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

Criminal Appeal No. S-1604-SB-2010

Date of decision: - 23.9.2017

Harkirat Singh Magat

.....Appellant.

versus

Rohit Thapar and another

.....Respondents

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. Rajiv Vij, Advocate for the petitioner (Legal Aid Counsel)

Mr. J.S. Lalli, Advocate for respondent No. 1.

ARVIND SINGH SANGWAN, J (ORAL)

Challenge in the present appeal is to an order dated 5.10.2009 vide which the Court of Additional Sessions Judge, Fast Track Courts, Ludhiana had dismissed an application filed by appellant- Harkirat Singh Mangat under Sections 195/340 Cr. P.C for proceeding against the accused under Sections 465/467/468/471 & 420 IPC and Section 109 IPC.

Before adverting to the facts of the case, it may be noticed that appeal was initially filed against respondent No. 1- Rohit Thapar and respondent No. 2- Inderjit Singh son of Ram Singh. This appeal was filed by the appellant in person and vide order dated 6.12.2011, on the oral request made by the appellant, particulars of respondent No.2-Inderjit Singh were deleted from the array of the parties and as such only respondent No.1-Rohit Thapar is the contesting respondent.

This Court vide order dated 24.4.2017, has also directed the High Court Legal Services Committee to nominate a panel counsel to plead the case on behalf of the appellant. Accordingly, Mr. Rajiv Vij, Advocate is appearing on behalf of the appellant.

Brief fact of the case as apparent from the lower Courts records are that appellant-Harkirat Singh Mangat has filed a suit for mandatory injunction against one Inderjit Singh son of Ram Singh to restore the possession of the suit land including the *brick kiln* etc.; for granting decree of declaration that the agreement/sale deed executed between the parties are liable to be cancelled and further a decree for damages qua the suit property was also prayed for. Appellant had also filed a criminal complaint against respondent No.2-Inderjit Singh under Section 420 IPC, which was pending before the Judicial Magistrate Ist class, Ludhiana.

Respondent No. -1 Rohit Thapar, Advocate was appointed as legal aid counsel to defend the defendant in that suit namely Inderjit Singh as the appellant- Harkirat Singh Mangat is an advocate practicing at District Courts, Ludhiana. During the pendency of the suit, a compromise was effected between the parties and on 18.3.2008, following statement was made before the learned trial Court: -

“ That on 18.3.2008, the appellant Harkirat Singh made the following statement in the Court of Sh. Kanwaljit Singh: -

I have taken the physical possession of the suit property as handed over by the respondent to me today. So , I withdraw all the proceedings pending in this Court in this case. However, I reserve my right for recovery of the amount against the defendant on the same cause of action as permitted by law.

RO & AC

Accepted

Sd/

Complainant

Sd/-Kanwaljit Singh

CJJD/18.3.08.

On the same date, the Judicial Magistrate Ist Class, Ludhiana passed the following order on 18.3.2008, allowing the appellant to withdraw the criminal

complaint: -

Present: - Complainant Harkirat Singh in person.

File taken up today as the matter has been compromised and other cases fixed for today have been withdrawn after compromise. Statement of complainant Harkirat Singh in this case also has been recorded whereby he has taken the physical possession of the property as handed over by accused to him today and he withdraw all the proceedings pending in this Court in this case. File be put up on 24.3.2008 as 22.3.2008 already fixed has been declared holiday.

Sd/- Kanwaljit Singh
JMIC/18.3.08.

Since the matter was compromised even in the civil suit, the Civil Court passed the following orders: -

“Present: - Plaintiff Harkirat Singh in person.

Sh. RohitThapar, Advocate counsel for defendant.

Both the learned counsel for the parties have stated that the matter has been compromised and defendant Inderjit Singh and his counsel RohitThapar, Advocate have suffered statement that as per the compromise, he has handed over the possession of the entire suit property to the plaintiff Harkirat Singh Mangat and as per the compromise, all the cases have been withdrawn. Plaintiff Harkirat Singh has also made a statement that he has taken the physical possession of the property as handed over by the defendant to him today and he withdraw all the proceedings pending in this Court in this case, however, he reserve his right for recovery of the amount against the defendant on the same cause of action as permitted by the Court. In view of the matter having been compromised and the statement s so recorded by both the parties, the present suit of the plaintiff and counter claim of the defendant and all the proceedings arising thereof are ordered to be dismissed as withdrawn. Plaintiff if so advise, is at liberty to initiate the recovery proceedings against the defendant on the same cause of action. File be consigned to record room.

Ludhiana.

18.3.2008

Sd/-
(Kanwaljit Singh)
Civil Judge (Jr. Division)
Ludhiana.

It has also come on record that appellant- Harkirat Singh Mangat has also got an FIR registered against respondent No. 2-Inderjit Singh under Section 384/34 IPC at P.S. Sahnewal. During the investigation, police recommended the cancellation report. Appellant-Harkirat Singh Mangat also filed a protest petition in which respondent No.2-Inderjit Singh was summoned under Section 384 IPC. Apprehending arrest, applicant-Inderjit Singh filed anticipatory bail application i.e., B.A. No. 413 dated 27.4.2005 through Rohit Thapar, Advocate who is respondent No. 1 and the same was disposed of on 23.1.2006 by the Court of Sh. S.P.Bangarh, Additional Sessions Judge, Ludhiana thereby granting anticipatory bail to Inderjit Singh with a direction to surrender before the trial Court. It may be noticed that during the pendency of this bail application, appellant had filed an application under Section 340 Cr. P.C. against respondent No. 1-Rohit Thapar. The operative part of this order reads as under: -

“12. The applicant has pleaded in his application the facts for his release on bail. Obviously, he has to plead that summoning order against him is false. Obviously, he has to plead that the police case registered against him was false. These pleas cannot make the application forged and fabricated one. Such, thus, being the situation, no direction can be given to the police to register case on the basis of facts stated by the applicant in his application for grant of bail. Even the Court is not required to enter into this controversy and need not make an enquiry on the facts mentioned in the application and such, thus, being the situation, the application under Section 340 Cr. P.C. of the respondent is devoid of merit and ought to be and is, hereby, dismissed. An application has been moved by respondent for taking action against the applicant and his counsel under the Contempt of Courts Act. Again this application is meritless as the applicant by taking pleas in this application and by engaging an Advocate for seeking grant of anticipatory bail cannot be held liable for contempt of Courts Act.”

Appellant- Harkirat Singh Mangat challenged the order of withdrawal of criminal complaint by way of filing the criminal revision i.e. **Criminal Revision No. 34 of 6.9.2008, Harkirat Singh Mangat vs. Inderjit Singh**, before the Additional Sessions Judge(A) cum Fast Track Court, Ludhiana and the said revision was dismissed by the Court vide order dated 17.2.2010 the Court held as under: -

9. In this respect, it is suffice to say that the petitioner had made categorical statement in the Court that he had taken physical possession of the suit property as handed over by the defendant to him today, so he withdraw all the proceedings pending in the Court in this case. He had reserved his right for the recovery of the amount against the defendant on the same cause of action as permitted by law. The perusal of the statement of the petitioner shows that he had withdrawn all the proceedings pending in the Court in this case. The title of this very complaint is mentioned in the statement of Shri Harkirat Singh complainant. He had duly accepted and signed his statement made in the Court on 18.3.2008. In such circumstances, it is apparent from his statement that he had withdrawn the present complaint. Even the complaint filed under Section 420 IPC by the complaint could be withdrawn without any application for getting permission to compound the offence. He himself had withdrawn the present complaint. It is also not out of place to mention that the complainant himself is an advocate and he signed on his statement after admitting the same to be correct. He did not raise any such objection which has been argued in this revision petition when he made statement in the Court. He rather mentioned the word "Accepted" under his signature on 18.3.2008 when his statement was recorded in the Court. Accordingly, the petitioner is also estopped by his act and conduct from arguing this fact at this stage. The facts of the authorities submitted by the learned counsel are quite distinguishable from the facts of the case in hand. It is a case of withdrawal of the complaint as per statement of the petitioner. Moreover, the detailed reason has also given by the petitioner

himself in his statement in which he stated that physical possession of the property has been handed over by the accused to him today i.e. 18.3.2008. The perusal of the order dated 18.3.2008 passed by the learned lower court also shows that the matter had been compromised and the other cases fixed for today have been withdrawn after the compromise. This order shows that other cases were also pending in that Court and it is on account of this reason that in the statement of the petitioner recorded on 18.3.2008 'Plaintiff/applicant/complaint' has been mentioned. If under the signatures of the Magistrate the word 'CH(JD)' is mentioned that does not lead to any inference that statement of the petitioner was recorded in a civil suit. The statements of the petitioner was recorded in all the cases and it was on account of this reason that the word 'Plaintiff/applicant/complainant' was recorded against the name of the petitioner. Accordingly, the fact remains that the complaint was withdrawn after taking physical possession of the property from the respondent and thus the order passed by the lower Court cannot be held to be illegal. No ground is made out to interfere in the order passed by the learned lower Court and the same is thus affirmed.

In view of the above discussion, there is no merit in the present revision petition and the same is dismissed. Lower Court file be returned. File of this Court be completed and consigned to record room."

During the pendency of the civil suit, appellant- Harkirat Singh Mangat preferred an application under Section 340 Cr. P.C to proceed against respondents under Sections 191, 192, 193, 199, 200, 196, 467, 468 and 471 IPC read with Section 109 IPC. The said application was dismissed by the Additional Chief Judicial Magistrate, Ludhiana on 6.4.2004. This application was contested by respondents vide impugned judgment dated 5.10.2009 and the Additional Sessions Judge cum Fast Track Court, Ludhiana dismissed the said application. While dismissing the same, the Court held that the in the present appeal,

respondents as a genuine document.

Appellant also challenged the order passed in the civil suit, vide which he had withdrawn the civil suit by filing **Civil Revision No. 544 of 2011** titled as **Harkirat Singh Mangatvs. RohitThapar and another.** The said revision was dismissed on 27.1.2011. The operative part of this judgment is reproduced below: -

“6. On asking of the Court the petitioner has submitted that he has actually taken possession of the property and that he does not seek a decree either for recovery of the possession or for possession of the property in dispute. He claims that he has got no grievance against the order dated March 18,2008 disposing of his suit on the basis of his statement abandoning part of the claim but his grievance is that the word used “dismissed” in the order dated March 18, 2008 would prejudice his right of recovery of the money due from the defendants.

7. After hearing the petitioner in person, I am of the opinion that the order dated March 18, 2008 had been passed on the basis of the statement made by the petitioner abandoning part of his claim and withdrawing his suit. It is clarified that the order dated March 18, 2008 does not affect the liberty of the petitioner to institute a suit in respect of the claim which he had not withdrawn i.e. damages or recovery. The user of word “dismissed” qua the part of the claim will not hamper his right to recover the amount due from the defendant- respondents, if any, subject to the law of limitation and the law of Court fee. It is made clear that in case the plaintiff- petitioner opts to review his suit for the claim not abandoned by him i.e. for recovery, he would be entitled to adjust the Court fee affixed by him for recovery of damages in his suit earlier filed. It will be open to the plaintiff- petitioner to avail the other legal remedies available to him in accordance with law. Disposed of with the above clarification.”

Learned counsel for the appellant has submitted that both respondents i.e. respondent No. 2-Inderjit Singh and his counsel, respondent No.

1-Rohit Thapar have made false statements and initiated false proceedings before the civil Court where he has filed the suit for mandatory injunction.

It is, thus, submitted that impugned order dated 5.10.2009 has been passed without appreciating the provisions of Section 340 Cr. P.C., as both the respondents have submitted false pleadings before the trial Court and have submitted the forged document.

On the other hand, learned counsel for respondent No. 1 submits that present appeal is liable to be dismissed. Appellant has already deleted respondent No. 2-Inderjit Singh from the array of respondents vide order dated 6.12.2011. It is further submitted that respondent No. 1 is only an advocate who was defending the said Inderjit Singh-respondent No.2 in the proceedings against the appellant and appellant who himself is an advocate on account of professional rivalry and to prevent him from defending the case of said Inderjit Singh-respondent No.2, who has filed the said false application.

Learned counsel for respondent No. 2 has further drawn reference to order dated 8.9.2015 passed in **CRM-M-14399-2010** titled as **Harkirat Singh Mangat vs. Inderjit Singh and another.** He further submits that appellant is in the habit of making similar applications and in one of such applications, filed against Inderjit Singh and others, before the Additional Chief Judicial Magistrate, Ludhiana, the same was dismissed on 6.4.2004 and the appeal filed before the Additional Sessions Judge cum Fast Track Court was dismissed vide order dated 5.10.2009. Appellant has filed another **CRM-M-14391-2010, Harkirat Singh Mangat vs. Inderjit Singh and another** before this Court, challenging the aforesaid orders and vide a detailed judgment, this Court dismissed the petition

by observing as under: -

“39. Further, in the present case, since the suit itself, is alleged to have been compromised alongwith other proceedings, in terms of the statement allegedly made by the petitioner/his counsel dated 18.03.2008 (against which the petitioner has filed Civil Revision No.544 of 2011), no adjudication took place as to who was actually in possession of the suit land, at any given point of time. Thus, if the suit eventually came to be decided against the petitioner, then by the reasoning given by the petitioner, in the present proceedings, he can be prosecuted under Section 340 Cr.P.C., with the same allegations with regard to the commission of offences for which he seeks to proceed against respondent Inderjit Singh/ his lawyers.

40. The next aspect on that reasoning would then be, that if any party loses a suit before the trial Court, then at that stage the losing party be proceeded against under Section 340 Cr.P.C., for having made some false statement in the pleadings. Then, if on appeal, the judgment is reversed, would it mean that the proceedings under Section 340 Cr.P.C., be reversed and the party losing in appeal, be proceeded against? If the petitioners' reasoning is to be accepted, it could actually lead to the above given scenario.

41. No doubt, an ideal situation is that each party should admit the correct position before the Court. If that were so, possibly there would be no need for any dispute redressal mechanism, with the disputes getting settled amongst parties themselves, outside Court. Unfortunately, society has not reached that level of a utopian society and as such, to proceed against every person denying or affirming a fact in pleadings, which is eventually proved or disproved before the Court, would mean never ending criminal litigation.

However, to repeat, if the nature of the denial or affirmation, is of such a nature that calls for proceedings under Section 340 Cr.P.C., obviously the Court would not hesitate in continuing such proceedings.

42. In the present case, with nothing having been proved in the civil suit and further, in view of the nature of the facts to be proved, with regard to possession at a particular point of time, the proceedings initiated by the petitioner, would not be

sustainable, in the opinion of this Court, at least at this stage, where the facts pleaded by the parties, in the civil suit, not having adjudicated upon, one way or another, in view of the statement (allegedly) recorded on 18.03.2008. Thus, having found no material, to proceed against respondent Inderjit Singh, under Section 340 of the Cr.P.C., there would, obviously, be no reason to proceed against his lawyer in the trial Court, who remained as a respondent in the array of parties before this Court, after deletion of the names of SarvshriRohitThapar and Dharamvir Sharma. Further, with no forged document having been specifically shown to this Court, as was contended by the learned counsel for the petitioner, there is no reason to continue the proceedings under Section 340 Cr.P.C. against him. Yet, it needs to be mentioned again, that the real grievance of the petitioner, as was repeated by him on almost every occasion that he appeared before this Court, was that his litigation was shown to have been wrongly compromised in the order of the Civil Court dated 18.03.2008. That to again repeat, is not the order challenged in these proceedings, it being subject matter of Civil Revision No.544 of 2011; nor, in fact, could it have been the order giving rise to the present proceedings, which were initiated vide an application moved by the petitioner under Section 340 Cr.P.C. on 08.09.2003, i.e. 4 ½ years before the order dated 18.03.2008.

43. In view of the above, I find no reason to reverse the judgments of the learned Additional Chief Judicial Magistrate, or of the learned appellate Court. Consequently, this petition is dismissed.

44. The effort and labour put in by Mr. ShekharVerma, the learned Amicus Curiae, in going through the lower Courts' record, is highly appreciated.”

It is further submitted by learned counsel for respondent No.1 that the order dated 5.10.2009 is the similar order to the impugned order dated 5.10.2009 which has been now challenged in the present appeal. It is also submitted on behalf of respondent No. 1 that there is no evidence on record to show that the respondent has forged any document or used the same as

a genuine document.

After hearing learned counsel for the parties, I find no merit in the present appeal.

A careful perusal of the lower Courts records as well as the paper book show that nothing has been proved on record that respondent No. 1-Rohit Thapar has forged any document or used the same as a genuine. In the earlier proceedings, the appellant has admitted that he has taken the possession of the property in dispute in pursuance to the statement dated 18.3.2008. More so, once, the appellant has opted not to proceed against respondent No. 2-Inderjit Singh by deleting his name, there is no material to proceed against respondent No. 1-Rohit Thapar, Advocate who represented the said Inderjit Singh in the trial Court. The primary grievance of the appellant was that the order dated 18.3.2008 was wrongly passed as there was no compromise but the said order was challenged by him by way of filing the **Civil Revision No. 544 of 2011** and the same was dismissed vide order dated 27.1.2011. Therefore, an application filed under Section 340 Cr. P.C. much after against the respondent No. 1 who was only defending the case of respondent No. 2-Inderjit Singh as an Advocate before the trial Court is rightly dismissed by the lower Appellate Court.

In view of above, finding no merit in the present petition, same is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

23.9.2017
preeti

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No