

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

CRM-M No. 21747 of 2014 (O&M)

Date of Decision: 20.03.2017

Bachhittar Singh and others

-Petitioners

Versus

State of Punjab and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. T.P.S. Tung, Advocate,
for the petitioners.

Ms. Rimplejeet Kaur, A.A.G., Punjab.

Mr. G.S. Jagpal, Advocate,
for respondent No.4.

Mr. K.S. Kang, Advocate,
for respondent No.5.

RAJ MOHAN SINGH, J.

Prayer in this petition is for quashing of FIR No.55 dated 04.05.2013 under Sections 420, 465, 467, 468, 120-B IPC registered at Police Station Khamano, District Fatehgarh Sahib (Annexure P-1) on the basis of compromise.

The FIR was registered at the instance of respondent No.4.

On 07.12.2011, an agreement to sell was executed between petitioner No.2 and respondent No.4 in respect of the land. The sale deed was to be executed on the target date i.e. 12.12.2012. Petitioners came to know from Halqa Patwari that

respondent No.4 had executed a sale deed in favour of one Priya Shahi wife of Surinder Singh on 25.10.2012 and fraud was committed with the petitioner Gurmail Singh that despite executing agreement to sell in favour of petitioner No.2 on 07.12.2011, respondent No.4 sold the property to aforesaid Priya Shahi on 25.10.2012. A civil suit for specific performance is statedly pending where *status quo* has already been ordered vide order dated 12.11.2012. After about two months of the passing of the interim order by the Civil Court, a complaint was filed by respondent No.4 against the petitioners for registration of the case. Consequently, FIR No.55 dated 04.05.2013 came to be registered for the offences under Sections 420, 465, 467, 468, 120-B IPC, Police Station Khamano, District Fatehgarh Sahib.

During the course of arguments, it has been found that the sale deed dated 25.10.2012 executed in favour of respondent No.5 was also based on agreement to sell dated 23.05.2012 which was executed prior to the target date fixed in agreement to sell dated 07.12.2011. A compromise was effected between petitioners and respondent No.4 by virtue of which it was decided to get the FIR quashed.

Initially, the Court passed the order dated 07.07.2014 issuing notice of motion on the basis of compromise. Thereafter,

an application for impleading respondent No.5 was moved and on 05.12.2014, it was noticed that the parties had entered into a compromise.

Both the parties were directed to appear before the trial Court for recording their statements in the context of genuineness of the compromise in question. The trial Court was also directed to send a report to this effect before the High Court.

On 12.02.2015, following order was passed by this Court:-

“During the course of arguments, it transpires that though the matter has been compromised between Bachhittar Singh and Gurmail Singh accused on one side and Balbir Singh complainant on the other side, but the right, title and interest of Priya Shahi having come into existence on the basis of registered document dated 23.5.2012, the compounding cannot come into operation unless and until third party Priya Shahi affected by the transactions is not joined in the compromise.

Application for impleadment of Priya Shahi as respondent No.5 is allowed. Amended memo of parties is taken on record.

For consideration on the petition for quashing of FIR on the basis of compromise, adjourned to 23.3.2015, expecting that the rights of the affected party will be taken into consideration before final decision of the present petition.”

The application for impleading Priya Shahi as respondent No.5 was allowed. It was also noticed that right, title and interest of Priya Shahi-respondent No.5 have come into existence on the basis of registered sale deed dated 25.10.2012 based on agreement to sell dated 23.05.2012. The compounding of the offence cannot come into operation until and unless third party has not been joined in the compromise, therefore, application for impleading Priya Shahi was allowed and it was ordered that right of the affected party will also be considered before deciding the interest on the basis of compromise.

Thereafter, the case was adjourned on number of occasions. Respondent No.5 was averse of the compromise as there is no redressal of her grievance in the compromise.

On 19.09.2015, following order was passed by this Court:-

“There is a written request for adjournment made on behalf of learned counsel for respondent

no.5.

Learned counsel appearing for the petitioner states that on each and every date request for adjournment is being made by counsel for respondent no.5. He further states that the matter has been compromised and the statements of the parties have been recorded and respondent no.5 is a stranger and is delaying the matter.

Adjourned to 21.09.2015 for arguments.”

After securing presence of learned counsel for the parties, I have heard arguments of both the sides.

Evidently, vide order dated 12.02.2015, it was ordered by this Court that the compounding of the offence cannot come into operation until and unless third party affected by the transaction is not joined in the compromise.

Respondent No.5 being a third party has not appeared before the trial Court for recording her statement in the context of genuineness of the compromise. A report has been received from the trial Court to the effect that petitioners and respondent No.4 were agreeing to the compromise and compromise was found to be genuine to the extent of willingness of the petitioners and respondent No.4.

Learned counsel for the petitioners vehemently

submitted that the sale deed dated 25.10.2012 was a sham transaction as no consideration was paid to respondent No.4. Apparently, a civil suit for specific performance was pending consideration before the competent Court. It would be highly pre-mature to see anything that too in different jurisdiction.

Learned counsel for respondent No.4 has also submitted that since civil suit is pending, therefore, civil rights of respondent No.5 will be adequately adjudicated upon by the competent Court and there would be no impediment for quashing the FIR on the compromise.

Since, respondent No.5 was not the complainant in the FIR, therefore, the presence of respondent No.5 is just to pressurize the parties for illegal gain, otherwise, the interest of respondent No.5 would be adequately answered in the civil proceedings.

I have considered the submissions made at the bar.

The order dated 12.02.2015 passed by this Court is specific in nature wherein it was ordered that the compounding of the offence cannot come into operation until and unless third party affected by the transaction is not joined in the compromise. Presence of respondent No.5 was thought appropriate in the compromise proceedings. Since, respondent No.5 has opposed the compromise in question, therefore, the

compromise cannot be treated to be voluntarily recorded even on behalf of respondent No.5 as well.

In view of aforesaid, I am of the view that no quashing of FIR on the basis of compromise can be entertained in view of opposition made by respondent No.5. However, the parties are at liberty to avail their remedies in accordance with law.

Disposed of.

20.03.2017

jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No