272-A

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38079 of 2013 (O&M)
Date of decision: August 30, 2016

Narender Kumar Khanna

......Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. G.S. Dhillon, Advocate
for the petitioner.

Ms. Rimplejeet Kaur, AAG Punjab.

Mr. Sunil Chadha, Senior Advocate with
Mr. M.S. Atwal, Advocate
for respondents No.2.

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A.B. CHAUDHARI, J (Oral)

In the present petition, petitioner has prayed for quashing the FIR No.39 dated 22.03.2013 (Annexure P-1), under Sections 420, 120-B of Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station City Phagwara, District Kapurthala.

FACTS

Respondent No.2-Harminder Singh Sooch lodged the First Information Report with the Police Station City Phagwara, District Kapurthala on 22.03.2013 that the petitioner-Narender Kumar Khanna, Ashwani Kumar Uppal and Nicky Khanna s/o Narender Kumar deceived him by conspiring together. In that, he was lured by Ashwani Kumar Uppal to purchase a commercial site by substituting the petitioner-Narender Kumar Khanna who had booked the site for the total consideration of ₹7,49,47,684/- in the name of Nicky Khanna. Petitioner-Narender Kumar Khanna had paid only the booking amount to the builder Omaxe and if he did not pay the balance amount, Omaxe would forfeit the booking amount paid by the petitioner-Narender Kumar Khanna. The property was such that it would touch sky rocketing prices. Respondent No.2-complainant was thus, asked to pay the balance amount to Omaxe and get the property transferred in his name.

The case of the petitioner is that he as well as respondent No.2 both are Non-Resident Indians residing in U.K. and have been good friends. In other words, they know each other very well. According to the complainant, as per the aforesaid allurement about which conspiracy was made by Ashwani Kumar Uppal and the petitioner-Narender Kumar Khanna, the petitioner had paid the entire amount as told to him by Ashwani Kumar Uppal by cheque and cash. Thereafter, he made enquiry with the builder Omaxe, since according to the complainant, fabricated documents with fabricated seal about the commercial site were given to him. Upon enquiry with the builder Omaxe, he came to know that as a matter of fact, an amount of ₹3,98,81,714/- only was paid to Omaxe towards actual price of the property as against the amount of ₹7,49,47,684/- that was collected from the complainant. It is with these allegations, respondent No.2 claimed that he was thus, deceived and the accused persons had conspired to deceive him and put him to a great financial loss. He also stated in the FIR that the petitioner and Ashwani Kumar Uppal promised him to hand-over some other property to compensate him for the loss caused but that was never done. A compromise was also arrived at during the course of police investigation but the petitioner did not even honour that compromise. Respondent No.2, therefore, stated that the petitioner had committed serious offence and therefore, legal action should be taken against him. It is on the basis of the said FIR, police investigation was made and the challan was also filed before the competent Court. The present petition was filed in this Court on 11.11.2013 which remained pending. After the filing of the challan in the trial Court, hearing on the question of framing of charge was held and the trial Court vide order dated 06.03.2014 made an order of framing the charges by giving reasons. Thereafter, the case was posted for evidence. It is in the above background the petitioner is seeking quashment of FIR in question.

In support of the petition, Mr. J.S. Bedi, the learned senior Advocate with Mr. G.S. Dhillon, Advocate made detailed submissions. With usual vehemence, Mr. Bedi contended that a perusal of the FIR itself, on a close look thereon and proper analysis, would show that the ultimate allegation made by respondent No.2-complainant is that he purchased the property for the consideration of ₹7,49,47,684/- and that the petitioner had agreed to purchase the same for this consideration of ₹3,98,81,714/- and therefore, the petitioner made a profit in the transaction. According to Mr. Bedi, making of profit, even assuming the allegations made by respondent No.2 are correct, can never be an offence as respondent No.2 was never prevented by anybody from making proper inquiry/investigation about the value of the property and at any rate, none prevented respondent No.2 from doing so. To say that, respondent No.2 was cheated as alleged by him is absurd because there is hardly any ingredient of offence of cheating or conspiracy in the present matter. Respondent No.2 could have easily refused to accept the offer for purchase of the said property rather than paying the amount. Even otherwise, the counsel for the petitioner emphasized on the fact that as a matter of fact, the petitioner had paid the actual price to the builder Omaxe in the sum of about ₹6.78 crores and it was respondent No.2-complainant who had paid less amount by about ₹92 lacs and therefore, as a matter of fact, it was the petitioner who was put to loss. Learned Senior Counsel invited my attention to various documents on record including the bank transactions and contended that in the wake of those transactions and the documents, the FIR is liable to the quashed as the same is nothing but an abuse of process of law. Learned Senior counsel for the petitioner, then took me through the one more report of investigation which he termed as 'further investigation' that was made by the police in which the police officer concerned had found the truth and the truth is that respondent No.2 had paid less amount than the amount actually paid by the petitioner to the builder Omaxe. According to him, this Court will have to take into consideration the said report of investigation and if the same is considered, the conclusion would be that the FIR being the abuse of process of criminal law, is required to be quashed and the consequently challan also.

Per contra, learned counsel for respondent No.2 as well as learned State counsel vehemently opposed the petition and submitted that this Court should not interfere in its inherent powers particularly when after completion of investigation, challan was filed and resultantly, the charge(s) were also framed by the trial Court and further that the case is now posted for evidence before the trial Court. Learned counsel then submitted that there is a document to show that was given by the builder Omaxe itself that it received only ₹3,98,81,714/- from the petitioner and therefore, it is false to say that the petitioner had paid the entire amount for which the property was purchased by respondent No.2. Learned counsel for the respondents submitted that the documents relied on by the petitioner in this petition so also the bank transactions etc. will have to be tested by test of cross-examination and at this juncture, no concrete inference can be drawn about the case of the petitioner which is now being sought to be put up before this Court. Respondent No.2 was clearly lured to pay huge sum of about ₹7.49 crores and was thus, deceived by the petitioner and Ashwani Kumar Uppal. Learned counsel for the respondents, therefore, prayed for dismissal of the petition.

<u>CONSIDERATION:-</u>

At the outset, it must be kept in mind that in the proceedings for quashing of FIR in question what is to be seen is whether on bare reading of the FIR itself, offences are made out or not? To consider all other documents produced by the petitioner or even by respondent No.2 in these proceedings to test whether there is abuse of process of law or not, would be impermissible. It is in this context this Court proceeds to find out whether the FIR in question is an abuse of process of law. It would be convenient to quote the following relevant extract from the FIR that was lodged by respondent No.2 in order to understand and make proper assessment of the FIR. It has already been stated in the facts that Ashwani Kumar Uppal had approached respondent No.2 with the proposal that the petitioner-Narender Kumar Khanna had booked the commercial site for total consideration of ₹7,49,47,684/- and that he had paid the booking amount to the builder Omaxe but since the petitioner-Narender Kumar Khanna could not arrange the balance amount to purchase the said commercial site booked by him, the two consequences would have followed, namely, forfeiture of the booking amount and losing the commercial site having potential of getting sky rocketing prices in future. The following portion is quoted from the FIR:-

> "xxxxx. He further told that Narinder Kumar Khanna has booked/purchased the commercial site for Rs.7,49,47,684/- (Rs. Seven Crore Forty Nine lac Forty Seven Thousand Six Hundred Eighty Four only) as Narinder Kumar Khanna is unable to arrange the balance amount as his booking amount

which he has already paid to the Omaxe is likely to be forfeited by the company and he asked the complainant that you pay the above said amount to Narinder Kumar Khanna and his son Nicky Khanna the above said site will be transferred in your name.

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Applicant handed over cheque amounting to Rs.5 crore 33 lacs to Narinder Kumar Khanna and 20,000/- pounds cash to Narinder Kumar Khanna in presence of his friend Gurnek Singh s/o Darshan Singh. Narinder Kumar assured the complainant that he and his son Nicky Khanna are selling the said property at par without taking any profit. He further assured that after receiving the amount the property in question will be transferred in the name of the complainant within few days.

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That when the complainant approached Narinder Kumar Khanna, Nicky Khanna & Ashwani Kumar Uppal about the transfer of the commercial site at Novelty Mall, Lawrence Road, Amritsar the above said persons gave the fabricated documents with fabricated seal on them and told the complainant that the above said property has been transferred in his name. That when the complainant went to the office of Omaxe and enquired about the ownership of the above said property he came to know that Nicky Khanna and Narinder K. Khanna had already got the above said property transferred in the name of Nicky Khanna and they had paid only Rs.3,98,81,714.40 (Rs. Three Crore Ninety Eight Lac Eighty One Thousand Seven Hundred Fourteen and Forty paisa only) which was the actual price of the above said property.

xxxxx

That further Ashwani Kumar Uppal, Nicky Khanna & Narinder Khanna told the complainant that they have got other properties in Punjab and they will transfer the property in his name to compensate him for the price which they have excessively charged. That neither the above said persons returned the money back nor transferred property in the complainant's name but keep on delaying the matter by giving ne excuse or the other nor transfer any property in the name of complainant. That all the above said persons have committed the fraud with the complainant."

A bare perusal of the above extract from the FIR, to my mind in clear terms, show that the accused Ashwani Kumar Uppal had lured respondent No.2 to purchase commercial site in the Novelty Mall in Amritsar built by the builder Omaxe and that the petitioner had booked the said commercial site. It is also clear that the petitioner had agreed that the balance amount, if paid by respondent No.2, the property will be transferred in his name and also stated that no profit was being made in the process by the petitioner and real price of the property was ₹7,49,47,684/-. Now, it is claimed by the petitioner that both of them are very well known to each other and are good friends. It is in that context, it must be believed that respondent No.2 reposed his faith in the petitioner and accordingly, paid him the total amount as aforesaid and described in the FIR extracted above. It is at the later stage, respondent No.2 came to know about some defect in the documents etc. Therefore, he went to the office of builder Omaxe but came to know that as a matter of fact, the petitioner had paid only an amount of ₹3,98,81,714/- to the builder Omaxe for the commercial site in question which means, the entire balance amount was mis-appropriated by the petitioner which was paid by respondent No.2. This is the sum and substance of the FIR and in my opinion, this prima-facie attracts the ingredients of Section 420 IPC. The other allegations about the meeting of mind between the petitioner and Ashwani Kumar Uppal as to the conspiracy are all the matters of evidence and cannot be assessed at this stage. To my mind, reading of the entire FIR clearly shows that respondent No.2 was cleverly deceived. In addition, it is stated in the FIR that the petitioner and Ashwani Kumar Uppal having been made aware of the fraud coming to light, they agreed to transfer their other property in the name of respondent No.2-complainant in order to compensate him for the excess amount taken by them. But they did not do so. Respondent No.2 was cheated. These are all the matters of evidence and the truth can be found out by tendering of evidence and the test of cross-examination. The reference to the bank transactions etc. by the learned counsel for the parties, cannot be made at this stage, since the oral as well as documentary evidence will have to be tested by cross-examination and both the parties will have opportunity to do so.

The trial Court while framing the charges has given the following reasons which I think are apt and I concur with the reasoning given by the trial Court which are quoted below for convenience:-

> "In the present case, as per allegations of the complainant, the accused induced him to deliver Rs.8,78,23,809/- on the pretext of transfer of one floor measuring 15901 sq. feet by Omaxe Company, Lawrence Road, Amritsar owned by Nikki Khanna though the said property was not transferred in his name. The complainant in his statement made before the police alleged that the accused cheated him by alluring him to deliver money on pretext of transfer of first floor of Omaxe Company but he obtained more amount than the amount paid by them to the Omaxe Company. Admittedly, an owner of property has every right to sell his property at the rate he desires and no offence under Section 420 of the Indian Penal Code will be made out but in the present case, position is totally different because as per allegation of the complainant, accused revealed higher rate of the floor fixed by company than its actual rate. The position might have been different if the accused after disclosing actual rate to the complainant had demanded higher rate for its sale. Since as per allegation of the complainant, the accused did not disclose him the actual rate of property fixed by the company and received more money than the rate fixed by the company; then, it can not be said that no fraud was committed by the accused with the complainant. Moreover, it is settled law that at the tie of framing of charge, merits and demerits of the case are not to be seen. From the report submitted by the police under Section 173 of the Code of Criminal Procedure, statements of the witnesses and other material lying on record, a prima facie case against the accused for having committed offence punishable under Section 420 of the Indian Penal Code is

> made out and he is ordered to be charge sheeted accordingly."

Learned Senior counsel for the petitioner relied on the further investigation report dated 20.02.2015 so I have carefully perused the same. The factual aspects in the said report are again the matters of evidence which will have to be tested in the cross-examination and it will not be possible to consider the said investigation report particularly when the challan has been filed and the Investigating Officer has also filed his reply by way of affidavit. I quote the following portion from the reply/affidavit filed by Jasbir Singh Rai, P.P.S., Deputy Superintendent of Police, Phagwara Sub Division, District Kapurthala:-

> "That there are prima facie well founded allegations against the petitioner and his co-accused in case FIR No.39, dated 22.03.2013, prima facie constituting the commission of offences under Sections 420/120-B of the Indian Penal Code, registered in Police Station City Phagwara, District Kapurthala, on the basis of statement of respondent No.2-Harminder Singh Sooch. After due investigation, which was conducted in a most fair and un-biased manner and to its logical end, challan against the petitioner was presented in the court of learned Sub Divisional Judicial Magistrate, Phagwara, on 15.1.2014. Charge against the petitioner was framed on 5.3.2014 and now the case stands fixed for 17.4.2014 for prosecution evidence.
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> xxxx
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> Since the amount of Rs.5,33,00,000/- in the form of cheque and 20,000/- pounds in cash were handed over to

the petitioner at Glassy Junction, Opposite Bus Stand, Phagwara, within the jurisdiction of the Phagwara police and, thus, he has been rightly prosecuted at Phagwara."

To sum up, in my opinion, for the above reasons, it would not be legal and proper to quash the FIR in question as it cannot be said to be the abuse of process of law. In the result, I find no merit in the present petition.

Petition stands dismissed, accordingly.

(A.B. CHAUDHARI)
JUDGE

August 30, 2016
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No