

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M No.38638 of 2013 (O&M)
Decided on: 20.07.2018**

Sanjay Kapoor and others

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Dr. Anmol Rattan Sidhu, Sr. Advocate
with Mr. Nafees Ahmad Khan, Advocate
for the petitioners.

Mr. Himmat Singh, DAG, Haryana.

Mr. Gaurav Bhayyia, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of FIR No.636 dated 20.11.2010 registered under Sections 452, 323 and 506 of the Indian Penal Code (in short 'IPC') at Police Station Civil Lines, District Gurgaon (Annexure P1).

The operative part of the aforesaid FIR is reproduced as under:-

*“To the SHO Sahib Police Station Civil Line Sector
15 GGN*

*Sir, I Rakesh Bawa r/o E-708 Rail Vihar Sector 15
Part-Iind Gurgaon alongwith my wife Shashi Bawa were
present at our residence on dated 08-10-10. That at about*

8 O' clock at night three persons 1. Aman Makkar 2. Pardeep Chawla 3. Sanjay Kapoor residents of Delhi entered forcibly in my house and started abusing and all three said that you will be cut into pieces and you will be killed and Aman pushed me after holding my hand. I dialed at No.100 to the police after going in my room. My wife went to call my neighbor Ashok Tyagi. Ashok Tyagi came at my residence and said to all three persons to go now from there with folded hands and by touching the feet and to come tomorrow. I will get your matter decided. Who remained there and said that we will remain here and 10-12 more persons would be called. In the meantime, the police came and those three persons were brought in the Police Station. In the Police Station SHO Sahib called both the parties on the next day morning at 10 in spite of my saying and no action was taken. On the next day we both the parties came in the Police Station and I told to Ashok Tyagi to do the needful as required but on that day the matter was not decided and given the time of next day. On the next day, we came in the Police Station but other party did not come present in the Police Station and there was no discussion further. Legal action may be taken on my complaint. Sd/- Rakesh Bawa son of G.S. Buwa E-708 Rail Vihar Sector 15 Gurgaon October 22, 2010. Police Proceeding: Today I ASI alongwith C. Surender 3849 reached at H.No. E708, Rail Vihar, Sector 15, Part II, Gurgaon regarding verification of the complaint, which was already entered vide DD No.34 dated 22.10.2010 in the roznamcha. From the contents of complaint and rapat No.34, offence under Section 452, 323, 506 IPC is found to be made and hence, ruqa is hereby being sent C. Surender Singh 3849 to police station for registration of case. After registration of case, case number be intimated. I ASI is busy in investigation at the spot. Today: Rail Vihar

Sect-15, Part II, Gurgaon. Sd/- Raj Kumar ASI PS Civil Line, Gurgaon DT 20.11.10 at 03:15 PM. Today at police station: on receiving abovesaid writing and after registration of case under abovesaid offences through computer, computer copies were prepared and same will be sent to higher officers through post. Copy of police file along with original writing is being sent thorough same C. to ASI at the spot.”

Learned Senior counsel for the petitioners has submitted that petitioner No.1 – Sanjay Kapoor is the proposed purchaser of a flat from the complainant/respondent No.2 namely Rakesh Bawa, in pursuance to an agreement to sell dated 12.02.2010 (Annexure P1) vide which a deal was struck between them for a total sale consideration of Rs.90 lacs, out of which, Rs.18 lacs were paid as earnest money and also got a loan from ICICI bank for Rs.60 lacs to make balance payment vide Annexure P3. It is further submitted that petitioner No.2 is a witness to the agreement to sell and petitioner No.3 is a property dealer, through whom the deal was made.

Learned Senior counsel for the petitioners has further submitted that subsequent to the aforesaid agreement to sell, the complainant/respondent No.2 – seller, could not procure the no objection certificate from the concerned department and on that account, parties were having meetings with each other and on 08.10.2010 on the asking of the complainant, the petitioners have visited his house and the complainant/respondent No.2 having failed to perform his part of agreement, adopted a novel procedure by issuing a legal notice dated 11.10.2010 (Annexure P4) to the petitioner No.1 that he has cancelled the agreement to sell and further forfeited the earnest

money of Rs.18 lacs.

Learned Senior counsel for the petitioners has placed heavy reliance on the aforesaid legal notice (Annexure P4) to submit that in this notice, there was no reference of any such incident dated 08.10.2010, forming basis of the impugned FIR and only it was stated that from the conduct of petitioner No.1, it is clear that he is not willing to purchase his flat and, therefore, the agreement to sell dated 12.02.2010 is cancelled and the amount of earnest money i.e. Rs.18 lacs, stands forfeited. The operative part of the legal notice dated 11.10.2010 (Annexure P4) reads as follows:-

“.....From your conduct, it is clear that you were not willing to purchase my flat and further you were not in position to make balance payment within the agreed period to me and that is why you have failed to perform your part of contract by not making the entire payment to me and by not coming forward. Therefore, keeping in view your defaulting conduct and inaction to perform your part of contract, I hereby cancel the agreement to sell dated 12.02.2010 and now, the said agreement to sell be treated as null and void from today onwards and further I hereby forfeit the earnest money of Rs.18 lacs which was given by you to me at the time of execution of agreement on two different dates as mentioned into the agreement to sell dated 12.02.2010.”

Learned Senior counsel for the petitioners, has further submitted that the petitioners have filed a reply to the legal notice dated 11.10.2010 and denied all the aforesaid facts. It is further submitted that, thereafter, the petitioners filed a civil suit for injunction before the Delhi High Court, in which on 20.10.2010, the following order has

been passed:-

- 1. Fresh plaint received, it be checked and registered as a suit.*
- 2. Issue summons in the suit and notice in the I.A. to the defendant by way of ordinary process, speed post, registered A.D. and approved courier, returnable for 18th November, 2010.*
- 3. It has been contended by learned senior counsel for the plaintiff that despite the fact that an agreement dated 12th February, 2010 the defendant seller was to get the property converted to freehold and transfer the title to the purchaser/plaintiff within a period of thirty days, however, the defendant has further averred that he has changed his mind and is trying to evade the execution of the agreement in favour of the plaintiff.*
- 4. It is contended that this evidence from the fact that in response to the reply to the notice sent by the plaintiff the defendant has taken a stand that the amount of earnest money paid to the defendant by the plaintiff has been forfeited as the plaintiff is accused to have, defaulted in performance on his part of the obligation.*
- 5. I have heard learned senior counsel for the plaintiff and have perused the record.*
- 6. I am satisfied that the plaintiff has got prima facie good case and that the balance of convenience is also in favour of the plaintiff and that the plaintiff will suffer an irreparable loss in case the plaintiff is not granted an ad interim injunction.*
- 7. Accordingly, the defendant is restrained from creating any third party interest, both with regard to the title as well as possession of the suit property till the next date of hearing.*

8. *Provisions of Order XXXIX Rule 3 CPC be complied with.*

9. *A copy of this order be given dasti.*

10. *List on 18th November, 2010.*

October 20, 2010

Sd/- V.K. Shali, J.”

Learned Senior counsel for the petitioners has further argued that vide the aforesaid order dated 20.10.2010, the Court has restrained the complainant/respondent No.2 from creating any third party interest regarding the title and possession of the suit property and the said suit is still pending. It is further submitted that the FIR was registered on 20.11.2013, much after issuance of legal notice, receiving the reply to the legal notice as well as the order passed by the Delhi High Court on 20.10.2010, just to convert a civil dispute in a criminal litigation with *mala fide* and oblique motive as the complainant himself was not ready to perform his part of agreement.

The learned senior counsel further submitted that a perusal of the FIR show that the ingredients of Section 323 IPC is not made out as there is no such allegation as well as there is no MLR on record.

Learned Senior counsel for the petitioners has also submitted that as per the allegation in the FIR, even the offence under Section 452 IPC, on the face of it, is not made out as there was no criminal intent on the part of the petitioners and no overt act is attributed in the FIR. The learned senior counsel further submitted that that even if, on the face of it, taken that the petitioners had visited the house of the complainant on the said date as per allegation only

altercation took place and police was called. It is further submitted that the allegation of empty threat do not constitute an offence punishable under Section 506 IPC.

Learned Senior counsel for the petitioners has relied upon the judgment **“Madhavrao Jiwajirao Scindia and others vs Sambhajirao Chandojirao Angre and others”**, 1988 (1) SCC 692, in which the Hon'ble Supreme Court in paragraph 7 has held as under:-

“...7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

Learned Senior counsel for the petitioners has also relied upon the judgment **“Chandran Ratnaswami vs K.C. Palanisamy and others”**, 2013(6) SCC 740, wherein the Hon'ble Supreme Court held as under:-

*“34. This Court in **State of Karnataka v. L. Muniswamy and Others**, (1977) 2 SCC 699 observed that the wholesome power under Section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the*

conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. It was held in this case (at p.703 of SCC):

"7...

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of

the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

This case has been followed in a large number of subsequent cases of this Court and other courts.

35. In *State of Haryana and Others v. Bhajan Lal and Others*, 1992 Supp.(1) SCC 335, this Court in the backdrop of interpretation of various relevant provisions of Cr.P.C. 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 of the Constitution of India or the inherent powers under Section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to myriad kinds of cases wherein such power should be exercised: (SCC pp. 378-79, para 102)

"102. (1)

(2) ..

(3) ...

(4) ..

(5) ..

(6)..

(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."*

36. *This Court in Zandu Pharmaceutical Works Ltd. and Others v. Mohd. Sharaful Haque and Another, (2005) 1 SCC 122 observed thus: (SCC p. 128, para 8)*

"8. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

37. *In Indian Oil Corpn. v. NEPC India Ltd. and Others, (2006) 6 SCC 736 this Court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that: (SCC p. 749, para 13)*

"13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

38. *In the case of Inder Mohan Goswami and Another v. State of Uttaranchal and Others, (2007) 12 SCC 1, this Court after considering series of decisions observed:*

"46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Criminal Procedure Code though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

xxx xxx xxx

50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice- liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts

have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued."

39. In *G. Sagar Suri and Another v. State of U.P. and Others*, (2000) 2 SCC 636, this Court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

40. In the case of *S.N. Sharma v. Bipen Kumar Tiwari and Others*, AIR 1970 SC 786 (at p.789), this Court has stated thus:

"7. .. It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that

such a power must be read in Section 159 of the Code."

41. *In the case of **State of West Bengal and Others v. Swapan Kumar Guha and Others**, AIR 1982 SC 949 while examining the power of a police officer in the field of investigation of a cognizable offence, Chandrachud, C.J. has affirmed the view expressed by Mathew, J. and observed as follows:*

"22. . There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code. "

42. *In the case of **Uma Shankar Gopalika v. State of Bihar and another**, (2005) 10 SCC 336, this Court has held as under:*

"6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to L 4,20,000, they would pay a sum of L 2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of L 4,20,000. It is well settled that every

breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 I.P.C.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120B Indian Penal Code and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 Criminal Procedure Code which it has erroneously refused."

The learned senior counsel has, thus, submitted that it is well settled principle of law that in case of a dispute arising out of an agreement to sell, it being a pure dispute of civil nature, the registration of an FIR by converting the said litigation into a criminal litigation, is not permissible and has prayed for quashing the FIR.

Counsel for the State, on the basis of the reply filed by the Assistant Commissioner of Police, City Gurgaon has submitted that after registration of the FIR, challan has already been presented and charges have been framed against the accused but no prosecution

evidence has been led so far. A perusal of the affidavit further show that the allegation in the complaint with regard to the contents of the legal notice dated 11.10.2010, not mentioning the alleged incident of 08.10.2010 are not denied. Even the pendency of the civil dispute as well as the order passed by the Delhi High Court is also not denied.

It may be noticed that this petition is pending since 2013 and till date, no reply has been filed on behalf of the complainant/respondent No.2 despite availing number of opportunities and granting last opportunity, as it is clear from the previous interim orders and, therefore, this case was listed in the urgent list being an old case and also in view of the fact that there is an interim stay. Hence, the allegation of petitioners are not denied by the complainant himself.

It may also be noticed that on an earlier occasion, on account of a statement made by one ASI Tota Ram that the prosecution evidence has been concluded, the earlier petition filed by petitioners was withdrawn and in the present petition noticing that the said statement was incorrect, notice was also issued to him to show cause as to why he has made a false statement. In the reply filed by him, he has tendered unqualified apology.

Learned Senior counsel for the petitioners, at this stage, submits that he will not press any relief against the said ASI as it is a matter of fact that no evidence has been recorded in the present case.

After hearing counsel for the parties, I find merit in the present petition for the following reasons:-

(a) Admittedly, as per the allegation in the FIR, the incident pertain to the date i.e. 08.10.2010 and immediately thereafter, the complainant has issued a legal

notice dated 11.10.2010 (Annexure P4), cancelling the agreement to sell dated 12.02.2010 and forfeiting the earnest money of Rs.18 lacs, in which there is no mention of any such incident.

(b) It is a matter of record that the petitioners have filed a reply to the legal notice on 13.10.2010 and immediately, thereafter also filed a civil suit before the Delhi High Court, in which vide order dated 20.10.2010, interim stay has been granted regarding the title as well as possession of the suit property and the said suit is still pending.

(c) A perusal of the legal notice (Annexure P4) show that the complainant has stated that the complainant is cancelling the agreement to sell dated 12.02.2010 as the petitioner/purchaser has failed to comply with the terms and conditions of the said agreement, however, it is demonstrated in the present petition that petitioner No.1 has paid the earnest money of Rs.18 lacs as per the agreement to sell and has also obtained a loan of Rs.60 lacs by sanctioning of a loan from the ICICI Bank (Annexure P3).

(d) The very fact that respondent No.2 has failed to file any reply during pendency of this petition, which is pending for the last 05 years to deny all the aforesaid facts and thus, the complainant/respondent No.2 has failed to prove that, at any stage, he was in a position to execute the sale deed, after obtaining the No Objection Certificate from the concerned department.

(e) It is apparent that the FIR was registered, much after passing of the order dated 20.10.2010 by the Delhi High Court, though, a DDR was registered on 22.10.2010 but no action was taken till the registration of the FIR, which was registered one month thereafter, without there being any evidence.

(f) Even if, on the face of it, it is taken that the

petitioners have visited the house of the complainant/respondent No.2 on 08.10.2010 with reference to talks for execution of the sale deed in pursuance of the aforesaid agreement to sell, no offence punishable under Section 323 IPC is made out as there is no such allegation that the petitioners have caused any injury to the complainant as there is no reference of any MLR.

(g) The allegation of committing the offence under Section 452 IPC is also not made out as no overt act is attributed to the petitioners after they visited the complainant and the allegations of empty threat do not constitute an offence punishable under section 506 IPC, on the face of the FIR.

*(h) Even otherwise, in view of the judgment of the Hon'ble Supreme Court **Chandran Ratnaswami's case (supra)**, it is basically a civil dispute between petitioner No.1 and the complainant/respondent No.2. The allegation in the FIR have been leveled to make out a criminal case whereas a civil suit, on the basis of the agreement to sell dated 12.02.2010 already filed by petitioner No.1 is pending.*

(i) Therefore, on the face of it, registration of the FIR is nothing but misuse of process of Court and a civil dispute is sought to be converted into a criminal litigation in order to put pressure on the petitioners, who have already parted away a huge amount of Rs.18 lacs as earnest money and the complainant is trying to forfeit that amount by escaping his liability to executed the sale deed.

In view of the judgment of the Hon'ble Supreme Court in **Chandran Ratnaswami's case (supra)**, I hold that the prosecution of the petitioners in pursuance to the impugned FIR is misuse of process of law and as on the face of it, the same do not constitute any offence.

In view of the judgment of the Hon'ble Supreme Court in ***“State of Haryana and others vs Bhajan Lal and others”***, 1992(1) SCC 355, it is also apparent that the criminal proceedings initiated against the petitioners is *mala fide* and is instituted just to put pressure on petitioner No.1, who well within his legal right is pursuing his remedy on the basis of the agreement to sell dated 12.02.2010, executed by the complainant in his favour and a civil litigation is already pending before the Court.

In view of the discussions made hereinbefore, finding merit in the present petition, the same is allowed and FIR No.636 dated 20.11.2010 registered under Sections 452, 323 and 506 IPC, at Police Station Civil Lines, District Gurgaon (Annexure P1), is ordered to be quashed qua the petitioners namely Sanjay Kapoor, Aman Makkar and Pradeep Chawla.

20.07.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

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