

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-17774-2017 (O&M)

Date of decision : 17.11.2018

Navneet Kumar

... Petitioner

VERSUS

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. R.S.Mamli, Advocate,
for the petitioner.

Mr. V.G.Jauhar, Sr. DAG, Punjab.

Mr. R.K.Saini, Advocate,
for respondent No.2.

RAJ SHEKHAR ATTRI, J.(Oral)

This is a petition under Section 482 Cr.P.C. for quashing of FIR No.0944 dated 24.12.2016 (Annexure P-1) registered under Sections 406, 420 of Indian Penal code (in short, "IPC") at Police Station City, Jagadhri, District Yamunanagar and subsequent criminal proceedings in the said FIR.

Present case has distinct facts. Petitioner-Navneet Kumar entered into an agreement of sale dated 10.1.2015 (Annexure P-5) with regard to sale of 2 acres and 6 marlas of land in the name of Bhag Singh, Raj Kumar, Anil Kumar and Jangsher Singh for a total sale consideration of ₹ 2,90,000,00/-. A receipt was issued with regard to receipt of ₹ 70 lacs in cash, ₹ 9 lacs through cheque and ₹ 4,90,000/- through another cheque. Parties agreed to execute the sale deed on 5.4.2015. Both the parties claimed that they appeared before the Registrar for execution of the sale deed and are still ready and willing to execute the sale deed. However, the petitioner

Farm on 8.7.2015.

It is the admitted case of the parties that M/s Garg Horticulture Firm and others have filed a civil suit No.583 of 2015 on 17.3.2015 seeking permanent injunction restraining defendant-Navneet Kumar (petitioner herein) from transferring his share to any third party without the consent and approval of the firm and its remaining partners. It is also undisputed fact that in the said case, learned Civil Judge, Junior Division, Jagadhri passed interim order on 21.3.2015 directing the parties to maintain status quo with regard to the suit property, which includes the property covered by the said agreement of sale. However, interim order continued up to 1.12.2015 and on that day, the application filed by the plaintiff M/s Garg Horticulture was dismissed.

The complainant had served a legal notice upon the petitioner on 5.5.2015 showing his willingness and readiness to perform his part under the agreement and requested the petitioner to inform him within seven days with regard to registration of the sale deed.

Instead of getting the sale deed registered or disclosing the fact with regard to pendency of the civil suit, a reply was filed by the petitioner on 11.5.2015 vide which the agreement of sale was cancelled unilaterally and it was submitted that the earnest money stood forfeited. Ultimately, the complainant lodged the FIR in question alleging that the petitioner was not competent to sell the land covered by the agreement of sale (Annexure P-5) and that a civil suit is pending and this fact was not disclosed by the petitioner to the complainant and thus, he has cheated him for a huge amount of ₹ 70 lacs.

ground that he was always ready and willing to perform his part under the agreement and it was the complainant who failed to perform his part under the agreement, as such, agreement of sale was cancelled and the earnest money stood forfeited.

It is the admitted case of the parties that the petitioner had transferred the land in favour of some third person.

I have heard the counsel for the parties and gone through the record.

Admittedly, a civil suit No.583 of 2015 is pending between the parties. On a perusal of order dated 1.12.2015 (Annexure P-14), it transpires that the petitioner formed a firm M/s Garg Horticulture which was registered at Serial No.1055 of 2000 dated 4.6.2001 with Registrar of Firms and the land covered by the agreement of sale and other land was the property of the aforesaid firm being owner.

A civil suit was filed by the said firm restraining the defendant (present petitioner) not to transfer the land to any third party without prior consent and approval of the plaintiffs. Learned Civil Judge, Senior Division ordered the parties to maintain status quo over the suit property vide order dated 21.3.2015. The said fact was never brought to the notice of the complainant. Thus, on 5.4.2015, order of status quo was in force. Although, said order of status quo under Order 39 Rule 1-2 CPC was vacated and an appeal against the same was also dismissed, yet it was the duty of the petitioner to wait for the final outcome of the civil suit and he was having no locus standi to cancel agreement of sale (Annexure P-5) or to forfeit the earnest money during the pendency of the civil suit at that time.

If we go through the material available on record, it transpires

that the petitioner was having a malafide intention to misappropriate the earnest money of ₹ 70 lacs paid to him vide agreement of sale (Annexure P-5).

The Hon'ble Supreme Court in **State of Haryana and others v. Ch. Bhajan Lal and Ors.**, 1992 AIR (SC) 604 has made the following observations:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Whether the allegations made in the First Information Report or the complaint, even if 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.
2. Where the allegations in the First Information Report and other materials, if any, accompanying

the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Whether, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific

provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

While relying upon the ratio laid down in **State of Haryana and others v. Ch. Bhajan Lal and others** (supra), it is held that there is no impropriety or illegality in the impugned order to warrant interference, as such, this petition is devoid of merit and the same is hereby dismissed.

However, nothing expressed above shall affect the merits of the case.

November 17, 2018
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

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