

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

**Crl. Revision No.3777 of 2014 (O&M)
Date of Decision: May 12, 2015.**

Jagan Nath

.....PETITIONER(s).

VERSUS

Parmod Kumar and others

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. G.S. Sandhu, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

This is a revision petition against the order dated 10.10.2014 passed by Sub Divisional Magistrate, Phul, whereby the complaint filed by the revision petitioner Jagan Nath bearing No.09 dated 29.02.2012 was dismissed.

The facts of the complaint filed by the revision petitioner, in brief, are that there was a land dispute between the revision petitioner-complainant, his brother Kulwant Rai-respondent No.2 and sons of respondent No.1 namely Ramandeep Singh and Amandeep Singh, respondents No.3 and 4. That dispute was amicably settled vide writing dated 02.10.2009 under the signatures of revision petitioner and his brother Kulwant Rai. The parties were to comply with the terms mentioned in the writing dated 02.10.2009 till 20.10.2009. Respondents No.2 to 4

committed default and did not turn up in the office of Tehsildar/Sub Registrar, Rampura Phul for execution of the transfer deeds. After few days, a close relative of the parties namely Parmod Kumar of Mandi Ahmedgarh-respondent No.1 intervened and assured to manage the implementation of family settlement dated 02.10.2009 but laid the condition to give ₹15,00,000 in cash as security which he would return after execution of the sale deed as per the settlement dated 02.10.2009. The complainant paid ₹15,00,000 in cash to Parmod Kumar and on 04.02.2010, the sale deed/exchange deeds by both the parties were executed. When the complainant asked Parmod Kumar to get returned ₹15,00,000 from Kulwant Rai, he started making excuses. Kulwant Rai also refused to withdraw the complaint filed by him. The matter was reported to the police on which registration of the FIR against respondents was recommended. Instead of registration of the FIR, a second inquiry was initiated and under political pressure, no further action was taken. The petitioner filed a criminal misc. petition i.e. CRM-M No.4612 of 2011 seeking registration of the FIR against the respondents but the same was withdrawn with liberty to file a complaint. Thereafter, complaint (Annexure P-1) was filed, wherein after recording of preliminary evidence, respondents-accused persons were ordered to be summoned by Sub Divisional Judicial Magistrate, Phul.

The respondents preferred revision petition against the summoning order, which was allowed by the Additional Sessions Judge, Bathinda, vide order dated 29.08.2014 and order dated 06.07.2012 was set

aside with direction to the trial Court to apply its mind and pass a fresh speaking order.

Learned Sub Divisional Judicial Magistrate, Phul vide order dated 10.10.2014 dismissed the complaint with the observations that '*the complaint is vague, has no head or tail and not proved from any angle. It has become tendency of the people to (sic convert) a purely civil litigation into a criminal one so as to twist the arm of the opposite party.*'

I have heard learned counsel for the revision petitioner and have perused the paper book with his assistance.

Against the order of Sub Divisional Judicial Magistrate, no revision was filed before the Court of Sessions. It has been submitted that the revisional powers of Sessions Court and this Court are concurrent, as such, petitioner has come to this Court.

Without going into the controversy as to whether the revision petitioner should first have gone to the Court of Sessions and to avoid unnecessary delay, this revision petition is being decided on merits.

The petitioner has levelled two allegations to make out a case for the offences punishable under Sections 406 read with Section 120-B, 420 and 506 IPC against the respondents. Firstly, that under the compromise arrived at between the parties on 02.10.2009, Kulwant Rai, respondent had to withdraw the complaint filed by him which he refused to withdraw and secondly, a sum of ₹15,00,000 in cash was given to respondent No.1 as security for execution of the settlement dated 02.10.2009 and this amount was not returned to the petitioner.

Both the plea raised by the revision petitioner are hollow and absurd. Firstly, in the event of non-compliance of any term of the family settlement, the remedy available is to sue for breach of contract and it does not invite a penal action under Section 406 or 420 IPC. So far as the story of paying ₹15,00,000 in cash to Parmod Kumar, respondent No.1 is concerned, the same does not appear to be plausible. As per the complainant, there was a family settlement dated 02.10.2009 under which some exchange deed of land were to be executed. It appears implausible to hand over a hefty sum of ₹15,00,000 in cash to respondent No.1 Parmod for execution of the terms of the family settlement. Taking into account the evidence on this score, the trial Court has observed in para 9 of the judgment as follows:-

“9. In evidence complainant examined himself as CW1 and examined other witnesses Jangir Singh CW2, Varinderpal Singh CW3 and Rajinderpal Singh as CW4. Now close perusal of version of the complaint and the entire evidence on file it comes out that the allegations of entrustment of Rs.15 lakh(sic lacs) by the complainant is only against accused Parmod Kumar. There is no evidence or even pleadings of entrustment of even a single penny against accused No.2, 3, 4. The complaint itself shows that on 04.02.2010 the sale deeds were executed by both the parties. There is no writing or document showing that Rs.15 lacs were handed over by complainant to the accused Parmod Kumar. It is a fact that the parties are related to each other and disputes are pending between them since long. Thus it is not expected from reasonable man to handover the huge amount of Rs.15 lacs to some

one without any written document executed in this regard. If the compromise really materialized on the basis of family settlement dated 02.10.2009 and exchange deeds were executed on 20.10.2009; then there is question as to why Kulwant Rai refused to withdraw the cases filed against the complainant and his son. The accused got registered a (sic an) FIR against the complainant bearing No.10 dated 16.03.2010 under Section 420/120-B IPC against Jagan Nath and Varinderpal Singh. It appears that the complaint in hand which has been filed is the counter blast to the above said FIR and allegations have been levelled to pressurise the accused side. Further Shri Jatinder Singh, SP(D) vide inquiry dated 26.03.2011 found the allegations levelled by the complainant as baseless, false and without any merit with the observations that the complaint is counter blast to FIR No.10 dated 16.03.2010 under Section 420, 120-B IPC.”

From the perusal of paper book and the order of the trial Court, it appears that the disbelief continued in between the parties even after family settlement dated 02.10.2009 and execution of exchange deed dated 04.02.2010 which resulted in registration of the FIR against the complainant and Varinderpal Singh on 16.03.2010 i.e. after execution of the transfer deeds. This appears to have prompted the petitioner to file this complaint and the trial Court has rightly observed that a Magistrate cannot be a silent spectator at the time of recording preliminary evidence and issue process mechanically merely on the basis of some statements of the alleged witnesses. The order of Magistrate summoning the accused must reflect the application of mind while scrutinizing the evidence brought on record.

Learned counsel for the petitioner has referred to a telephonic conversation text of which has been placed on record as Annexure P-4 to make out that there was entrustment of ₹15,00,000 in cash. This conversation is between Raju and Parmod and Parmod is telling Raju that *'Masarji (maternal uncle) had given ₹15,00,000 which he had returned in the Gurudwara Sahib'*. He had also told Raju that *'Masarji(maternal uncle) placed the money in Gurudwara Sahib and asked Rinka to pick up the money, if they were right. Rinka in the presence of Amra, picked up that money from that Gurudwara Sahib'*. This conversation also refers to the payment of ₹15,00,000 to Masarji (maternal uncle) who gave it to Parmod and he (Parmod) returned it to Masarji. Learned Magistrate has also looked into this conversation to make out whether any prima facie case is made out and on perusal of text of conversation, he has rightly concluded and even if this conversation is admitted to be correct, it do not disclose that Parmod Kumar accepted ₹15,00,000.

In view of the facts and circumstances discussed above, this revision petition has no merits. Dismissed.

May 12, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE