

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

CRM M-5880 of 2016

Date of Decision: February 18, 2016

Payal Bindal and another

.....Petitioners

Vs.

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.J.S. Bedi, Sr. Advocate with  
Mr. Lovekirat S. Chahal, Advocate  
for the petitioners.

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**M.M.S. BEDI, J.**

Petitioners Payal Bindal and her husband Sanjeev Kumar Bindal through instant petition under Section 482 Cr.P.C. seek quashing of FIR registered at Police Station Zirakpur under Sections 420/ 120-B IPC and all the subsequent proceedings alleging that the FIR has been registered at the instance of one S.S. Dhanda claiming himself to be the President of Vishranti City, Zirakpur to the effect that partners of M/s Sai Apartments and Infrastructure have sold plots in Vishranti City on which number of persons had constructed houses and obtained electricity connection. In April, 2014, Parneet Kaur entered the colony on April 18, 2014 and

informed that plots have been wrongly sold to the complainant and other persons. She raised a fence on June 7, 2014 encircling the property.

Mr. J.S. Bedi, learned senior counsel for the petitioners has contended that the matter had been investigated by Berma Singh, SHO, Police Station City Zirakpur and reported that Directors of the Company have sold the land of Parneet Kaur which had been stayed, by giving khasra numbers of different roads. Later one, a SIT headed by Inspector Bhupinder Singh found the petitioners as innocent and he submitted his report vide annexure P-3 to the effect that petitioners Payal Bindal and Sanjeev Kumar Bindal are found innocent. Learned counsel for the petitioners has submitted that a second challan was again submitted against Sushil Bindal. The petitioners have learnt that prosecution agency has procured arrest warrants against the petitioners by SI Charan Singh by moving an application on which the Judicial Magistrate Ist Class, Dera Bassi vide order dated November 6, 2015 has issued arrest warrants of both the petitioners alongwith warrants of Hem Raj and Sumit as there was no stay by any Court against the arrest of the petitioners. Mr. Bedi, Senior Advocate appearing for the petitioners has submitted that that perusal of the FIR indicates that the petitioners have been involved in the case being the partners in the affairs of M/s Sai Apartments and Infrastructure but the various partnership deeds from 2010 to 2013 indicate that the petitioners are not the partners even though the brother of petitioner No.2, namely, Sushil Bindal is a partner. It was also argued that the petitioners themselves had purchased 8

plots in Vishranti City on June 3, 2013. Relying upon the charge-sheet under Section 173 (2) Cr.P.C. submitted qua the co-accused of the petitioners, it was argued by Mr. Bedi that the allegations of selling and handing over of the possession of the plots were against Sushil Bindal, Vishal Goyal, Hem Ram, Neha Sharma, Ajay Kumar etc. Statements under Section 161 Cr.P.C. of 20 witnesses were relied upon by Mr. Bedi to submit that petitioners have not been named by any witness of having accepted money on behalf of the partnership or having dealt with the affairs of the partnership. He had also relied upon the contents of CWP No. 14927 of 2015 in support of his contention that the petitioners are, directly or indirectly, not concerned with the affairs of any partnership firm as such as per the judgment of **State of Haryana and others Vs. Bhajan Lal**, AIR 1992 SC 604, no cognizable offence having been made out against the petitioners, the FIR deserves to be quashed.

I have heard learned counsel for the petitioners and carefully considered the contentions in context to the status of the investigation and report under Section 173 (2) Cr.P.C. The petitioners have not been challaned till date on the basis of the material forming part of the investigation.

Learned Senior Advocate has referred to the police proceedings recorded after the investigation to contend that challan under Sections 420/120B IPC has been filed against Neha Sharma and Vimal Kumar in the Court of Judicial Magistrate Ist Class. He further submits that Sushil Kumar

Bindal was also arrested on April 29, 2015 by SI Charan Singh. For investigation qua the remaining accused one SIT was constituted headed by SP and it was observed that after completing the investigation the remaining accused should be apprehended and thereafter a separate challan would be presented before the Court on the basis of said observations in the report under Section 173 (2) Cr.P.C.

When questioned as to what is the need for quashing of the FIR when the prosecution agency till date has not opted to present a challan against the petitioners, learned counsel for the petitioners has vehemently urged that on the basis of the allegations in the FIR, though the challan has not been presented against the petitioners but on the basis of some observations made during police proceedings in the police diary, an attempt is being made to arrest the petitioners. A reference has been made to the interim order dated November 6, 2015 passed by Judicial Magistrate Ist Class, Dera Bassi, issuing arrest warrants against the petitioners on the application of SI Charan Singh.

Since the prosecution agency has not presented a challan against the petitioners and they are not being tried on the basis of the FIR, the petition for quashing of the FIR appears to be premature.

I have considered the contention of learned counsel for the petitioners regarding the illegality of the application seeking arrest warrants against the petitioners and the orders of Judicial Magistrate Ist Class, Dera Bassi allowing the application. The appropriate remedy with the petitioners

would be to seek protection of their liberty by availing the remedy under Section 438 Cr.P.C. by approaching the Court of competent jurisdiction as per law.

Since as per contentions of learned counsel for the petitioners, the petitioners have not been arraigned as accused by presentation of challan but an attempt is being made to arrest them by seeking arrest warrants, as such there is an apprehension of arrest in the FIR, the petitioners may avail the remedy to seek protection of their life and liberty by availing the remedy under Section 438 Cr.P.C. In the present petition, the order of Magistrate dated November 6, 2015 has not been challenged on the ground that once the FIR qua the petitioners is quashed on the basis of the challan presented against the other accused, the petitioners would be entitled to all the consequential benefits.

I do not find that arguments convincing as a person against whom the prosecution agency has opted not to present challan cannot be treated as an accused until he is summoned as an accused by the Court or on the basis of any further investigation. The evidence collected against the co-accused of the petitioners cannot be considered to quash the proceedings qua a person who has not been challaned. It is natural consequence of non-existence of any evidence against a person that they have not been challaned. The petition for quashing of the FIR is premature and not maintainable.

Petitioners are relegated to the alternative remedy of protecting their liberty by challenging the order of issuance of warrants without the

petitioners having been challaned and the Magistrate having not taken cognizance as per provisions of Section 190 Cr.P.C.

Disposed of with the above directions at this stage.

February 18, 2016  
sanjay

(M.M.S.BEDI)  
JUDGE