

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1649 of 2015

Date of Decision: September 29, 2017

Naresh Behal

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:Mr. Jagdish Manchanda, Advocate
for the petitioner.

Mr.Naveen Sheoran, Deputy Advocate General, Haryana
Respondent No.2-Sunil Gupta, complainant in person

ARVIND SINGH SANGWAN, J.

Petitioner-Naresh Behal has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No. 186 dated 7.4.2011, under Sections 406, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 ('IPC' for short), registered at Police Station Sector 7, District Faridabad (Annexure P1).

Brief facts of the case are that the respondent No.2-complainant-Sunil Gupta filed a criminal complaint before the trial Court which was sent to the Police for investigation. As per the complaint, the complainant was working as a property dealer and one Suresh Rathi

contacted the complainant for purchase of an industrial plot. The complainant had talked with the petitioner-accused No.3, who is also a property dealer, for the purchase of a plot. The petitioner took the complainant to the house of Pushpinder Verma, accused No.1, who told that Ranjan Kashyap is the real owner of the plot, and he has given him the right to deal with the aforementioned plot. The conveyance deed was in the name of M/s R.R. Enterprises and accused No.1-Pushpinder Verma told that accused No.2-Ranjan Kashyap is the proprietor of the said firm. It was further informed that the original registry is with the Punjab National Bank and, therefore, the deal was effected for a total amount of ₹ 3.85 crore on 12.2.2010 and on that day, an amount of ₹ 1,00,000/- was paid by the complainant to accused No.1 as token money. Therefore, accused No.1-Pushpinder Verma took ₹ 9,00,000/- from the complainant on 2.3.2010 against a receipt in which there are signatures of Dharampal as a witness. On the asking of the complainant and abovesaid Suresh Rathi, accused No.1 demanded ₹15,00,000/- which were paid on 5.3.2010 to accused No.1 Pushpinder Verma in the presence of accused No.3-Naresh Behal i.e. the petitioner. Accused No.2-Ranjan Kashyap issued a receipt dated 5.3.2010 and the petitioner signed the said receipt as a witness. In the receipt, the reference of the plot and the total amount was given. It is further set up in the FIR that the complainant, thereafter, asked accused No.1 for a meeting with the original owner and the aforesaid Pushpinder Verma asked them to reach in the Office of the Madhu Ladha C.A. On reaching there, Pushpinder Verma got introduced complainant and Suresh Rathi with Ranjan Kashyap, who was stated to be the real owner of the property.

Thereafter, the amount of ₹50,00,000/- (i.e. ₹35,00,000/- by cash and ₹15,00,000/- by way of two cheques) was paid to Ranjan Kashyap as a witness. The deal was set up for ₹ 3 crore 85 lakhs. However, Pushpinder Verma later on demanded ₹4.05 crore. Another amount of ₹35,00,000/- was paid to Pushpinder Verma against a receipt dated 25.3.2010 under the signatures of Ranjan Kashyap and the complainant signed as witnesses. ₹ 10,00,000/- were paid on 19.4.2010 in cash to Pushpinder Verma and a receipt witnessed by Dharampal was issued. Later on, the accused persons, in order to grab the amount taken from Suresh Rathi and complainant, have committed the offence of cheating as the plot was mortgaged with Punjab National Bank. The Police, thereafter, registered the FIR.

This petition was filed in the year 2015 and later on, respondent No.2- Sunil Gupta, was impleaded as a party vide order dated 1.10.2015. Respondent No.2 appeared in person on 2.5.2016 and submitted that he wanted to argue the matter himself. Thereafter, respondent No. 2 as well as the State of Haryana have filed their respective replies. Today, respondent No.2 is again present in person and has submitted that he wants to make the submission in person.

All the accused persons filed anticipatory bail applications and during the pendency of the anticipatory bail application filed by Ranjan Kashyap bearing No. CRM-M-31000 of 2012 which was taken up along with CRM No. M-27426 of 2012 filed by the petitioner, a settlement was arrived at between the parties and it was observed by this Court vide order dated 12.4.2013 that a compromise has been effected for a total sum of ₹ 1,03,33,000/- and the accused have handed over the additional amount of

₹16,33,000/- as on 12.4.2013. Two cheques amounting to ₹ 8,00,000/- and ₹ 8,33,000/- lacs were handed over to the learned counsel appearing for the complainant. While disposing of these petitions, this Court has passed the following order on 4.7.2013:-

“The complainant, present in person in Court today, states that Rs.15,00,000/- was given by him to Pushpinder Verma and the present petitioner jointly, though the receipt for the same was only signed by the present petitioner, Naresh Behal . However, definitely Rs.1,11,00,000/- plus have been received back by him, as already noticed in Crl.Misc. No. M-31000 of 2012. Obviously, the Rs.15,00,000/- admitted to have been given to the present petitioner by the complainant have been returned.

In view of the above, I deem it appropriate to confirm the interim bail granted to the petitioner by this Court on September 07,2012, also. He would execute fresh bail bonds and surety bonds, to the satisfaction of the trial Court.

Both the petitions are disposed of accordingly.”

It is, thus, submitted on behalf of the petitioner that on 4.7.2013, while confirming the anticipatory bail application filed by the petitioner, this Court has observed that the complainant (who is now respondent No.2) stated that ₹ 15,00,000/- were given by him to Pushpinder Verma and petitioner-Naresh Behal was only a signatory on the receipt. It was also observed that admittedly, this amount has been given back to the complainant by the present petitioner i.e. Naresh Behal as is evident from the order dated 4.7.2013 .

Learned counsel for the petitioner has submitted that the other two co-accused have filed CRM-M-16938-2012 praying for quashing of the FIR. Similarly, Ranjan Kashyap has filed CRM-M-31059-2013 claiming the similar relief. During the pendency of the aforesaid petitions, a compromise was effected and the respondent-complainant on receiving the amount as per the settlement made in the compromise, FIR qua Pushpinder Verma and Ranjan Kashyap was quashed vide order dated 27.10.2014 (Annexure P4) which reads as under:-

“ By way of common order, I shall dispose of the present petitions, arising out of the same FIR, under Section 482 of the Code of Criminal Procedure, for quashing of FIR No.186 dated 07.04.2011, registered under Sections 420, 406, 467, 468, 471 and 120-B IPC, at Police Station Sector-7, Faridabad, and all consequential proceedings arising therefrom.

The learned counsel for the petitioner(s) state that the as per FIR, the total transaction was for Rs. 1,20,00,000/-. However, the parties entered into a compromise dated 13.06.2011 (Annexure P-2) whereby Rs. 1,03,33,000/- was settled to be given by the petitioner(s) in lieu of full and final settlement. In pursuance to the settlement as against the total liability i.e. settled amount, an amount of Rs. 1,11,33,000/- has already been paid till date. Apart from the above amount of Rs.1,11,33,000/- , cheque and draft totalling Rs.5,50,000/- was handed over to the complainant in the Court on 07.10.2014, which have already been encashed by the complainant and in pursuance of order dated 07.10.2014, petitioner Pushpinder Verma

got prepared a demand draft of Rs. 50,000/- before the trial Court but the complainant/respondent No.2 refused to accept the same.

The learned counsel for petitioner(s) have handed over demand drafts of Rs. 50,000/- each today in the Court to learned counsel for the respondent No.2/complainant. The learned counsel for respondent No.2/complainant, on instruction, states that complainant will be bound by the terms & conditions of the compromise and shall make statement before the Court of Addl.Sessions Judge, Faridbad in the matter under Section 138 of Negotiable Instrument Act between Pushpinder Verma and complainant on the next date of hearing.

Heard.

The parties have compromised the matter which is duly acknowledge by their respective counsel. Affidavit of complainant respondent No.2, is already on record. In view of the above and the law laid down by Hon'ble the Supreme Court, in 'Gian Singh Vs. State of Punjab and another', 2012(4) RCR (Criminal) 543 and Narinder Singh Vs. State of Punjab, 2014 (6) SCC, 466, this Court feels that no purpose would be served in keeping the proceedings alive.

Accordingly, the present petitions are allowed. FIR No.186 dated 07.04.2011, registered under Sections 420, 406, 467, 468, 471 and 120-B IPC, at Police Station Sector-7, Faridabad and all consequential proceedings arising therefrom are hereby quashed qua the present petitioners Pushpinder Verma and Ranjan Kashyap.”

It is, thus, submitted that the petitioner, who was only an attesting witness, to a receipt of ₹15,00,000/- dated 5.3.2010, the amount which has

already been received by the respondent-complainant, as noticed by this Court in the order dated 4.7.2013, nothing is left due against the petitioner in view of the compromise arrived at between the complainant and the two co-accused Pushpinder Verma and Ranjan Kashyap qua whom the FIR has already been quashed.

It is also submitted on behalf of the petitioner that a perusal of the FIR shows that the only role attributed to the petitioner was that he introduced the complainant with Pushpinder Verma and petitioner had paid the entire amount to Pushpinder Verma on different dates against the receipts and petitioner never received any amount from the complainant. The only allegation against the petitioner in the FIR is that he was an attesting witness to receipt dated 5.3.2010 vide which accused No. 1 Pushpinder Verma received the amount of ₹15,00,000/- and, thus, no offence is made out against the petitioner.

On the other hand, the learned State Counsel, on the basis of the reply filed by the Assistant Commissioner of Police, Ballabgarh stated that on 5.3.2010, the complainant gave ₹15,00,000/- to Pushpinder Verma in the presence of Naresh Behal-petitioner and a receipt was issued and the petitioner signed the said receipt as a witness. The factum of compromise between the complainant, on one hand, and Pushpinder Verma and Ranjan Kashyap, on the other hand, is not denied in the affidavit.

In the reply filed by respondent-complainant by way of affidavit dated 11.8.2016 (which is in vernacular), it is submitted that the petitioner-Naresh Behal got the aforesaid deal of the industrial plot which was sealed by the Excise and Taxation Department and the petitioner has witnessed a

receipt of ₹15,00,000/- which they have distributed with each other and deal could not be matured. It was also submitted that no compromise is effected between the complainant and petitioner-Naresh Behal and he is facing the agony of litigation for the last seven years.

After hearing the learned counsel for the parties and respondent No.2, who appeared in person, I am of the opinion that the present petition deserves to be allowed for the following reasons:-

(a) A perusal of the FIR shows that the petitioner is only a witness to receipt dated 5.3.2010 vide which the complainant paid ₹15,00,000/- to co-accused -Pushpinder Verma, It is not stated in the FIR that the petitioner is a beneficiary of the said receipt.

(b) A bare perusal of the FIR further shows that in the entire dealing of the complainant with Pushpinder Verma and Ranjan Kashyap, no amount was paid by the complainant to the petitioner.

© In the anticipatory bail application filed by the petitioner in CRM-M-27426-2012, this Court, on the statement of respondent No.2-complainant, has observed as under:-

“The complainant, present in person in Court today, states that Rs.15,00,000/- was given by him to Pushpinder Verma and the present petitioner jointly, though the receipt for the same was only signed by the present petitioner, Naresh Behal . However, definitely Rs.1,11,33,000/- plus have been received back by him, as already noticed in CrI.Misc.No.M-31000 of 2012. Obviously, the Rs.15,00,000/- admitted to have been given to the present petitioner by the complainant have been returned.”

Therefore, the complainant has not denied that he has received an amount of ₹15,00,000/-

(d) The main accused- Pushpinder Verma and Ranjan Kashyap have already compromised the matter with the complainant and, as per the compromise dated 13.6.2011, which forms part of the order dated 4.7.2013 noticed above, the said accused persons have paid a total amount of ₹1,11,33,000/- and amount of ₹5,50,000/- and a demand draft of ₹50,000/-. Accordingly, on the statement of the complainant, FIR qua Pushpinder Vema and Ranjan Kashyap was quashed.

(e) In view of the fact that the FIR against the co-accused have already been quashed on the basis of compromise and the payment having been made to the complainant, no purpose will be served for continuing with the prosecution of the present petitioner.

The Apex Court in the case of State of Haryana vs. Bhajan Lal 1992 Supp(1) Supreme Court Cases 335, has held that where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice and that though it may not be possible to lay down any precise clearly defined and sufficiently channelised and inflexible guidelines or rigid formule and to give an exhaustive list of myriad kinds of cases.

Accordingly, this petition is allowed. FIR No. 186 dated 7.4.2011,

under Sections 406, 467, 468, 471 and 120-B IPC registered at Police Station Sector 7, District Faridabad (Annexure P1).qua petitioner-Naresh Behal is, accordingly, quashed.

(ARVIND SINGH SANGWAN)
JUDGE

September 29 , 2017
arya

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No