

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

CRM-M-21472-2016 (O&M)

Date of decision: 30.08.2017

Jaspal Singh and another

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Rohit Kapoor and Mr.Gaurav Mannan, Advocates
for the petitioners
Mr.C.L.Pawar, Senior Deputy Advocate General, Punjab
Mr.Akshay Bhan, Senior Advocate with
Mr.Maharaj Kumar and Mr.Aman S. Talwar, Advocates
for respondent Nos.4 to 9
Mr.Atul Yadav, Advocate for respondent Nos.10 to 12

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

Petitioners have filed this petition under Section 482 Cr.P.C. with a prayer that the official respondents may be directed to take appropriate action on the complaint dated 21.12.2015 (Annexure P8) and dated 6.6.2016 (Annexure P9) filed by the petitioners and to register an FIR under Sections 420, 406, 467, 468 read with Sections 34 and 120-B IPC and other provisions against the accused persons mentioned therein and to investigate the matter.

It comes out that earlier the matter was disposed of by a Co-ordinate Bench of this Court at the motion stage vide order dated 17.6.2016, directing the respondents to act on the complaint given by the petitioners dated 21.12.2015 (Annexure P8) to respondent no.2, which was endorsed to respondent no.3 and register the case against the persons mentioned in para 20 of the petition and investigate the matter in a fair

manner.

Aggrieved by the said order, M/s Paras Buildtech India Private Limited and others, who were adversely affected by the order filed Special Leave Petition (Crl.) No.5211 of 2016 before the Apex Court objecting to the ex-parte order passed against them without hearing them. The Apex Court vide order dated 6.1.2017, set aside the said order with the following directions:-

Having heard learned counsel for the parties, we allow the special leave petition, set aside the impugned order and request the High Court to hear both the parties and express an opinion in accordance with law with regard to the registration of the F.I.R. Be it noted, we have not expressed any opinion on the merits of the case, for we have only set aside the order as it was passed ex-parte without hearing the petitioner herein.

Needless to say, if any F.I.R. has been registered on the basis of the order passed by the High Court, which has been set aside, the same shall be struck off. We may hasten to clarify that our direction for striking off F.I.R. Will not be treated as an expression on any opinion on the merits of the case. We have so stated to dispel the apprehension expressed by Mr.Kapoor, learned counsel appearing for the respondent nos.4 and 5.

This is how the petition has been again put up before this Court. Notice was issued to all the respondents. They have put in appearance and filed written reply putting forward their side of the case.

The short facts which are required to be noticed for the purpose of disposal of the present petition are that the petitioners are the owners of land measuring 35 kanal 16 marla situated in the revenue estate of Zirakpur, Tehsil Derabassi, District SAS Nagar, (Mohali) Punjab. M/s Paras

Buildtech India Private Limited – respondent no.4 through its Director Harender Nagar approached the petitioners to develop the said land for the purpose of construction of commercial complex and a hotel thereupon. Accordingly, an agreement dated 9.6.2005 was executed between the parties. It comes out that the developers leased out the parking space to M/s Tycon Events and Promotions Private Limited on the monthly rent of Rs.2,25,000/-. Admittedly, from the said rent, 42% share was to go to the petitioners. Later on, M/s Paras Buildtech India Private Limited – respondent entered into an addendum dated 25.8.2008/ 30.8.2008, without informing the petitioners whereby said M/s Tycon Events and Promotions Private Limited was to invest Rs.1 crore 50 lakhs on the equipment, machinery etc. and in consideration thereof licence fee of Rs.2,25,000/- per month was waived. It appears that a dispute arose between the parties and the matter was settled by way of compromise dated 23.9.2009, whereby 58% share of the developers i.e. M/s Paras Buildtech India Private Limited and 42% of both the petitioners in equal share was maintained. The collaboration agreement is Annexure P2.

Deed of compromise dated 23.9.2009 (Annexure P1) was executed between the parties, which was followed by collaboration agreement dated 23.9.2009 (Annexure P2), in which the petitioners were to get 42% share of all the floors of commercial complex including multiplex and hotel along with internal and external parking space, proportionate share in the land underneath and along with roof rights. Similarly, 58% share were also given to the developers. It was further agreed that the maintenance service in the complex will be taken by the developers either themselves or through the maintenance agency for which the parties on

which charge having a reasonable nexus on the cost incurred will be payable by each commercial owner of the commercial complex and hotel. Owners are not liable to pay any maintenance charges till the allocated portion to them is leased out or maximum by two years of the date of allocation and after the lease, the same shall be paid by the lessee and not by the owners. Regarding the parking space, it was agreed that the said agreement with M/s Tycon Events and Promotions Private Limited shall be replaced by the same terms and conditions and the lease money as per contract agreement shall be payable by the lessee directly to the owners and developers as per their share i.e. 42% to the owners and 58% to the developers. It was further agreed that common area internal and external for setting of kiosk, advertisement board, electronic board, signage's antenna on roof and right to electronic media shall be given to any company or individual and the developers have right to negotiate and finalize with them and inform the first party i.e. owners and after their verbal or written consent, contract agreement of lease or rent shall be executed jointly by the owners as well as developers. In the same also, owners will have 42% share and developers have 58% share which shall be directly paid by the lessee to the owners and the developers. A mention was also made about the allocation of kiosk and antennas to M/s HFCL Infotel Limited, M/s MX Foods Private Limited, M/s MX Foods Ventures Private Limited, Jindal Candy House and M/s Vodaphone, which was executed with the developers with the consent of the owner. The necessary lease/ rent/ contract has been signed and given to them by the developers. The said lease deeds are to be replaced with the new agreement, executed by the owners and the developers. The revenue from said agreement was also to be shared in the

proportion of 42% and 58% by the owners and the developers. Reference was also made to the certain lease. In this way, according to the petitioners, after the said agreement, all the new lease deeds or agreements were to be negotiated by the developers but executed jointly by the owners and the developers in favour of the lessee.

It is further claimed that M/s Paras RE Facilities Management Private Limited was the maintenance agency and the sister concern of M/s Paras Buildtech India Private Limited and having common Directors and common authorized signatories. The said M/s Paras RE Facilities Management Private Limited entered into an agreement with M/s Lion Manpower Solutions Private Limited without any authority from owners/petitioners and in order to cheat the petitioners, executed fresh agreement regarding the parking rights. They have also committed many irregularities after the passing of the judgment dated 22.12.2015 in FAO No.8629 of 2015. They have given the property in dispute to Toyota Company for display of cars at the Mall and the said sister concern i.e. M/s Paras RE Facilities Management Private Limited is receiving the entire revenue and depriving the petitioners of its 42% share.

Respondent nos.4 to 9 in the reply, have stated that the present petition is not maintainable. Equally efficacious remedy under Cr.P.C. is available. It is a purely civil dispute. The execution of agreement dated 25.8.2008 regarding parking rights with M/s Tycon Events and Promotions Private Limited and addendum dated 30.8.2008 was not denied. It was stated that the said agreement was terminated on 3.7.2015 regarding which arbitration proceedings have become final. It was further stated that the respondent company has handed over the operation, management and

maintenance of the mall to M/s Paras RE Facilities Management Private Limited as a maintenance agency. It has entered into an agreement with M/s Lion Manpower Solutions Private Limited. Respondents have executed GPA in favour of the petitioners. Developers had paid Rs.20,30,00,000/- (Twenty crores thirty lakhs only) to the petitioners in terms of the collaboration agreement. They have become greedy and cancelled the GPA on 13.7.2005. Therefore, the developers were constrained to pay another sum of Rs.1,30,00,000/- (one crore and thirty lakhs only) to the petitioners vide cheque dated 27.9.2008. Subsequently, an FIR was also registered on the complaint of the respondent no.4 on 6.5.2009 against the fraudulent cancellation of GPA and the matter was compromised on 23.9.2009 and fresh Special Power of Attorney and GPA were executed. It was further stated that the inquiry was conducted by the authorities into the complaint of the petitioners and it was found that the dispute is of civil nature. Hence, no criminal action is required. Respondent nos.7 and 8 have no role in the functioning of the company. Respondent no.7 ceased to be director in October 2015. Respondent no.8 was never a director. Respondent nos.5, 6 and 9 have not been attributed any role.

I have heard learned counsel for the parties and have also carefully gone through the file.

Admittedly, compromise deed/ agreement dated 23.9.2009 was followed by a fresh collaboration agreement (Annexure P2) with the director of M/s Tycon Events and Promotions Private Limited was executed by the developers and the owners. In this way, it was tripartite agreement under which 42% of the share of the petitioners was directly payable to them. Similarly, conditions were imposed regarding tripartite agreement

regarding common internal and external area for setting up of kiosk, advertisement board, electronic board, signage's antenna on roof and right to electronic media. The developers were authorized to negotiate but the final agreement was to be executed by owners and developers jointly and 42% share and 58% share of the same was directly payable to the owners and developers respectively by the lessee. The agreement with some other lessees were also replaced with fresh tripartite agreement in above noted terms. In accordance with the said understanding, a fresh tripartite memorandum of understanding, was executed by the owners and developers with the said M/s Tycon Events and Promotions Private Limited. Admittedly M/s Paras RE Facilities Management Private Limited is the sister concern of respondent no.4 M/s Paras Buildtech India Private Limited. M/s Paras Build Call Private Limited formerly known as M/s Paras Buildtech Private Limited, has the authorized signatory, who is the same i.e. Rajesh Kumar Tyagi. Directors namely Harinder Nagar and Neelam Nagar are also same. Though M/s Paras Buildtech India Private Limited has two more Directors, namely, Kunal Rishi and Saroj Sehrawat.

Now, if the grievance of the petitioners is examined. According to him, M/s Paras RE Facilities Management Private Limited, the sister concern of respondent no.4 was only maintenance agency and was not authorized to enter into an agreement regarding lease of the parking area or other area with anybody. Despite that a shoddy agreement regarding lease of the parking space was executed by M/s Paras RE Facilities Management Private Limited without the consent and knowledge of the petitioners. M/s Paras RE Facilities Management Private Limited being the maintenance agency has no right to enter into an agreement regarding parking area with

anybody. In the agreement dated 12.8.2015 (Annexure P6), the said M/s Paras RE Facilities Management Private Limited is mentioned as Pasas RE and M/s Lion Manpower Solutions Private Limited is mentioned as parking manager. Some of the contentious clauses are reproduced as under:-

2. Consideration

2.1 Paras RE shall pay management fee to the parking manager as 55% of 'the total monthly collections from the parking area or actual expense on the person deployed for the purpose of Parking Management service, whichever is higher on presentation of actual bill. The management fee shall be calculated at the end of the month on the basis of total revenue generated and shall be paid to the Parking Manager on quarterly basis.

2.2 Parking Manager shall be responsible to collect the parking charges from the commuters and shall deposit the same on daily basis with PARAS RE. This is agreed and undertakes by die parties that the payment terms may be changed any time during the currency of the agreement with mutual consent.

2.3 It is agreed that the Parking Manager shall collect from the cars Rs.20/- per entry on normal days and Rs.30/- per entry on holidays and from, two wheelers Rs.15/- per entry for all days. Any change in the above charges shall be made by Parking Manager after obtaining approval from PARAS RE Paras RE can declare any day as free Parking day at its sole discretion without obtaining any consent from the Parking Manager.

It is claimed that the said clauses are aimed at depriving the petitioners of 42% share in the said parking area. It is further claimed that M/s Paras RE Facilities Management Private Limited is a front company of M/s Paras Buildtech India Private Limited –respondent no.4 and is being used to deprive the petitioners 42% share directly payable to them from certain

facilities, including the parking area and that the agreement is without any authority. It is further stated that similar agreement was executed with one Toyota company for display of cars, regarding which a complaint dated 31.1.2016 (Annexure P10 (colly.)) was made. It is claimed that in the similar fashion the said method of using the front company i.e. M/s Paras RE Facilities Management Private Limited is used to deprive the petitioner 42% share, which would accrued to him on account of lease of the parking space etc. and that the said agreements are being executed without any authority. In this way, according to the petitioners, M/s Paras Buildtech India Private Limited through its directors has entered into criminal conspiracy with the other respondents by committing cheating, forgery and fraud.

Learned counsel for the petitioners has contended that agreement dated 12.8.2015 (Annexure P6) between M/s Paras RE Facilities Management Private Limited and M/s Lion Manpower Solutions Private Limited was ante-dated to avoid effect of status quo order passed by the civil Court and is a forged document. Civil suit was pending regarding the parking facility only.

Learned counsel for the respondents has vehemently argued that admittedly, civil suits are pending between the parties and that it is basically a civil dispute and arbitration award has already been passed between M/s Tycon Events and Promotions Private Limited and M/s Paras Buildtech India Private Limited, in which the present petitioners were also party. That award was regarding the termination of contract agreement of M/s Tycon Events and Promotions Private Limited. Learned counsel for the respondents has heavily relied upon the authority of Sakiri Vasu vs. State of U.P. and others, 2008(1) R.C.R. (Criminal) 393 delivered by the Apex

Court, in which, it was observed as under:-

*25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should **ordinarily refuse** to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).*

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

Therefore, it is pressed that the remedy lies in approaching the police under Section 154(3) Cr.P.C. or the Magistrate under Section 156(3) Cr.P.C. Reliance has also been placed on another authority in Lalita Kumari vs. Government of Uttar Pradesh and others, (2014) 2 Supreme Court Cases 1. Further reliance has been placed on the Division Bench of this Court in Renuka Chopra vs. State of Haryana and others, 2017(2)

R.C.R. (Criminal) 991. It is further contended that on the complaint of the petitioners, the police had conducted an inquiry and found that it is a case of civil nature. Opinion of District Attorney, SAS Nagar (Annexure R4/11) was taken who also opined that the case is of civil nature.

So far as inquiry of the complaint is concerned, police cannot conduct the investigation before registration of FIR. In *Lalita Kumari's case (supra)*, the Hon'ble Apex Court, observed as under regarding the inquiry:-

87. The term "inquiry" as per Section 2(g) of the Code reads as under:-

"2(b) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court."

Hence, it is clear that inquiry under the Code is relatable to a judicial act and not to the steps taken by the police which are either investigation after the stage of Section 154 of the Code or termed as "preliminary inquiry" and which are prior to the registration of FIR, even though, no entry in the General Diary/ Station Diary/ Daily Diary has been made.

Therefore, inquiry which is in the shape of investigation, before FIR is not permissible. If the police finds that cognizable offence is made out, the police has to register a case.

Now, coming to the powers of this Court. The authority in the case of *Sakiri Vasu*, makes it clear that ordinarily this Court is not to exercise the powers to order registration of case, which means that in exceptional cases, this Court can exercise powers under Section 482 Cr.P.C. to order registration of case. In the present case, the matter was considered earlier by Co-ordinate Bench of this Court, though the present private respondents were not heard and after hearing the case, the order was passed on 17.6.2016 by Co-ordinate Bench of this Court to register the FIR. It was

on account of the order passed by the Apex Court in the Special Leave Petition that the said ex-parte order, without hearing the petitioner i.e. respondent no.4 herein, has been set aside and this Court was directed to hear both the parties and express an opinion in accordance with law with regard to registration of FIR. It is not disputed that in pursuance to the order passed by this Court, FIR was already registered and in terms of the orders of the Apex Court, it stood struck off. It goes to show that this Court had already exercised the jurisdiction under Section 482 Cr.P.C. and the matter has been remanded for fresh hearing.

After going through the facts and circumstances, I am of the view that lot of cases are coming where there are agreement between land owners and the developers. Once, agreement is executed, the developers try to find way and means to deprive the land owners of the profits which accrued on account of the commercialization of the property. In the present case, M/s Paras RE Facilities Management Private Limited is the front company and sister concern of M/s Paras Buildtech India Private Limited. It had only the maintenance contract and without any consent or written agreement on behalf of the owners, they started giving contract and appropriating the revenue, by entering into agreement with various lessees for the parking space and other areas, which is contrary to the agreement arrived between petitioners and respondent no.4. The clauses of the agreement executed by M/s Paras RE Facilities Management Private Limited and M/s Lion Manpower Solutions Private Limited goes to show that a unique method was devised to cheat the petitioners by creating an agreement which has no consent or approval of the land owners and is not binding on them. The civil and criminal remedy can go side by side. The

present case also requires collection of evidence and its critical examination by investigating agency.

Therefore, I am of the view that it is a case where this Court should order registration of FIR. Consequently, I am of the view that a Co-ordinate Bench of this Court correctly exercised the jurisdiction on 17.6.2016 to order registration of FIR. The Hon'ble Apex Court had directed this Court to hear the respondents. After hearing the private respondents also, I am of the view that it is a case, which make out the cognizable offence and for the reasons recorded above, must be investigated by the police.

Consequently, the present petition is allowed and respondent nos.1 to 3 are directed to register a fresh FIR on the complaint dated 21.12.2015 (Annexure P8), followed by another complaint dated 6.6.2016 (Annexure P9) and investigate the same in accordance with law.

Before parting with the judgment, it is made clear that the observations made above are strictly for the purpose of disposal of the present petition and shall not be taken as an expression of opinion by this Court regarding civil dispute pending between the parties or regarding the merits of the complaint dated 21.12.2015 (Annexure P8) and complaint dated 6.6.2016 (Annexure P9). The police shall investigate the case and after investigation and collecting the evidence, it may come to its own conclusion without being influenced by the opinion expressed by this Court and present final report before the competent Court, expeditiously.

30.08.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No