

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-5853 of 2010 (O&M)

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Date of decision:16.11.2016

Amar Chand Amar and others

...Petitioners

v.

Vinod Gupta

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Anurag Arora, Advocate for the petitioners.

Mr. Ashok Aggarwal, Advocate for the respondent.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of complaint No.1363 dated 20.10.2007 titled as “Vinod Gupta v. Amar Chand Amar and others” under Sections 406, 418, 420, 120-B IPC (Annexure-P.1) and summoning order dated 7.11.2009 (Annexure-P.2) passed by learned Additional Chief Judicial Magistrate, Faridabad, as the complaint itself does not disclose the commission of any offence and the order summoning the petitioners to face the trial under Section 420 IPC, having been passed without application of proper mind, and the proceeding therein amounts to abuse of process of law.

Notice of motion was issued to the respondent in this case.

Mr. Ashok Aggarwal, learned Advocate has put in appearance

on behalf of the respondent and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that in the present case, complaint has been filed by Vinod Gupta against Amar Chand Amar, Satish Chand Amar, Prem Chand Amar, Suresh Chand Amar and Vikram Jain under Section 156 (3) Cr.P.C. mainly stating that the complainant and accused Nos.1 to 4 are the step brothers. Father of the complainant has two wives. Accused No.1 to 4 were born from Smt. Premwati, whereas the complainant and his brother and sisters, namely, Vimal Chand, Madhu Gupta and Beena Aggarwal were born from Sheela Devi-second wife. As per the allegations grand-father of the complainant and accused Nos.1 to 4, namely, Shri Shyam Lal had two sons, namely Harish Chander and Bhermanand. Bhermanand remained unmarried during his lifetime. Shyam Lal partitioned his property between his two sons, namely, Harish Chander and Bhermanand in the year 1959. Accused Nos.1 to 4 fraudulently and dishonestly got transferred the property left by Shyam Lal in their favour without impleading Harish Chander and complainant, his brother and sister as a party. It is also stated that a civil suit was filed which was pending before the Court. The Court made it clear that if they alienate any property, they shall make a clear recital in the deed to the effect that the litigation regarding property is pending before the Court. It is also stated that accused No.1 in connivance with accused No.2 and 3 transferred the property by way of gift deed in the name of accused No.3. The parties to the civil suit

did not mention about the litigation thus they have committed cheating and forgery.

A perusal of the FIR itself shows that civil litigation is pending and order has been passed by the civil Court in this matter and the civil Court even did not restrain the accused from alienating the property. Rather, the only condition was that if they alienate any property, they shall make a clear recital in the deed to the effect that the litigation regarding property is pending before the Court, which means that accused No.1 had a right to alienate the property and he has only violated the order of the Court by not mentioning that litigation regarding the property is pending before the Court. For this violation of the Court order, accused No.1 is liable under the provisions of Order 39 Rule 2A C.P.C. The effect of this transfer by accused No.1 in favour of accused No.3 is at the most only that the doctrine of *lis pendens* under the civil law will apply and accused No.3 will be debarred from taking the plea of bona fide etc.

In no way, the perusal of contents of the FIR shows that it amounts to commission of offence under Section 420 IPC i.e. cheating. The registration of the FIR in the present case against the petitioners is nothing but an abuse of process of law and amounts to miscarriage of justice.

Therefore, keeping in view the facts and circumstances of this case, this petition is allowed and criminal complaint No.1363 dated 20.10.2007 titled as “Vinod Gupta v. Amar Chand Amar and others” filed under Sections 406, 418, 420, 120-B IPC (Annexure-P.1), summoning order dated 7.11.2009 (Annexure-P.2) passed by learned Additional Chief Judicial

Magistrate, Faridabad, summoning the petitioners to face the trial under Section 420 IPC and all subsequent proceedings arising out of the same are hereby quashed.

November 16, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No