IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19716-2011(O&M)
Date of decision:-20.3.2018

Karam Chand Bansal

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.R.K. Singla, Advocate
for the petitioner.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

Mr.Dinesh Goyal, Advocate
for respondent No.2.

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H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. has been filed by petitioner Karam Chand Bansal for quashing of FIR No.669 dated 27.12.2009, Police Station Sadar, Patiala, for the offences under Sections 420 and 380 IPC and all subsequent proceedings conducted therein including order of framing charge dated 15.4.2011.

Inter alia, in the petition, the petitioner has contended that he is working as a Pharmacist in the Department of Health and Family Welfare, Punjab; that he is a permanent resident of H.No.1065, Sector 21, Panchkula; that Dr.Paramjit Singh Padda – respondent No.2 had submitted an application to SSP, Patiala on 23.3.2009 alleging therein

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that the present petitioner had agreed to sell one plot bearing Khata No.50/53, Khasra No.694/610/149 measuring 266 Sq. yards situated within the revenue limits of village Dhakoli, Tehsil Dera Bassi, District Mohali with him in the year 1997 for a sale consideration of Rs.5 lakhs vide an oral contract entered into between the parties at Civil Dispensary Fort Bahadurgarh (Patiala) and that he had paid the entire sale consideration amount; that the petitioner neither executed the sale deed nor returned the amount; that complainant – respondent No.2 remained posted as Senior Medical Officer from 1989 to 2004 in Punjab Armed Police and retired from PCS Executive Branch, thereafter, was re-employed by State of Punjab. According to the present petitioner, the FIR was got registered against him by respondent No.2 by exerting pressure on the police; that as a matter of fact no such contract was entered into and no money was received by the present petitioner from the complainant; that the petitioner was granted pre arrest bail by learned Additional Sessions Judge, Patiala; that an inquiry into the matter was conducted by DSP Rural, Patiala but he did not do so in a proper manner and pressurized the petitioner to execute the sale deed in favour of respondent No.2. According to the petitioner, he never remained posted as Pharmacist at Dispensary Fort Bahadurgarh, therefore, there was no occasion for him to steal any document.

The petitioner seeks quashing of the FIR and ancillary proceedings on the following grounds:

(i) That the complainant had approached SSP, Patiala on 26.3.2009 i.e. after more than 11 years of petitioner and the complainant allegedly entering into an

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agreement to sell in the year 1997 and the complainant has not rendered any explanation as to why he kept quiet for such a long time and in case of ***Suresh Versus Mahadevappa Shivappa Danannava and others, AIR 2005 Supreme Court 1047***, Hon'ble Apex Court and taking similar view in case ***Amir Chand & another Versus Prem Chand 2009(4) RCR (Criminal) 491***, this Court had quashed the FIR;

(ii) that taking cognizance by the trial Court without filing application under Section 468 Cr.P.C. for condoning delay is without jurisdiction;

(iii) that no written agreement to sell was executed;

(iv) that the complainant having his residence at Mohali, whereas petitioner is posted as Pharmacist at 82 PAP Battalion, Chandigarh having his residence at Sector 21, Panchkula, the property in dispute is situated within the revenue limits of village Dhakoli, Tehsil Dera Bassi, District Mohali, thus there was no question of execution of oral agreement to sell at Bahadurgarh Fort Dispensary;

(v) that if the complainant had paid a sum of Rs.5 lakhs to petitioner, he would have demanded receipt for the same asking him to execute agreement to sell in his favour and then subsequently get the sale deed executed but he did not do so. He neither served any

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notice upon the petitioner nor filed any suit for specific performance/recovery showing that case set up by the petitioner is false; and

(vi)that the complainant – respondent No.2 wants to grab the property of petitioner by misusing process of law by lodging FIR against the petitioner.

Notice of the petition was given to respondents, who put in appearance and filed written replies.

In written reply submitted by respondent No.1 in the form of affidavit by DSP, Rural, Patiala, it has been contended that after due investigation, challan has been filed in case FIR No.669 dated 27.12.2009, under Sections 420/380 IPC, Police Station Sadar, Patiala on 4.9.2010 and charge was framed on 15.4.2011 and now the case is fixed for prosecution evidence, as such, the petition deserves to be dismissed. It is further contended that the pleas taken by the petitioner in the petition can be taken up by him during the trial and no ground to quash the FIR along with ancillary proceedings is made out.

In the written reply submitted on behalf of respondent No.2 – complainant, it is contended that petition is not maintainable since no legal point is involved and all the points raised by the petitioner are disputed; that the petitioner has got a remedy to prove his case during trial or to file representation in the Court of Sessions, therefore, the petition in hand is not maintainable; that on a complaint submitted by present complainant to SSP, Patiala on 23.3.2009, the matter was inquired into by DSP, Rural, Patiala, who submitted his report dated 22.5.2009 finding the allegations to be correct and recommended

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registration of FIR; that after obtaining the legal opinion from the D.A. Legal, formal FIR was registered on 27.12.2009; that after registration of the FIR, the matter was investigated and thereafter challan was filed in the Court; that the petitioner has not come to the Court with clean hands. In the end, such respondent prayed for dismissal of the petition.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has argued that the dispute between the parties is essentially of civil nature, the same has been given criminal colour by lodging FIR, which is nothing but an abuse of process of law, as such, deserves to be quashed. In support of his such contentions, he has referred to an authority ***Maya and others Versus State of Haryana and another, 2013(3) RCR(Criminal) 146*** by a Co-ordinate Bench of this Court. He has further referred to authority ***Amir Chand and another Versus Prem Chand, 2009(4) RCR(Criminal) 491*** also by a Co-ordinate Bench of this Court, which related to a case when a complaint had been filed under Sections 406/420 IPC alleging that accused had agreed to sell property for a consideration of Rs.3.25 lakhs receiving advance of Rs.1.84 lakhs but did not execute the sale deed and the complaint had been quashed for the reason that the complainant could not prove that he had paid a sum of Rs.1.84 lakhs and further it was not shown why the complainant did not seek civil remedy for 2 years and 8 months after the expiry of date fixed for registration and it was only on oral agreement and even the allegations of complainant are accepted, no criminal case is made out. Another authority pressed into service by learned counsel for the

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2018.03.26 15:19
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petitioner was ***Ram Biraji Devi and another Versus Umesh Kumar Singh and another, 2006(3) RCR(Criminal) 308*** by the Apex Court where while dealing with a criminal complaint under Section 420 IPC containing allegations that accused by oral agreement had agreed to to sell a plot for Rs.4 lakhs and received advance payment of Rs.80,000/- but refused to execute written agreement. It was found to be civil liability and complaint was quashed. He referred to other authorities i.e. ***Suresh Versus Mahadevappa Shivappa Danannava and another, 2005(2) R.C.R.(Criminal) 29*** by the Apex Court and ***Shashi Pratap Singh Versus State of U.P., 2001(4) RCR(Criminal)148*** by Allahabad High Court in that regard.

In support of his contention that petition under Section 482 Cr.P.C. craving for quashing of FIR and other proceedings is maintainable, learned counsel for the petitioner has referred to authority ***Prabhu Chawla Versus State of Rajasthan and another, 2016(4) RCR(Criminal) 270*** by Hon'ble Apex Court wherein it was observed that availability of remedy under Section 397 Cr.P.C. would not make a petition under Section 482 Cr.P.C. not maintainable. In another authority referred to by learned counsel for the petitioner i.e. ***Dhariwal Tobaco Products Ltd. and others Versus Sate of Maharashtra and another, 2009(1) RCR(Criminal)677*** by Hon'ble Apex Court, it was observed that an application under Section 482 Cr.P.C. for quashing of criminal proceedings cannot be dismissed only for the reason that an alternative remedy under Section 397 Cr.P.C. is available.

After hearing learned counsel for the parties and perusing the record carefully, I find that the allegations in the FIR seem to be

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highly unconvincing and improbable. The complainant entering into an agreement to purchase house of the accused without there being any document to evidence that transaction does not appeal to reason. The contention that petitioner had stolen the agreement from the almirah of Dispensary Fort Bahadurgarh (Patiala) seems unconvincing and improbable keeping in view the fact that there is nothing on record to show that petitioner ever remained posted as Pharmacist at Bahadurgarh Fort. The complainant is not shown to have filed any civil suit seeking specific performance of alleged agreement to sell or refund of money paid. The agreement is said to have been entered into in July, 1997, however, till date no civil suit has been filed by the complainant. The FIR was also lodged after 12 years of the alleged transaction. Admittedly, a suit for specific performance can be filed within three years of entering into an agreement/date fixed for execution of sale deed. The civil suit is hopelessly time barred. Even if the prosecution story is admitted as such, the complainant cannot possibly get the desired remedy by taking recourse to the criminal law when the acts attributed to the petitioner do not even prima facie fall within the definition of any offence. I find that the FIR so recorded is nothing but an abuse of process of law calling for interference by this Court in exercise of powers under Section 482 Cr.P.C.

Therefore, the petition is accepted, the FIR along with ancillary proceedings are ordered to be quashed against the petitioner.

(H.S.MADAAN)
JUDGE

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Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No

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