on 10.04.2012. At a later stage, the petitioners learnt that one of the executants of the General Power of Attorney had died before execution of the sale deed, dated 10.04.2012 and, as such, the petitioners filed an application before the Collector, Sub-Division, Sunam, disclosing the bona fide mistake committed by the petitioners and further prayed that approximately 6 kanals share of Paramjit Singh (since deceased) be not included in the sale-deed, dated 10.04.2012. It was further submitted that the informant had nothing to do with the ownership of the land in question, which was sold by the petitioners vide sale deed, dated 10.04.2012 and, as such, he was not competent to lodge the FIR in question. He further submitted that respondent Nos.3 and 4, who were sons of Paramjit Singh (since deceased) had given the affidavits, dated 06.08.2012 in favour of the petitioners stating that they had received the entire sale consideration from the petitioners with regard to the share of the above stated land belonging to their father and they had no objection if the land was sold by the petitioners vide sale deed, dated 10.04.2012 and the petitioners had not committed any fraud with the informant

side or any other person. It has also been submitted that petitioners were not aware at the time of execution of the sale deed, dated 10.04.2012, that Paramjit Singh, who had executed the General Power of Attorney, dated 14.06.2010, had already expired. In support of his contention, the learned counsel has placed reliance on the judgment rendered by Hon'ble the Supreme Court in the matter of **Md.Ibrahim and others vs State of Bihar and anr**, 2009(4) RCR (Criminal) 369.

On the other hand the learned counsel for the State as well as Mr.Harsh Aggarwal, learned counsel for the respondent No.2-informant submitted that the petitioners had not only committed cheating but also committed forgery with an intention to commit cheating and, as such, respondent No.2-informant was competent to report the matter to the police; the disputed question of facts cannot be decided in a petition filed under Section 482, Cr.P.C.; after completion of the investigation, the chargesheet (report under Section 173, Cr.P.C.) has already been presented before the learned Area Judicial Magistrate and, as such, the High Court should not evaluate the material available on record before the Court below and should leave it for the consideration of learned trial Court. They further submit that the

petitioners knowing fully well that Paramjit Singh, one of the Executors of the General Power of Attorney, dated 14.06.2010 had died before 10.04.2012, the date on which the sale deed was executed on the basis of the General Power of Attorney, dated 14.06.2010 and, as such, the petitioners had narrated the wrong facts in the sale deed and thereby not only committed cheating but also forgery. It was also submitted that the petitioners were in possession of the piece of land, which was allegedly sold by the petitioners on the basis of invalid General Power of Attorney and, as such, his rights were affected from the said sale deed and hence he was competent to report the matter to the police. They further submit that the ratio of the judgment in the matter of **Md.Ibrahim** (supra) would not be applicable to the facts and circumstances of the case in hand.

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

Before going through the legal question raised by the learned counsel for the petitioners it is deemed appropriate to recapitulate the facts of the case.

Respondent No.2-Amrik Singh had reported the matter

to the police on 06.07.2012 vide his application bearing No.2514/P, inter alia, alleging that he along with Jagdev Singh, Gurmail Singh and Malkiat Singh were in possession of a piece of land measuring 82 kanals 16 marlas situate at village Khanpur Fakira. Earlier thereto their predecessors were in possession of the said land. Even the Civil Court had also granted stay in their favour in view of the possession over the said land. Balwinder Singh, his father Lal Singh and Lambardar Gurbax Singh had hatched conspiracy to dispossess the informant and other persons from the above stated land. In furtherance of the said conspiracy, petitioner No.1- Teja Singh and petitioner No.2- Balwinder Singh had got one Power of Attorney No.46, dated 14.10.2006 in their favour from Gurtej Kaur, Dhirpal Singh Issar, Harminder Singh and others while Gurtej Kaur and others had never been in possession of the said land. Paramjit Singh, one of the executants of the said power of attorney in favour of the petitioners, had died on 14.01.2011 and the said fact was in the notice of the petitioners. Even the witnesses and the vendees of the above stated piece of land were fully aware that Paramjit Singh had already died when the sale deed No.18 dated 10.04.2012 was executed on the basis of the General Power of

Attorney, allegedly executed by Paramjit Singh. It was wrongly averred in the sale deed that all the executants of the General Power of Attorney, dated 14.06.2010 were alive on 10.04.2012 when the sale deed was executed.

On the basis of the complaint lodged by the informant, an enquiry was conducted by the Station House Officer, Police Station, Darba, and whole material was placed before the Senior Superintendent of Police, Sangrur, and after obtaining his permission the impugned FIR was registered.

After completion of the investigation, chargesheet (report under Section 173, Cr.P.C.) had already been presented before the learned Area Judicial Magistrate.

From the perusal of the facts, it is prima facie clear that the informant and few other persons were in possession of the land in dispute. General Power of Attorney was executed by Paramjit Singh and others in favour of the petitioners on 14.06.2010. Said Paramjit Singh had died on 14.01.2011 and the said fact was not only in the notice of the petitioners, who had sold the said land vide sale deed No.18, dated 10.04.2012 but the same was in the knowledge of the witnesses, who had witnessed the sale deed and the vendees thereof. It was wrongly averred

by the petitioners that all the executants of the General power of Attorney No.46, dated 14.06.2010 were alive on 10.04.2012, the date on which the sale deed was executed and, as such, the petitioners had prima facie committed cheating and forgery for which an FIR was registered and thereafter the charge-sheet has been presented.

The ratio of the judgment in the matter of **Md.Ibrahim** (supra) relied upon by the learned counsel for the petitioners would not be applicable to the facts and circumstances of the case in hand. In the said case Hon'ble the Supreme Court has held that accused selling the property of another person claiming himself to be the owner and executing the sale deed in such a situation, the purchaser who was cheated might lodge a complaint for commission of offence punishable under Section 420, IPC. In the case in hand the allegations are not only of cheating but of forgery as well. The offences punishable under Sections 120-B, 465, 467, 468, and 471, IPC, are cognizable offences and, as such, the police was within its jurisdiction to register the FIR on the basis of the complaint moved by respondent No.2-informant-Amrik Singh.

In view of the totality of the facts and circumstances of

the case, no ground of quashing of the FIR and consequential proceedings arising therefrom is made out.

Dismissed.

February 2, 2015
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(NARESH KUMAR SANGHI)
JUDGE