

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 17.12.2018

1. CRM-M-3890-2016 (O&M)

Ajay Kapur

... Petitioner

Vs.

Daljit Bahia

... Respondent

2. CRM-M-19694-2017 (O&M)

Ajay Kapur

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.S. Cheema, Sr. Advocate with
Mr. P.S. Ahluwalia, Advocate,
Mr. Sharan Thakur, Advocate,
Ms. Saumya Ahluwalia, Advocate,
Mr. Satish Sharma, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

Mr. Jitendra Ratta, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (ORAL)

This order shall dispose of aforementioned two petitions i.e. CRM-M-3890-2016 and CRM-M-19694-2017.

Prayer in CRM-M-3890-2016 is for quashing of criminal complaint No.RT-06 dated 09.01.2013 titled as Daljit Bahia Vs. Gian Kaur and ors., filed by the respondent-complainant as well as the summoning order dated 25.09.2015 (Annexure P-2) passed by the Additional Chief Judicial Magistrate, Rupnagar, summoning the petitioner to face trial for the offence punishable under Sections 420, 423, 467, 468 read with Section 120-B of the Indian Penal Code (for short 'IPC').

These petitions were admitted vide orders dated 26.02.2018, noticing the preliminary submissions made by learned senior counsel for the petitioner. Thereafter, applications in both the cases, were moved for extension of stay of further proceedings before the trial Court, which were opposed by learned counsel for the respondent-complainant and it was agreed by both the parties that the main case(s) be taken up and decided on merits.

Brief facts of the case are that the complainant along with his father Kundan Singh and his brother Sukhvinder Singh were joint owners of land measuring 18.2 acres situated in Village Nuhon, District Rupnagar. The complainant, his father and brother are residing in England and they had appointed Sh. Rajinder Singh as their General Power of Attorney to manage the affairs of this land with a right to sell/transfer the same subject to the condition that amount of sale consideration will be transferred in the bank account of father of the complainant Kundan Singh. It is further stated that said Rajinder Singh, GPA of Kundan Singh was closely related to the complainant party, as he was married to Smt. Gyan Kaur, real sister of Kundan Singh and both of them and their son Buta Singh had assured that they will take care of property of the complainant. It is also stated that on asking of Rajinder Singh, GPA,

family of the complainant offered to sell the aforesaid land at the rate of approximately Rs.49.00 lacs per acre and Rajinder Singh was directed to finalize the deal @Rs.50.00 lacs per acre for the entire land. In the month of June, 2010, Rajinder Singh and his son Buta Singh informed the complainant that a deal is finalized for the entire land @ Rs.50.00 lacs per acre and after deduction of the commission to be paid to the broker, they will received the net amount of Rs.8.70 crores. Later on, the complainant came to know that Rajinder Singh, GPA holder has died on 30.07.2010 and before his death, by way of four sale deeds; i.e. vide first sale deed Ex.CW1/C, he transferred 92 kanals 15 marlas of land in favour of M/s Ambuja Cement on 11.06.2010 for a sum of Rs.5.39 crores. Thereafter, vide second sale deed dated 11.06.2010 Ex.CW1/E, Rajinder Singh had transferred 46 kanals 07 marlas of land in favour of Hardeep Singh for Rs.63,83,000/-. Said Hardeep Singh was an attesting witness to the first sale deed in favour of M/s Ambuja Cement. Thereafter, one Harbans Singh, by impersonating himself as Rajinder Singh, who died on 30.07.2010, transferred 06 kanals 07 marlas of land in favour of Hardeep Singh vide sale deed dated 10.02.2011 Ex.CW1/F, for Rs.10.92 lacs and Hardeep Singh thereafter, on 06.04.2011, sold the same in favour of M/s Ambuja Cement vide sale deed Ex.CW1/J. It is further stated in the complaint that out of total sale consideration of Rs.8.70 crores, approximately an amount of Rs.2.90 crores was transferred in the bank account of father of the complainant and remaining amount of Rs.5.8 crores was not transferred and the accused persons have thus misappropriated the amount. It is further stated that a complaint was made to SSP, Rupnagar and an FIR No.18 dated 12.03.2012 was registered under Sections 419, 420, 465, 467, 468, 471, 120-B IPC, at Police

Station Sadar, Roop Nagar, only with regard to 3rd sale deed dated 10.02.2011, vide which one Harbans Singh had impersonated as Rajinder Singh and sold the land to Hardeep Singh. It is further stated that the police has wrongly given clean chit to M/s Ambuja Cement, despite the fact that the company had paid only Rs.3.00 crores to late Rajinder Singh, contrary to the recital in the sale deed, where it was stated that payment of Rs.8.80 crores is made by cheque and Rs.50.00 lacs is paid in cash and an amount of Rs.2.39 crores was wrongly paid to Hardeep Singh. It is further stated that later on, Hardeep Singh sold the said land to M/s Ambuja Cement vide sale deed dated 06.04.2011 and therefore, the accused persons, who were employees of M/s Ambuja Cement and were holding the various posts and the persons responsible for the affairs of the company, have committed the offence.

Learned senior counsel for the petitioner submitted that status of the petitioner, who is arrayed as accused No.6 in the complainant, is of Chief Executive Officer of M/s Ambuja Cement, Mumbai and he has no direct role in the purchase of land from Kundan Singh through his GPA Sh. Rajinder Singh. In this regard, learned senior counsel has referred to the brochure/annual report, 2010 of M/s Ambuja Cement, in which the petitioner is shown to be Business Head of West and South. It is further submitted that in this document, as per Corporate Governance, Clause at point 1.2, governance structure shows that the Executive Management of M/s Ambuja Cement is run with clearly demarcated responsibilities and authorities at different levels and an Executive Committee comprises of Managing Director, Business Head and Corporate Functional Head and this Committee is a brain storming Committee, where important business issues are discussed and decisions are taken.

Learned senior counsel for the petitioner further submitted that the business Head has power to decentralize the powers and responsibilities and to build leader and their business operation had been divided in three regions i.e. North, West and South and East, each to be headed by a Business Head, who is responsible for the business relating to their respective regions and report to the Managing Director. Learned senior counsel, in reference to above, submits that since the petitioner was a Business Head of West and South and therefore, he was not responsible for the North Region, where another Business Head was appointed.

It is further argued by learned senior counsel for the petitioner that there are two GPAs; one executed by Kundan Singh and his son/complainant Daljit Bahia and second one by another brother of the complainant in favour of Rajinder Singh and as per Clause 7 of this GPA, it is for the attorney to account for, to the principal, any amount received, and to deposit it in the bank account of Mr. Kundan Singh, Account No.(NRE-7) 110023054 at Punjab and Sind Bank, Purana Quilla Road, New Delhi-110001. It is thus stated that in the GPA, it was nowhere mentioned that at the time of execution of the sale deed, amount is to be deposited directly in the name of Kundan Singh and it was for the GPA holder to account for his principal i.e. the complainant's family. There was no direct responsibility of M/s Ambuja Cement or its officials to pay the amount directly to Kundan Singh. Similar condition is there in the second GPA executed by brother of the complainant namely Sukhvinder Bahia dated 02.01.2008.

Learned senior counsel has further argued that during the investigation of aforesaid FIR No.18, Harbans Singh, who allegedly

impersonated himself as Rajinder Singh, has died in police custody and the police has submitted the challan/final report against Gyan Kaur, Buta Singh and Hardeep Singh and they are facing the trial. During the said trial, after recording the statement of complainant Daljit Bahia as PW1, an application under Section 319 Cr.P.C. for summoning M/s Ambuja Cement through its officials including the petitioner being the Chief Executive Officer, was filed on 29.04.2014 and the trial Court, vide order its order dated 03.10.2015, dismissed the application, observing that in the police investigation, no dishonest intention of M/s Ambuja Cement was found by the police and therefore, the allegation levelled by the complainant that officials of M/s Ambuja Cement, in connivance with other accused persons, had committed the fraud with the complainant, as payment of Rs.3.00 crores was made vide cheque No.26478, whereas in the sale deed dated 11.06.2010, the same is shown to be Rs.4,88,10,490/-.

It is next argued on behalf of the petitioner that thereafter, the complainant preferred a revision before the Court of Sessions and while deciding the said revision, which was limited to the extent of examining the validity of impugned order dated 03.10.2015, dismissing the application under Section 319 Cr.P.C., the revisional Court expanded its scope and by recording consent of the petitioner to the effect that an appropriate complaint (impugned in this petition) is pending, wherein the petitioner/accused is summoned to face the trial, the criminal complaint and the police challan case be jointly tried in order to avoid any conflicting decision.

For a reference, the impugned order is reproduced as under: -

“Heard. This is a revision against the order dated 19.10.2015 passed by learned Chief Judicial Magistrate, Ropar refusing to

summon respondents No.1 to 5 as accused in police report case titled as "State vs. Hardeep Singh (FIR No.18 dated 12.2.2012, regarding allegations of cheating, misrepresentation, forgery and embezzlement of funds, regarding which FIR No.18 dated 12.2.2012 was registered. It is contended by learned counsel for the parties that in a private criminal complaint titled as "Daljit Bahia versus Gian Kaur and others", regarding the same occurrence, respondents No.1 to 5 have already been summoned to face trial under sections 420, 423, 467, 468 read with section 120-B IPC vide order dated 25.9.2015. So, once now respondents No.1 to 5 have already been summoned to face trial in above said private criminal complaint and both police challan case and private criminal complaint are required to be tried jointly in order to avoid any conflicting decision and further because of offence having been committed in the same transaction, I am of the considered opinion that ends of justice would be met by ordering the clubbing of both private criminal complaint titled as "Daljit Bahia versus Gian Kaur and others" and police challan case titled as "State vs. Hardeep Singh" and in case such clubbing is made, then definitely the grievance of the revisionist because of refusal of the trial court to summon respondents No.1 to 5 under section 319 Cr.P.C. would be met and present revision need not be decided on merits. Hence, it is ordered that both private criminal complaint titled as "Daljit Bahia versus Gian Kaur and others" pending in the court of Ms. Jasleen Narang, JMFC, Ropar and police challan

case titled as “State vs. Hardeep Singh” pending in the court of learned CJM, Ropar shall be clubbed and criminal complaint titled as “Daljit Bahia versus. Gian Kaur and others” pending in the court of Ms. Jasleen Narang, JMFC, Ropar is withdrawn from her court and is transferred to the court of Ms. Jasbir Kaur, CJM, Ropar for its joint trial with police report case, as it is going to be tried in the manner as trial in a police report case. With these observations, this revision petition stands disposed of. Copy of this order be sent to both the courts concerned for compliance. Trial court record be returned and this file be consigned to record room.”

The petitioner has filed CRM-M-19694-2017, challenging the aforesaid order, which is also being heard and decided together.

Learned senior counsel for the petitioner has next argued that there is no evidence on record to show that the petitioner has played any role in the purchase of land from GPA of the complainant or from Hardeep Singh as the petitioner is posted in Mumbai and there is no evidence that he had actively participated in the negotiation proceedings or at the time when the sale deed was executed and therefore, there is no individual role of the petitioner. It is further submitted that the amount has been paid by the company and the petitioner has not made any personal gain. It is also submitted that the petitioner cannot be held vicariously liable under the provisions of Indian Penal Code as there is no specific averment in the complaint that the petitioner was incharge or liable for the day to day responsibility of the company being the Business Head of West & South, whereas the area, where the sale deed has been executed, falls

in the North Region.

Learned senior counsel has further argued that the impugned order passed by the Additional Sessions Judge, which is under challenge in CRM-M-19694-2017, is without jurisdiction as there was no notice to the petitioner or other accused persons as the challenge in the revision petition was to the order, dismissing the application under Section 319 Cr.P.C. and the same has been passed without following the proper procedure laid down under Section 210 Cr.P.C. It is next argued that without setting aside the findings recorded by the trial Court, in the order dismissing the application under Section 319 Cr.P.C., the revisional Court could not pass the order clubbing both the cases and there was no issue before the revisional Court for clubbing of both the cases and the impugned order has been passed by the revisional Court, while exceeding its jurisdiction provided under Section 397 Cr.P.C. read with Section 399 Cr.P.C. and the revisional Court has thus faulted the judicial discipline. Learned senior counsel has relied upon **Balbir Vs. State of Haryana, 1994 (4) RCR (Crl.) 839** to submit that where the allegations, witnesses and accused are different, the revisional Court was not justified in clubbing the complaint case with the police challan case.

In reply, learned State counsel, assisted by learned counsel for the complainant, has however opposed the prayer made by the petitioner and has placed on record photocopy of the trial Court record. It is submitted that the order dated 03.01.2017 passed by the revisional Court is in fact based on the concession given by the petitioner and the petitioner cannot reconcile later on to submit that the same was not given by the learned counsel representing the petitioner. It is further submitted that the petitioner was duly represented before

the revisional Court and therefore, after affording an opportunity of hearing and recording his concession, the impugned order has been passed.

Learned counsel for the complainant, in reply to the prayer made in CRM-M-3890-2016, submits that there are disputed questions of facts. In the sale deed dated 11.06.2010, total sale consideration is shown Rs.4,88,10,490/-, out of which, Rs.3.00 crores were paid through cheque No.26478 favouring Rajinder Singh and Rs.1.93 crores were paid vide two cheques favouring Hardeep Singh, who was a witness to the same. In this sale deed, there is a clear recital of the power of attorneys dated 21.07.2008 and 26.05.2009, in which there is a clear rider that the payment is to be made to Kundan Singh in his bank account in Punjab and Sind Bank, New Delhi and M/s Ambuja Cement intentionally gave a cheque in favour of Rajinder Singh, GPA of the complainant and therefore, it was duty of the purchaser to hand over sale consideration to actual owner.

Learned counsel has referred to sale deed dated 18.08.2011, vide which Hardeep Singh had sold the land in favour of M/s Ambuja Cement and the payment is shown through cheque No.27051 dated 22.12.2010 for Rs.3,69,00,938/- favouring Hardeep Singh. Learned counsel has raised a suspicion that when Hardeep Singh was not owner of the property on 22.12.2010, how M/s Ambuja Cement through its officials had made the payment of Rs.3.69 crores to Hardeep Singh at the time of execution of the sale deed in August 2011 and this raises a serious doubt about role of the petitioner that the accused persons were hand in gloves with each other by taking undue benefit of a clause in the sale deed that the amount is to be paid to the complainant by the GPA holder.

It is further submitted that even in the sale deed dated 06.04.2011, description of the amount of Rs.51.00 lacs is that it is paid in cash and Hardeep Singh was a witness to same, is factually incorrect, as this amount was paid through cheque. It is further submitted that as per Ex.CW1/I signed by M/s Ambuja Cement, they have given the details of three cheques of Rs.51.00 lacs, Rs.1,88,10,940 and Rs.3.00 crores, out of which, first two cheques were in the name of Hardeep Singh and the first cheque was in the name of GPA Rajinder Singh. It is thus submitted that it is to be decided during the course of trial, under what circumstances, the officials of M/s Ambuja Cement have made the aforesaid payment in favour of Hardeep Singh by way of two cheques of Rs.51.00 lacs and Rs.1.88 crores and there was a stipulation in the GPA that the amount is to be paid to the GPA holder, which again raises a suspicion and is a serious disputed fact.

Learned counsel for the complainant has further argued that as per the balance sheet, relied upon by learned senior counsel for the petitioner, it is overall responsibility of the Executive Committee, which is brain storming Committee when important issues are discussed and the petitioner being a member of the Executive Committee, as a Business Head, was responsible for taking the decision to purchase the land from the complainant and thus, he is the person responsible and cannot escape his criminal liability. It is next argued that the petitioner had failed to explain in what circumstances, half of the sale consideration was paid to a witness Hardeep Singh, who was not even owner of the land, as it is admitted case of the parties that Kundan Singh and his both sons were owners of the property. It is further argued that even certain documents i.e. Indemnity Bond, Authority Letters with reference to the sale

deeds dated 10.06.2010, are forged and it can only be decided by the trial Court after leading the evidence.

Learned counsel for the complainant has also submitted that it is admitted case of the petitioner that third sale deed Ex.CW1/F was executed by Harbans Singh impersonating himself as Rajinder Singh, GPA of the complainant, who died on 30.07.2010, in favour of Hardeep Singh, who was attesting witness of the first sale deed executed in favour of M/s Ambuja Cement and therefore, it was well within the knowledge of the petitioner and the officials of M/s Ambuja Cement that the said sale deed dated 10.02.2011 is a forged document and despite knowing the said fact, M/s Ambuja Cement purchased the same land from Hardeep Singh immediately after two months i.e. 06.04.2011 vide sale deed Ex.CW1/J and therefore, the conspiracy between all the accused persons is apparent on record.

Learned State counsel has additionally argued that the challan was presented against three accused persons, out of which one Harbans Singh has died and out of 19 prosecution witnesses, 03 PWs have already been examined in the FIR case.

After hearing learned counsel for the parties, I find no merit in both these petitions, for the following reasons: -

- (a) The argument raised by learned senior counsel for the petitioner in CRM-M-3890-2016 that the petitioner is business head of West & South Region and is not responsible for the sale, which had taken place in the North Region, is not supported by any document, to show that the decision to purchase the land was not taken by the Executive Committee of M/s Ambuja Cement, being Brain

Storming Committee, where important decisions are taken. In the absence of any such document, the petitioner, being a member of the Executive Committee of M/s Ambuja Cement, is one of the person responsible for taking the decision to purchase the land from the complainant through his GPA.

- (b) There are serious disputed facts, as the sale deed dated 11.06.2010 is stated to be for sale consideration of Rs.4,88,10,490/-, out of which, Rs.3.00 crores were paid through cheque, to Rajinder Singh and Rs.1.93 crores were paid vide two cheques favouring Hardeep Singh, who was a witness to the sale deed and further perusal of the sale deed dated 18.08.2011 shows that Hardeep Singh had sold the land in favour of M/s Ambuja Cement, on receiving an amount of Rs.3,69,00,938/- paid to Hardeep Singh on 22.12.2010 and the sale deed was executed much later in the month of August 2011 and there is no explanation how this amount was transferred to Hardeep Singh (who was not the owner of the land) and not to Rajinder Singh, GPA of the complainant.
- (c) Hardeep Singh is an attesting witness to the first sale deed executed in favour of M/s Ambuja Cement. Therefore, when one Harbans Singh, by impersonating himself as Rajinder Singh (since deceased), GPA of the complainant, sold the land to Hardeep Singh vide third sale deed and later on, M/s Ambuja Cement purchased the same land from Hardeep Singh, knowingly that Rajinder Singh, GPA had already died and Harbans Singh, by impersonating himself as Rajinder Singh, had sold the land to

Hardeep Singh, it cannot be said that primarily the allegations of conspiracy are not made out.

- (d) In the entire petition, the petitioner could not give the details of the amount, which was paid to the complainant, knowingly that Rajinder Singh is only a GPA, it was duty of the purchaser to transfer the amount in favour of the seller and therefore, it again raises a suspicion of conspiracy between all accused persons.
- (e) So far as the prayer of the petitioner in CRM-M-19694-2017, challenging the order dated 03.01.2017, clubbing the complaint case and the police challan case is concerned, in view of **Balbair's** (supra), the impugned order is modified to the extent that instead of clubbing the complaint case with the police challan case, both the cases be tried by one Court and be decided on the same date.
- (f) It has been held by the Hon'ble Supreme Court in **Chirag M. Pathak and others Vs. Dollyben Kantilal and others, 2017 (4) RCR (Crl.) 987** that the High Court, in exercise of powers under Section 482 Cr.P.C, is not to undertake examination of the facts contained in the FIR, by acting as appellate Court and draw its own conclusion, therefore, from the bare reading of the impugned criminal complaint and the summoning order, it cannot be said that the trial Court has not applied its mind to hold that prima facie evidence summoning the petitioner has not come on record and offences are not made out.

With the aforesaid modifications in the order dated 03.01.2017 that the complaint case and the FIR case, instead of being tried jointly, will be tried

and decided by the same Court, both these petitions are dismissed.

17.12.2018
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No