

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7197-2015 (O&M)

Date of decision: 08.12.2015

Surinder Kaur and another

... Petitioners

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Rangi, Advocate and
Mr. Harmanpreet Singh Cheema, Advocate
for the petitioners.

Ms. Anmol Grewal, AAG, Punjab.

Mr. Sanjeev Pandit, Advocate
for respondents No.2 & 3.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seek quashing of impugned FIR No.130 dated 02.07.2014 under Sections 406, 420, 120-B of Indian Penal Code ('IPC' for short), registered at Police Station City Ropar, District Ropar and the consequential criminal proceedings arising therefrom.

Notice of motion was issued and pursuant thereto, reply by way of affidavit was filed on behalf of the respondent-State. A separate reply was

filed on behalf of respondents No.2 & 3.

Learned counsel for the petitioners submits that petitioners were neither owners nor party to the agreement to sell. Agreement to sell was admittedly executed between Darshan Singh, (husband and father of petitioners No.1 & 2 respectively) and the complainants-respondents No.2 & 3. Learned counsel for the petitioners further submits that although the petitioners were present at the time when the money was received by Darshan Singh and they also put their signatures on the receipt but that alone will not be sufficient to make the petitioners accused, because the petitioners had no occasion to commit the offence alleged against them. He also submits that although the respondents-complainants filed civil suit for specific performance and they impleaded only Darshan Singh as party-defendant, which is a matter of record.

Had the petitioners been equally responsible and liable to be proceeded against, complainants would have certainly impleaded the petitioners as party-defendants in the civil suit. He concluded by submitting that even if the allegations levelled in the impugned FIR are taken to be true on their face-value, no offence, of any kind whatsoever, is disclosed against the petitioners, therefore, continuation of the criminal proceedings arising out of impugned FIR against the petitioners, would amount to abuse of process of law. Relying upon the judgment of the Hon'ble Supreme Court in **Md. Ibrahim and others Vs. State of Bihar and another, 2009 (8) SCC 751** and a judgment of this Court in **CRM-M-7781-2011 (Resham Kaur and others Vs. State of Punjab and another), decided on 08.10.2015**, learned counsel for the petitioners prays for quashing of the impugned FIR, by allowing the

present petition.

Per contra, learned counsel for the State as well as learned counsel for the complainants-respondents No.2 & 3 submit that petitioners also played active role in the commission of offence alleged against them, because of which they have been rightly made the accused and are liable to face the criminal trial. They further submit that petitioners along with main accused Darshan Singh received the amount from the complainants, because of which they put their signatures on the receipt on reverse side of the agreement to sell. They also submit that judgments relied upon by learned counsel for the petitioners are not applicable to the facts of the present case. They pray for dismissal of the present petition.

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 contentions raised, this Court is of the considered opinion that present petition deserves to be accepted, in view of the peculiar fact situation obtaining in the case. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that Darshan Singh was the exclusive owner of the disputed piece of land. It is also not in dispute that agreement to sell was between Darshan Singh and complainants. Petitioners neither executed the agreement to sell nor they were witnesses to it. No doubt petitioners were present at the time of receipt of money by Darshan Singh from the complainants and they also put their signatures on the receipt along with Darshan Singh. In view of this abovesaid undisputed fact situation, the only issue that arises for consideration of this Court is whether mere presence

of the petitioners at the time of payment and putting signatures on the receipt along with Darshan Singh, would be sufficient to make the petitioners accused for the offences under Sections 406, 420, 120-B IPC.

With a view to answer this sole question posed above, learned counsel for the complainants-respondents was asked to read the language used in the receipt, recorded on the reverse side of the agreement to sell. A bare glance at the receipt shown and read over to this Court by learned counsel for the respondents-complainants during the course of hearing, would make it crystal clear that neither the complainants intended to pay even a single penny to the petitioners nor they actually paid it to the petitioners. The entire amount was paid to Darshan Singh and rightly so, he being the exclusive owner of the plot intended to be sold and he alone was the party to the agreement to sell.

Having said that, this Court feels no hesitation to conclude that mere presence of the petitioners at the time of receipt of money by Darshan Singh and putting the signatures by the petitioners on the receipt along with Darshan Singh, would not be sufficient to make the petitioners accused for the offences alleged against them. It is so said because petitioners never intended to sell anything to the complainants nor there was any agreement to sell between the petitioners and the complainants. Whatever was the transaction, it was between Darshan Singh and complainants.

It is also pertinent to note here that when the complainants filed their civil suit for specific performance qua the same very agreement to sell, they did not implead the petitioners as party-defendants, whereas the complainants sought to make the petitioners accused, to face the criminal trial about the same transaction. Further, the argument raised by learned counsel

for the petitioners that even if the allegations levelled against the petitioners in the impugned FIR are taken to be true on their face-value, no offence, of any kind would be disclosed against the petitioners, has been found worth acceptance, because it meets the requirement of law for quashing any criminal proceedings arising out of FIR, while exercising inherent jurisdiction under Section 482 Cr.P.C.

Further, the complainants paid the major amount by way of cheque issued in favour of Darshan Singh only. Had the petitioners been party to the commission of offence alleged against them, complainants would have certainly made the payment of some amount to the petitioners. In fact, since the petitioners were neither owners of the plot intended to be sold by Darshan Singh nor they were party to the agreement to sell, they had no occasion to play any role in the commission of offence alleged against them.

It is not even the argued case on behalf of the complainants that any amount of money, as a matter of fact, was paid to any of the petitioners by any of the complainants. In such a situation, it can be safely concluded that petitioners have committed no offence and the criminal proceedings arising out of the impugned FIR cannot be permitted to continue against the petitioners, with a view to prevent any further abuse of process of Court and also to secure the ends of justice.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Inder Mohan Goswami and another Vs. State of Uttaranchal and others, 2007 (4) RCR (Crl.) 548, Md. Ibrahim and others Vs. State of Bihar and another, 209 (8) SCC 751, Sarabjit Singh Vs. State of Punjab and others, 2013 (6) SCC 800, Rishi**

Pal Singh Vs. State of UP and another, 2014 (7) SCC 215 and a judgment of this Court in **Resham Kaur's** case (supra).

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 it's own course and the investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and it's 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 judgments 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 Judgments (R.A.J.) 127 : 2012 (12) SCC 72. What emerges from the above judgments 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.”

Coming back to the given 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, will 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. Under the peculiar circumstances of the present case, instant 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 present petition deserves to be accepted. Consequently, FIR No.130 dated 02.07.2014 under Sections 406, 420, 120-B IPC, registered at Police Station City Ropar, District Ropar, as well as the subsequent criminal proceedings arising therefrom, are hereby ordered to be quashed, 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

08.12.2015
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