IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.19963 of 2016 (O&M)

Date of decision: 14th February, 2018

Rajesh Kumar Garg

… Petitioner

Versus

State of Haryana & another

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Promila Nain, Advocate for the petitioner.

Mr. P.K. Jangra, Addl. Advocate General, Haryana for the respondent/State.

Mr. P.S. Jammu, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

Petitioner Rajesh Kumar Garg, who also happens to be an accused in case got registered on application under Section 156(3) Cr.P.C. on the orders of the Court by way of FIR No.130 dated 24.04.2015 (Annexure P2) under Sections 406, 420, 120-B IPC read with Section 506 IPC with Police Station Sector 5, Panchkula had sought by virtue of present petition under Section 482 Cr.P.C. for the exercise of inherent powers of this Court seeking quashment of the FIR and all subsequent proceedings arising thereon.

Heard Ms. Promila Nain, Advocate for the petitioner; Mr.P.K. Jangra, Addl. Advocate General, Haryana representing the respondent No.1/State and Mr. Paramjit Singh Jammu, Advocate appearing on behalf of respondent No.2/Complainant and perused the records of the case.

The undisputed facts are that the complainant moved an application before the concerned Court and vide orders dated 20.04.2015 (Annexure P1) the Court of learned Judicial Magistrate 1st Class, Panchkula passed orders, the operative part of which is reproduced as below to lay emphasis:

> *"… … … Therefore, in view of the same the SHO concerned is directed to register an FIR against the accused No.1 and 2. However, if in the course of investigation anything pertaining to involvement of accused No.3 is made out, IO is at liberty to take action as per law. … … …"*

It is as recourse to the same, name of the present petitioner who was accused No.3 has been arraigned.

The brief allegations of the complainant Mahesh Gupta are to the effect that he was resident of Panchkula running his business and entered into an agreement to sell dated 07.11.2014 with accused Kamlesh Gupta for the sale of showroom detailed therein, situated at Zirakpur, District Mohali and as per the agreement paid a total sum of Rs.1,81,00,000/- which was witnessed by Manoj Gupta another accused and Ravinder Sharma witness. It is thereafter, the accused failed to execute the sale deed in spite of receiving the entire sale amount and instead accused Manoj Gupta and Kamlesh Gupta have sold the property to the accused petitioner Rajesh Kumar Garg and did not undergo their part of the obligation or refunded the amount and hence the case in question under Sections 406, 420, 120-B IPC read with Section 506 IPC.

Section 406 IPC deals with criminal breach of trust and which is defined in Section 405 IPC and need to have necessary ingredients of entrustment to a person of a property or with any dominion over property and the person who has been entrusted, dishonestly misappropriates or converts the property to his own use or dishonestly uses or disposes off that property or willfully suffers any person to do so in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract made touching the discharge of such trust. It is the own case of the complainant spelled out from his allegations that the petitioner had only purchased this property from the co-accused Kamlesh Gupta and Manoj Gupta and neither there is allegation that he was aware of the earlier contract with the complainant or his malafide intention in doing so.

Section 420 IPC, the other offence for which the accused has been charged, relates to cheating and which is defined in Section 415 IPC and the very necessary ingredients for holding a person guilty of cheating are to show that he had fraudulent and dishonest intention at the time of making the promise with an intention to retain the property. If it is so, as it is the allegation that the complainant has paid in cash the entire sale amount of Rs.1.81 crores, then why from November 2014 till the moving of the application in April 2015 he has been sleeping over the matter and why he did not get the sale deed executed, rather implies that there is something else to this twist and after having lost on this agreement to sell has resorted to this means of registering a criminal case that too in Police Station, Sector 5, Panchkula when property is in Zirakpur, thus as a pressure tactic to get back his money which has gone away by non-fulfillment of the obligations arising out of that agreement to sell dated 07.11.2014. Therefore, to the mind of this Court no case for cheating is also made out, much less any allegation directly assigned to the petitioner for criminal intimidation punishable under Section 506 IPC.

A plain reading of the allegations does not depict any specific allegation against the petitioner or his role in commission of the offence and the only role assigned to him is that he purchased the property subsequently from the owners. To the very specific query of this Court during the contentions of learned counsel for the petitioner, learned State counsel was purely at loss of words what evidence has come about which was not even before the learned Magistrate which did not contemplate initiation of any action against the petitioner at that point of time and which has come subsequently during the investigations, could not be highlighted in his submission by learned State counsel.

The petitioner had purchased the property in question through registered sale deed on 02.03.2015 which itself is a public notice to the people at large, when the agreement to sell was alleged to have been executed on 07.11.2014 and learned State counsel could not show what was the period during which the sale deed could be executed in compliance of the agreement to sell with Kamlesh Gupta accused.

Though there could be a cause of criminal intent and malice on the part of the co-accused, but the petitioner apparently on the face of it appears to be a bona fide purchaser for a valuable consideration and no criminal role or attribution can be made to him of any criminal offence. Since the dispute revolves around civil obligation of the parties to the agreement to sell where the present petitioner has no role to play and neither there is any specific allegation against the petitioner for having acted in a criminal manner to thwart the earlier transactions between the complainant and the co-accused. In such a background, what comes up before this Court is that there has been misuse of the process of the Court by the investigating agency as even the Court did not come across any criminal intent of the petitioner and it was during the investigations he has been roped in regarding which no substantive evidence is highlighted in the arguments by the State. The principles of law enunciated by the Hon'ble Supreme Court regarding exercise of extraordinary powers under Article 226 of the Constitution of India and Section 482 Cr.P.C. have been well considered in **'State of Haryana and others v. Ch.Bhajan Lal and others' 1992 AIR SC 604**, and which are reproduced herein below to lay emphasis:

(1) Where 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) Where the allegations in the FIR 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 FIR 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.

Further reliance is also placed on **'Baijnath Jha v. Sita Ram & another' 2008 AIR (SC) 2778.**

From the above, it is a clear case where there is a manifest criminal misuse on the part of the complainant to have roped in the bona fide subsequent purchaser with an ulterior motive for wrecking vengeance arising out of such frustration of his agreement to sell and thus, it becomes imperative for this Court to exercise its powers and come to the aid of the petitioner to undo this misuse of the process of Court and to meet the ends of justice demand it so. In the light of the same, in the exercise of powers under Section 482 Cr.P.C., finding the prosecution of the petitioner Rajesh Kumar Garg in this case to be per se illegal, present FIR and all proceedings consequent thereto are hereby quashed. The petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

February 14, 2018
rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No