

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

CRM-M-42898 of 2013
Date of Decision: April 21, 2015

Shamsher Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. G.K. Dulat, Advocate
for the petitioner.

Mr. J.S. Brar, AAG, Punjab.

FATEH DEEP SINGH, J.

I will have my pound of flesh

You may have but without shedding even a drop of blood"

This dialogue scripted centuries ago by famous Bard of Avon William Shakespeare in the famous play 'The Merchant of Venice' still reverberates in the corridors of justice and, thus, reflects its significance and relevance even in this modern era.

Somewhat similar to this could be termed the plight of present petitioner Shamsher Singh, with petition under Section 482 Cr.P.C. who happens to be one of the accused and has sought to seek quashing of FIR No.73 dated 19.4.2012 under Sections 420, 120B IPC registered with Police Station, City Mansa. It was on application dated 22.2.2012 moved by one Arshdeep Pal Singh son of Baljinder Singh, Police Inspector, resident of village Sedda Singh Wala, Tehsil Jaitu District Faridkot the case was got registered. The complainant claims to have entered into an agreement to sell dated 17.1.2011 with Kartar Singh, son of Chet Ram, resident of Village Kanoi whom the complainant

alleges is holding a general power of attorney of his sisters Jass Kaur and Bhagi who all have inherited the estate of their deceased father Chet Singh and also entered into a similar agreement to sell with Amar Singh on his behalf as well as on behalf of his sister Amar Kaur as attorney and both being heirs of Gurnam Kaur wife of Kapoor Singh resident of Handiaya, Faridkot for selling share out of land measuring 47 kanals, 13 marlas (free from mortgage) in the revenue estate of village Bhopal and land measuring 27 kanals and 8 marlas plus out of 38 kanals and 14 marlas in all totalling 113 kanals 15 marlas (under mortgage) also situated in village Bhupal, District Mansa and in all the owners agreed to sell land measuring 81 kanals and 2 marlas @ ₹3,60,000/- per acre. It is alleged that all the accused alleged vendors had received ₹3,00,000/- through Kartar Singh and Amar Singh and it was agreed that the balance amount will be received on or before 17.3.2011 when the sale deed was to be executed claiming that he was ready and willing to undergo his part of the contract but the accused did not turn up and, thereafter, it transpired that these persons have sold out of the land measuring 47 kanals and 13 marlas an area of 15 kanals through sale deed No.4760 dated 29.09.2011 and another chunk of land 66 kanals and 2 marlas vide sale deed No.4761 dated 20.9.2011. On this complaint, the matter was investigated by the Bathinda Police and which findings dated 6.2.2012 went against the complainant and it is thereafter, on another application, DIG Bathinda Range, passed order dated 07.08.2012 transferring the matter to DSP, Bhuchio and that is how the present case was got registered.

The petitioner has come up in this petition seeking quashment of this FIR and consequences arising therefrom.

Heard, learned counsel for the parties and perused the records of the case along with trial Court records containing report

under Section 173 Cr.P.C.

The exercise of powers under Section 482 Cr.P.C has been subject matter of interpretation at various forums and having regards to the provisions of Code of Criminal Procedure Chapter XIV the Hon'ble Apex Court view in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others 1992 AIR (S.C.) 604** after going through the series of decisions relating to the exercise of extraordinary powers under Article 226 of Constitution of India as well as under the inherent powers under Section 482 Cr.P.C. had laid down the grounds to sufficiently channelize the eventualities in which these powers could be exercised which are enumerated as below:-

1. 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.
2. 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 under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. 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 made out a case against the accused.
4. 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.
5. 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.
6. 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 of the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. 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.

Thus, going through the entire gamut of allegations and the evidence that has been gathered in the report under Section 173 Cr.P.C. placed on the records shows that there is a dispute over an agreement to sell between the parties which is governed by Chapter II of the Specific Relief Act, 1963 and which provides mechanism for seeking relief in case of such breach of the contract. No doubt, power vests entirely in the Civil Court over the very validity and enforceability of these alleged agreements to sell, however, in terms of Chapter X of Indian Contract Act vests in the principal powers to delegate his authority to an agent who holds power of attorney on his behalf and which also lays down the principle of ratification and the effect of agency on contract with third person. Criminal offence has in it the very essential element of *mens rea*, a guilty mind, coupled with in such cases element of fraud, deceit with an intent to cause undue loss to the complainant side and undue gain to the accused side and it is in that eventuality some semblance of criminal offence is made out. In the case of Kartar Singh father of the petitioner he has been attributed an insignificant role that he was instrumental in the purchase of stamp paper on which the agreement to sell was executed and which admittedly as per own stand of the complainant was signed by the two sides and how one can attribute a criminality to this petitioner is anybody's guess and what is reflected from the scenario before this

Court though accused No.1 to 5 are alleged to be the vendors and accused No.6 to 11 have been roped in that as they had knowledge of the sale deeds, whereas, accused No. 9 to 10 were the attesting witnesses of the subsequent sale deeds and how the latter set could be roped in are matters which impinges upon the judicial conscience.

The contention of the learned counsel for the petitioner that the initial complaint made by the complainant was filed and it is subsequent thereto the father of the complainant who happens to be a police officer at that time wielded his influence and got the matter transferred to place of his posting and managed to get favourable enquiry and, thereafter, got the FIR registered are matters which reflect malafide abuse of the judicial process and which argument could not be controverted on behalf of the State as Mr. J.S. Brar, learned Assistant Advocate General concedes the fact of agreement and its contents. Certainly from the records an extra ordinary interest appears to have been envinced by the higher echelons of police in taking a hasty decision contrary to what was earlier given by the police on the first complaint of the complainant and such exercise of malafide powers certainly assume significance as it has been used to attain a sinister and totally illegal purpose. As has been laid down in Bhajan Lal's case it was held that the proper test to be applied in such a case is as to what is the purpose for which the power is exercised and by applying these tests it bears out that nowhere in the report under Section 173 Cr.P.C. original of which is before this Court there is any semblance of evidence of the original power of attorneys so attributed to some of the accused that they acted as attorneys of the principals and even the shoddy manner of investigation as a resolve to accomplish the sinister goal without loss of time and in the process have forgotten to take into possession the original agreements to sell so purported to have been executed between

complainant and the accused side and the one placed on the challan before the Court is a mere photostat copy, wherein, there is no signature or thumb impression attributed to Kartar Singh alleged attorney of Jass Kaur and Bhagi and rather contrary to the averments made in the complaint names of Jass Kaur and Bhagi also find mentioned as signatory to this agreement when actually neither any signature nor thumb impression are attributed to them on this document. This Court in its endeavour to do justice has even perused the police file produced before the Court on behalf of the State and even in the police file photostat copy of the agreement to sell document shows that most of the parts in the body have been left blank, especially, regarding number and date of power of attorney in favour of Kartar Singh on behalf of Jass Kaur and Bhagi sisters and there are thumb impressions only of Amar Singh accused who is purported to have acted on his behalf as well as on behalf of his sister Amar Kaur and there is no signature or thumb impression of Kartar Singh accused who is signatory to this agreement on behalf of himself as well as his sisters Jass Kaur and Bhagi. Rather a close look to these documents shows that all is not well with the same and it is a belated subsequent afterthought the same has been fabricated which certainly are stark reminders to this fabrication and deceit being propagated by the complainant side. Moreover, as has been argued on behalf of the petitioner the agreement to sell is dated 17.1.2011, wherein, the stand of the complainant is that the sale was to be executed on or before 7.3.2011 whereas, the alleged sale deeds which forms the backbone of the allegations and are registered documents were executed on 20.9.2011 after almost six months of this expiry of period to execute sale deeds in favour of complainant and in between neither any civil suit has been preferred by the complainant and even revenue authorities had sanctioned mutation Nos.8476 and 8477 in

favour of the subsequent vendees-purchasers and the objections raised by the complainant were dismissed vide order dated 13.12.2011 by Assistant Collector Grade-1-cum-SDM, Mansa and it is the subsequent recourse adopted by the complainant in registering the FIR on 19.4.2012 furthers this element of mala fide and vengeance. The fact that revenue authorities have denied any relief to the complainant are rather matters which cannot escape judicial scrutiny. Learned counsel for the State could not pinpoint any credible and cogent evidence which could substantially support the case of the complainant from any angle and apparently there is lack of bona fide on the part of the complainant and present proceedings appears to have been generated as an arm twisting tactics by the influential against the poorer and weaker and being tainted with mala fide are pure and pure misuse of process of the Court. Though this Court can quash an FIR by exercise of powers under Section 482 Cr.P.C. as well as under Articles 226/227 of the Constitution of India, however, the exercise of powers under this may give same results but the criteria of exercise of these powers is quite different. As has been argued since challan has been presented in Court, therefore, the entire evidence is before this Court and it can be evaluated if any case is made out or not. In the instant case a pure civil cause has been dubiously given the taint of commission of a criminal offence where there is not an iota of evidence as to commission of any offence. The trial of the accused would be a mere futile exercise since there is nothing evident so. Thus, the uncontroverted allegations do not constitute any offence and are rather to the mind of this Court absurd and pure colourable exercise of powers by the Court, thus necessitating intervention by this Court as laid down in "Bhajan Lal's" case *ibid*.

In the light of what has been discussed above, allowing the petitioner to face the trial would be a futile exercise which

would be counter to the dispensation of justice and would not serve any purpose in view of which the present petition is allowed and since the FIR Annexure P-1 does not disclose commission of any offence the same stands quashed along with all incidental proceedings arising out of it.

What has been discussed above and finding that there is a stark attempt on behalf of the prosecution to bring in tainted evidence by means of forgery and fabrication it would sub-serve the ends of justice, if trial Court is directed to proceed ahead under the provisions of Section 340 Cr.P.C. against the complainant and police officials involved in the present process who had the audacity to counter the first findings of the police had marked the enquiry subsequently to another district and after entrusting to favourable officers procured a report leading to persecution and harassment of the petitioner and to ensure that injustice done to the petitioner is put to an end.

(FATEH DEEP SINGH)
JUDGE

April 21, 2015
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