

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-13056-2016

Date of decision: 04.12.2018

Balwinder Singh and others

..... Petitioners

Versus

Surjit Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. SP Soi, Advocate for the petitioners.

Mr. Siddharth, Sharma, Advocate for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing Complaint No. 1876 dated 20.04.2012 (Annexure P-7) titled as “Surjit Kaur Vs. Balwinder Singh and others”, under Sections 420, 406, 120-B and 380 IPC and all subsequent proceedings arising therefrom, including summoning order dated 19.05.2014 (Annexure P-8).

Put pithily, respondent-Surjit Kaur, lodged FIR No. 18 dated 15.03.2008, under Section 420 IPC against the petitioners, on the allegations that petitioner No. 1-Balwinder Singh, on the basis of General Attorney, executed by her in his favour to take care of her house in her

absence, when visits Canada to meet her another son, he cheated and committed fraud with her by executing a sale deed dated 19.12.2007 in favour of his wife-petitioner No. 2-Neetu.

During investigation, the allegations of the respondent against the petitioners were found false. Therefore, police filed cancellation report dated 08.05.2008 (Annexure P-5). The respondent never raised any protest to the cancellation report Annexure P-5, therefore, the same was accepted.

After four years thereafter, respondent filed a private complaint against the petitioners in which they were summoned by the trial Court vide order dated 19.05.2014 (Annexure P-8).

Learned counsel for the petitioner *inter alia* contends that for the same set of allegations against the petitioners, the respondent had lost her litigation on civil side twice, inasmuch as, her civil suit levelling similar allegations was dismissed vide judgment and decree dated 18.12.2015 (Annexure P-10). The said judgment and decree attained finality, in view of the fact that first appeal of the respondent has also been dismissed by the Ist Appellate Court. The present complaint of the respondent is hit by doctrine of “double jeopardy”, because the petitioners cannot be tried twice for the same offence. That apart, findings of the Civil Court have to be prevailed upon the Criminal Court. Therefore, continuation of impugned complaint against the petitioners would be a futile exercise.

On the other hand, learned counsel for the respondent,

refuting the submissions of learned counsel for the petitioners submits that judgment and decree of the Civil Court against the respondent had not attained finality, because she is going to file Regular Second Appeal, before this Court. The criminal offence of a person is altogether different from civil action. Therefore, the petitioners cannot be permitted to take advantage of the decision of civil court in their favour. Taking advantage of fiduciary relationship in between respondent and petitioners No. 1 and 2 as mother, son and daughter-in-law, petitioners No. 1 and 2, illegally and fraudulently, usurped the self-acquired house of respondent by executing sale deed dated 19.12.2007, in favour of petitioner No. 2 without making payment of any sale consideration to the respondent.

Having given anxious consideration to the rival submissions, this Court finds this petition merits acceptance for the reasons to follow:

Undisputedly, petitioner No. 1-Balwinder Singh, is the real son of respondent; petitioner No. 2 is his wife and petitioner No. 3 is the marginal witness of the sale deed. Respondent also does not dispute execution of general attorney in favour of her son-petitioner No. 1. Therefore, validity and legality of the same is not doubtful.

House in question is not the ancestral property of the parties. Rather, it was purchased by another son in the name of mother-respondent. On similar allegations, the respondent had challenged the disputed sale deed, executed by petitioner No. 1 in favour of his wife-petitioner No. 2 on civil side, but remained un-successful, as she was non-suited by the civil court vide judgment Annexure P-10, which

attained finality, on dismissal of her appeal by the Ist Appellate Court.

More so, in FIR No. 18 dated 15.03.2008, under Section 420 IPC, lodged by the respondent on the similar allegations against the petitioners, cancellation report Annexure P-5, was accepted by the learned Magistrate. Respondent never raised any protest to the aforesaid cancellation report submitted by the police in the said FIR. Therefore, for execution of sale deed in question dated 19.12.2007, the petitioners have already made to suffer for around 11 years. Since, findings of Civil Court have come against the respondent, therefore, petitioners cannot be made to suffer any more.

Silence of the respondent after acceptance of cancellation report in her aforesaid FIR, for four years in itself is sufficient to draw an adverse inference that filing of impugned complaint by her is a *mala fide* and blackmailing device adopted by her against the petitioners.

That apart, permitting to continue with impugned complaint against the petitioners, at the behest of respondent definitely shall be hit by the doctrine of double jeopardy, inasmuch, as for the same offence the petitioners cannot be vexed twice.

Sale deed in question dated 19.12.2007, being a registered document, is a public document, bearing endorsement of concerned Sub Registrar. Therefore, sale consideration recited therein cannot be doubted.

In view of the discussion made above, the instant petition is allowed and Complaint No. 1876 dated 20.04.2012 (Annexure P-7) titled

as “Surjit Kaur Vs. Balwinder Singh and others” and all subsequent proceedings arising therefrom, including summoning order dated 19.05.2014 (Annexure P-8), qua the petitioners are quashed.

December 04, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No