

241 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-37134 of 2013
DECIDED ON: JANUARY 15, 2016

GIAN CHAND & ANR

.....PETITIONERS

VERSUS

ASHWANI KUMAR AND ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vivek Suri, Advocate
for the petitioners.

Mr. Aakash Singla, Advocate
for the respondents.

JASPAL SINGH, J

Instant petition has been preferred under Section 482 Cr.P.C. seeking quashing of complaint No. 41 dated December 19, 2011 captioned as *Ashwani Kumar & another vs. Gian Chand & others* (Annexure P-1) and summoning order dated May 20, 2013 (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Samana whereby the present petitioners have been summoned to face trial under Section 420 IPC read with Section 120-B IPC and all subsequent proceedings arising therefrom.

2. Shorn off all the details, suffice it to say that the allegation contained in the complaint are that petitioner No.1 in connivance with petitioner

No.2 and revenue official(s) sold an area of 8.36 square yards (8'x7'.6") to Matoo as against area of 1'x6" owned by him on the basis of sale deed dated February 09, 1993 and further that under the garb of afore-said sale deed petitioners have raised the construction in front of their shop and has encroached upon public street. Even without getting the site plan sanctioned. On the basis of aforesaid complaint and the strength of preliminary evidence, petitioners have been summoned to face trial alongwith other co-accused for commission of offence punishable under Section 420 read with Section 120-B IPC vide impugned order dated May 20, 2013 (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Samana.

3. No doubt the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. But at the same time 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. Such proceedings deserve to be quashed and the Court has ample power in this regard.

4. Adverting to the facts of the case in hand, instant complaint has been filed by Ashwani Kumar and Harbans Lal who have nothing to do with the property in dispute. It is not their case that property which has been sold by petitioner No.1 in favour of petitioner No.2 vide sale deed dated February 19, 1993 or any part thereof, belong to either of them. Not only this even Harbans

Lal-petitioner No.2 has also filed a civil suit titled as **Harbans Lal and another**

vs. Gian Chand and others; seeking mandatory injunction directing the petitioners to remove the construction including its malba raised by them in front of their shop situated in market near Gandhi ground, Samana Mandi, Samana, District Patiala. Alongwith said suit, an application seeking an interim injunction was also filed, which is still pending disposal before Additional Civil Judge, Senior Division, Samana. The said suit is being resisted by petitioner No.1, as is evident from the copy of written statement (Annexure P-4).

5. A glance at the aforesaid complaint transpires that petitioners have been summoned to face trial under Section 420 read with Section 120-B IPC and makes it crystal clear that petitioners have raised the construction on a public street, which is the subject matter of the civil suit. Moreover, there is nothing on record to suggest that either of the petitioners have been deceived by either of the complaints/respondents. There is also nothing on record to suggest that there was any fraudulent inducement to the complaints/respondents either to deliver any property to them or to retention thereof.

6. The ingredients which constituted offence of cheating as envisaged under Section 420 IPC are not at all established, even if the allegations are taken on their face value. Rather, this Court is of the considered view that instant complaint is nothing but appears to have been maliciously instituted with ulterior motive to wreak vengeance on the petitioners. Even, otherwise when a civil court is already seized of the matter, it is not desirable to continue with proceedings. It is also well settled proposition of law that Magistrate has to apply its mind before passing the summoning order, as summoning of a person as an accused is a serious matter and it is not as if the complainant version is supported by one or two witnesses. In the case in hand, as has also been

discussed above either of the complainants/respondents have no *locus standi* to file the complaint. Especially, under Section 420 IPC because they have nothing to do with the property, which is the subject matter of the sale deed dated February 09, 1993. Neither it can be said that they have been cheated in any way due to the execution of the said sale deed. So, the complaint bearing No. 41 of 19.12.2011 titled as **Ashwani Kumar & another vs. Gian Chand and others** (Annexure P-1) as well as summoning order dated May 20, 2013 (Annexure P-2) and all subsequent proceedings arising therefrom, are manifestly attended with mala fide and as such the same are not sustainable in the eyes of law. The continuation of proceedings in the afore-said complaint is nothing but an abuse of process of law.

7. Accordingly, instant petition is allowed and complaint (Annexure P-1) as well as summoning order (Annexure P-2) and all subsequent proceedings arising therefrom, are quashed qua petitioners.

JANUARY 15, 2016
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(JASPAL SINGH)
JUDGE