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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-37617-2014 [O&M]
Date of Decision:- August 09, 2017

Joginder Singh and othersPetitioners

Versus

State of Punjab and another ... Respondents

2. CRM-M-39076-2014

Dharam Singh and othersPetitioners

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Inderjit Sharma, Advocate,
for the petitioners.

Mr. R.B.S. Chahal, Addl. AG, Punjab

Mr. Navkiran Singh, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

By filing above titled two petitions under Section 482 of Code of Criminal Procedure [Cr.P.C.], petitioners seek quashing of FIR No. 524 dated 18.12.2009 (Annexure P/1) registered under Sections 420, 406 and 120-B IPC at Police Station Civil Lines, Amritsar and all subsequent proceedings arising therefrom. Therefore, both these petitions are being disposed of by this common order.

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2 For facility of reference, facts are being taken from CRM-M-37617-2014. Petitioner No. 3, Harjit Singh son of Gurbachan Singh was owner in possession of plot measuring 1055.55 sq. yards, situated at Gumtala Colony, Tehsil and District Amritsar. Harjit Singh was residing in Dubai. His wife, Kashmir Kaur was staying in India and being attorney/representative of Harjit Singh entered into an agreement (Annexure P/2) of sale of plot measuring 1055.55 sq. yards on 16.1.2006 for a total sale consideration of Rs.24.00 Lacs in favour of Dharam Singh, petitioner. A sum of Rs.3.00 Lacs was paid by Dharam Singh as earnest money. Additional sum of Rs.3.00 Lacs was received on 5.4.2006 by Kashmir Kaur in the presence of witnesses. The target date for execution of sale deed was 21.08.2006. Harjit Singh himself assured Dharam Singh that his wife Kashmir Kaur was fully competent to execute the agreement and sale deed on his behalf. Demarcation of the plot was also conducted but area measuring 190 sq.yards was found to be less on the spot. Dharam Singh was ready to get the sale deed executed on payment of balance sale consideration, but Kashmir Kaur as well as her husband, Harjit Singh failed to execute the sale deed in terms of agreement, Annexure P/2, dated 16.1.2006. Legal notice dated 24.08.2006 was also issued, but to no effect.

3. Dharam Singh had filed a civil suit against Kashmir Kaur and her husband on the basis of agreement of sale in Civil Courts at Amritsar. However, at the time of decision of application under Order XXXIX Rules 1 and 2 CPC, observation was recorded by learned Additional District Judge, Amritsar in the order dated 27.1.2009 (Annexure P/4) that Kashmir

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Kaur was neither owner of the suit property nor authorized agent/power of attorney of Harjit Singh and as such, she was not competent to enter into the agreement. During the pendency of the civil suit, Kashmir Kaur and her husband, Harjit Singh executed sale deed regarding plot in question in favour of Kulbir Singh son of Ajit Singh and Satbir Singh son of Avtar Singh.

4. Dharam Singh filed an application before the police for registration of FIR and on the basis of that, FIR (Annexure P/5) No. 354 dated 9.9.2007 under Section 420 IPC was registered against Kashmir Kaur, Harjit Singh, Kulbir Singh and Satbir Singh at Police Station – Civil Lines, Amritsar. After registration of said FIR, Annexure P/5, the matter was compromised vide compromise deed (Annexure P/6) dated 11.07.2009 between complainant Dharam Singh and accused Kashmir Kaur and Harjit Singh, Kulbir Singh and Satbir Singh. On the basis of said compromise, Annexure P/6, petition under Section 482 Cr.P.C. was filed for quashing of FIR, Annexure P/5 and as per order (Annexure P/7) dated 28.1.2010 passed by this Court, FIR No. 354 (Annexure P/5) was quashed by this Court. Accordingly, civil as well as criminal litigation between the parties came to an end and Dharam Singh had received a sum of Rs.6.00 lacs from Kashmir Kaur and others on the basis of compromise dated 11.7.2009 (Annexure P/6).

5. Subsequently, present case, FIR No. 524 dated 18.12.2009 (Annexure P/1) was registered under Sections 420, 406 and 120-B IPC at Police Station Civil Lines, Amritsar against the petitioners by Lakhbir Singh stating that he and Dharam Singh were old friends and Dharam Singh

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approached him that he want to construct a house at Amritsar. Thereafter Lakhbir Singh and Dharam Singh entered into the agreement of sale dated 16.1.2006 for purchase of same plot measuring 1055.55 sq. yards with Kashmir Kaur for consideration of Rs.24.00 Lakhs. As per the complainant, he paid Rs. 3.00 lakhs as earnest money to Kashmir Kaur on 16.1.2006. The remaining sale consideration of Rs.3.00 Lakhs was also paid by him on behalf of Dharam Singh. It is the version of Lakhbir Singh, who is author of the FIR, Annexure P/1 that the agreement was in the name of Dharam Singh, but he was also partner, that way, he claimed that the transaction was a sham and *benami* transaction. The subsequent development of events having been narrated by the petitioner that the sale deed was not executed in terms of the agreement and thereafter, the sale deed was executed with different persons, which was result of connivance of Dharam Singh, his elder brother Joginder Singh and Mukhtiar singh, Kashmir Kaur, Harjit Singh, Kulbir Singh, Satbir Singh, Kuljinder Singh, Sukhraj Kaur and Amandeep Singh Kahlon.

6. Learned counsel for the petitioners submitted that the allegations are false, frivolous and no case is made out from a bare reading of the FIR, (Annexure P/1) and the FIR was registered on the basis of pressure upon the police.

7. At the time of arguments, learned counsel for the petitioners also contended that the present petitioners have no role at all in the alleged commission of offence and the present petitions be accepted and the FIR be quashed.

8. While arguing on these points, learned counsel for the

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respondent No. 2, (complainant of this case), contended that on the basis of FIR No. 524, Annexure P/1, investigation has already been completed and challan has been presented in the trial Court indicating role of each accused. The individual role of the petitioners has been detailed in CRM-8698-2016. The proceedings on the basis of present FIR, Annexure P/1, are liable to continue as respondent No.2 was not party to earlier compromise and the petitioners have played fraud upon respondent No.2 and the present petition be dismissed.

9. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the process of law for registration of FIR No. 524 (Annexure P/1) was initiated on the basis of complaint made by Lakhbir Singh, respondent No. 2 herein. As such, the basic facts taken in the complaint would be most relevant to decide whether the present FIR should continue or the same should be quashed. If the version of Lakhbir Singh, who is respondent in these cases, is taken into account and on the face of it, no agreement was executed by Lakhbir Singh. If at all there was any arrangement between Dharam Singh and Lakhbir Singh, that might have given rise to some legal rights and the appropriate remedy would be by way of civil suit, but at any rate, no criminal liability arises or there was no ground for registration of FIR as no agreement was executed by Lakhbir Singh. The respondent cannot take such a plea of *benami* transaction as per provisions of Benami Transactions (Prohibition) Act, 1988 and Benami Transactions (Prohibition) Amendment Act, 2016. The agreement, Annexure P/2, was executed between Dharam Singh and Kashmir Kaur

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and for certain reasons, the deal could not be materialized and even FIR No. 354, Annexure P/5, was registered and subsequently the parties to the agreement entered into a compromise, Annexure P/6 and the Court accepted the said compromise and vide order dated 28.1.2010 (Annexure P/7) the said FIR was quashed and that matter had come to a close at that stage. There was absolutely no ground for re-opening the matter or registration of FIR on the same facts simply by taking the plea that the agreement was on behalf of respondent No.2, Lakhbir Singh, apart from Dharam Singh.

10. More so, in this case, the police had already submitted report dated 18.6.2010 (Annexure P/8) on the basis of enquiry that the complainant, Lakhbir Singh has not paid any earnest money to Kashmir Kaur at the time of execution of agreement, Annexure P/2. It is an *inter se* dispute between Dharam Singh and Lakhbir Singh and that cannot be made the basis of registration of FIR or proceeding on the basis of that. Subsequently, another application, Annexure P/9 was filed and Additional Deputy Commissioner of Police, after conducting enquiry submitted report on 17.1.2014, Annexure P/10 that no new facts had come in the investigation and authorities had already submitted the report that there was no necessity to further investigate the matter.

11. It is well-established principle of law that inherent powers conferred upon this Court under Section 482 Cr.P.C. has to be exercised to correct patent illegalities when some miscarriage of justice is done. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed, because they are

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initiated illegally, vexatiously or without jurisdiction and where the allegations, even if they they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused. Such a view was taken by Hon`ble Supreme Court of India in in Madhu Limaye v. State of Maharashtra, 1978 AIR (SC) 47. However, in the present case, if the contents of the complaint and the material available on the file are taken into consideration in the light of the above observations, it is not a case where *prima facie* case is made out and there is sufficient material available on the file to quash the present FIR.

12. Resultantly, the present petitions are accepted and FIR No. 524 dated 18.12.2009 (Annexure P/1) registered under Sections 420, 406 and 120-B IPC at Police Station Civil Lines, Amritsar and all subsequent proceedings arising therefrom, stand quashed.

13. The petitions stand allowed in the above terms.

August 09, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes
Yes