

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-7781-2011
Date of decision:8.10.2015

Resham Kaur and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CRM-M-10069-2011

Harbans Kaur and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Mr.Mansur Ali, Advocate for the petitioners.
Mr. K.D.Sachdeva, Addl. A.G., Punjab.
Mr.J.S.Dhaliwal, Advocate for
Mr.H.S.Brar, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

These two identical criminal misc. petitions filed by the petitioners under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short) for quashing of the same impugned FIR and the consequential proceedings arising therefrom, are being disposed of together vide this common order, as both the petitions are based on same set of facts. The complainant-respondent is also the same in both the cases. However, for the facility of reference, facts are being culled out from CRM-M-7781-2011.

Notice of motion was issued in both the cases and further proceedings before the learned trial Court were stayed. Separate replies have been filed on behalf of respondent-State and complainant-respondent

No.2.

Learned counsel for the petitioners submits that Annexures P-1 and P-2 are the sale-deeds dated 7.1.2008 and 4.4.2008, respectively, whereby petitioners purchased the land from Smt. Harbans Kaur etc. Complainant Paramjit Singh filed a civil suit for specific performance against both set of the petitioners in these two petitions, that is the vendors as well as the vendees. Suit of the complainant was partly decreed, however, only qua the alternative relief for refund of earnest money along with interest @ 9% vide judgment dated 12.3.2015. The same sale-deeds as well as the same land were the bone of contention in civil as well as the present criminal proceedings.

Although, the complainant filed his civil suit on 5.5.2008, yet he intentionally concealed this material fact at the time of getting the impugned FIR registered on 4.8.2009 (Annexure P-4). Investigating agency did not look into this material aspect of the matter for the reasons best known to it and filed the challan against the petitioners, altogether ignoring another material document in the form of report of Naib Tehsildar (Annexure P-5) in favour of the petitioners. He concluded by submitting that in the peculiar facts and circumstances of the case, even if the allegations levelled against the petitioners in the impugned FIR are taken to be true on their face value, still no offence of any kind, whatsoever, is made out against the petitioners. In support of his contentions, learned counsel for the petitioner places reliance on a judgment of the Hon'ble Supreme Court in **Inder Mohan Goswami & another v. State of Uttaranchal & others, 2007 (4) RCR (Cr1.) 548**. He prays for quashing the impugned FIR and the consequential proceedings arising therefrom, by allowing both these petitions.

well as learned counsel for complainant-respondent No.2 opposed both these petitions, contending that de hors the civil litigation having been decided in favour of the petitioners, they cannot be absolved from their criminal liability and the impugned FIR was not liable to be quashed. They pray for dismissal of both these petitions.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful 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, both these petitions in hand deserve to be accepted, for the following more than one reasons.

The dispute between the parties, if at all, was only that of a civil nature. It is a matter of record that the material fact of pendency of civil suit for specific performance filed by the complainant himself does not find mentioned in the impugned FIR, because the complainant, while proceeding on his mala fide intention, concealed this material fact from the investigating agency. Similarly, this aspect was not investigated by the investigating agency, proceeding on a wholly misconceived approach and filed the report under Section 173 (2) Cr.P.C., thereby forcing the innocent citizens to face criminal trial. Having been left with no other option, petitioners have rightly approached this Court by way of instant quashing petitions under Section 482 Cr.P.C. and the petitioners have been found entitled to invoke the inherent jurisdiction of this Court for quashing the impugned FIR as well as the criminal proceedings arising therefrom.

During the pendency of these petitions, Civil Suit No. 149

dated 5.5.2008 filed by the complainant Paramjit Singh for specific performance, came to be partly decreed, however, only for alternative relief of recovery of earnest money with interest, by judgment dated 12.3.2015 passed by the learned Additional Civil Judge (Senior Division), SBS Nagar. In such a situation, it can be safely concluded that petitioners committed no offence and the criminal proceedings arising out of the impugned FIR cannot be permitted to proceed any further, with a view to prevent the abuse of process of court and also to secure the ends of justice.

In view of what has been discussed hereinabove, it can be safely concluded that even if the allegations levelled against the petitioners in the impugned FIR are taken to be true on their face value, still no offence of any kind, whatsoever, would be made out against the petitioners. Having said that, this Court feels no hesitation to conclude that continuation of the criminal proceedings arising out of the impugned FIR would certainly amount to abuse of process of law, which cannot be permitted and the impugned FIR as well as the criminal proceedings arising therefrom cannot be sustained for this reason also.

The above-said view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Inder Mohan Goswami & another v. State of Uttaranchal & others, 2007 (4) RCR (CrI.) 548, Md Ibrahim and others v. State of Bihar and another, 2009(8) SCC 751, Sarabjit Singh v. State of Punjab and others, 2013 (6) SCC 800 and Rishi Pal Singh v. State of UP and another, 2014 (7) SCC 215.**

The relevant observations made by the Hon'ble Supreme Court in paras 10 to 12 of its judgment in **Rishi Pal Singh's** case (supra), which can be gainfully followed in the present case, read as under:-

“Before we deal with the respective contentions

advanced on either side, we deem it appropriate to have thorough look at Section 482 Cr.P.C., which reads :

“Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any orders of this Code or to prevent abuse of process of any court or otherwise to secure the ends of justice”.

A bare perusal of Section 482 Cr.P.C. makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of court and to secure the ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The courts have to be very circumspect while exercising jurisdiction under Section 482 Cr.P.C.

This court in Medchl Chemicals & Pharma (P) Ltd. Vs. Biological E. Ltd. and others, 2009 (2) RCR (Criminal) 122 : 2000 (3) SCC 269, has discussed at length about the scope and ambit while exercising power under Section 482 Cr.P.C. and how cautious and careful the approach of the courts should be. We deem it apt to extract the relevant portion from that judgement, which reads :

“Exercise of jurisdiction under inherent power as envisaged in Section 482 of the Code to have the complaint or the charge sheet quashed is an exception rather than rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the

prosecution with the lodgement of First Information Report. The ball is set to roll and thenceforth the law takes its own course and the investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the fact of it does not constitute or disclose any offence alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situations as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount.”

This Court in plethora of judgements has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 Cr.P.C. In State of Haryana V. Bhajan Lal, 1991 (1) RCR (Criminal) 383: 1992 Supp (1) SCC 335, this court has listed the categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this court in (1) Central Bureau of Investigation V. Duncans Agro Industries Ltd., 1996 (3) RCR (Criminal) 60: 1996 (5) SCC 592; (2) Rajesh Bajaj Vs. State NCT of Delhi, 1999 (2) RCR (Criminal) 160: 1999 (3) SCC 259 and (3) Zandu Pharmaceuticals Works Ltd. V. Mohd. Sharaful Haque and another, 2004 (4) RCR

(Criminal) 937: (2005) 1 SCC 122. This Court in Zandu Pharmaceuticals Ltd., observed that : “The power under Section 482 of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under Section 482 of the Code must be exercised and proceedings must be quashed.” Also see Om Parkash and others Vs. State of Jharkhand, 2012 (4) RCR (Criminal) 662: 2012 (5) Recent Apex Judgements (R.A.J.) 127 : 2012 (12) SCC 72. What emerges from the above judgements is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceedings results in miscarriage of justice or when the Courts comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the Courts have to only look at the controverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and well into the disputed questions of fact.”

Reverting back to the peculiar fact situation of the present case

and respectfully following the law laid down by the Hon'ble Supreme Court, in the judgments referred to hereinabove, it is unhesitatingly held that continuation of the criminal proceedings against the petitioners, arising out of the impugned FIR would result in futile exercise and sheer wastage of valuable time of the court, because not even remotest scope is left to record the conviction of the petitioners. The present one has been found to be a fit case, exercising its inherent jurisdiction under Section 482 Cr.P.C., at the hands of this Court, so as to prevent the abuse of process of court and also to secure the ends of justice.

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 both the instant petitions deserve to be accepted.

Consequently, the impugned FIR No.85 dated 4.8.2009 registered under Sections 420, 467, 468, 430 and 506 IPC at Police Station Rahon, District SBS Nagar as well as the subsequent proceedings arising therefrom, are hereby quashed.

Resultantly, with the above-said observations made, both the present petitions stand allowed, however, with no order as to costs.

8.10.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE