

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

CRM-M No.43373 of 2016 (O&M)

Decided on: 06.08.2018

Surjit Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. J.S. Thind, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. G.S. Bawa, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of complaint No.250 dated 15.06.2011 (Annexure P2) as well as the order dated 16.09.2015 (Annexure P5) passed by the trial Court.

Brief facts of the case are that respondent No.2/complainant has filed a criminal complaint No.250 dated 15.06.2011 (Annexure P2) with the allegations that the complainant and his partner namely Khajinder Singh were approached by the petitioner/accused – Surjit Singh, being owner of land measuring 32 kanals 07 marlas situation in village Kala Ghanupur, District Amritsar. It is further stated in the complaint that the petitioner allured the complainant and his partner to purchase the aforesaid property at the rate of Rs.25 lacs per acre and on such inducement, believing that the land of the petitioner is free from all encumbrances and is having a

clear title, the complainant and his partner entered into an agreement to sell to purchase the land on 03.05.2005 and paid an amount of Rs.10 lacs as earnest money out of total sale consideration. The stipulated date for execution of the sale deed was fixed as 03.05.2006. It is further stated in the complaint that prior to the aforesaid date, on 10.06.2005, the accused/petitioner in furtherance of his evil intention of cheating the complainant by practicing fraud, further received Rs.25 lacs from the complainant and his partner and passed on the possession of the land measuring 01 acre i.e. 07 kanals 19 marlas in favour of the complainant and his partner by executing a power of attorney and a Will in their favour. The said land was further sold by the complainant party to one Harcharan Singh, for Rs.20 lacs and he is now in possession of the same.

It is further stated in the complaint that after 01.06.2005, the intention of the petitioner/accused became dishonest and he refused to get the sale deed executed in terms of the agreement to sell dated 03.05.2005. Thereafter, the complainant and his partner filed a suit for possession by way of specific performance, which is pending before the Civil Court. It is also stated in the complaint that later on, the complainant came to know that a suit has been filed by one Jaskarandeep Singh against the petitioner prior to agreement to sell dated 03.05.2005 on the basis of a family settlement. The said Jaskarandeep Singh is son of real brother of the accused. It is further stated in the complaint that Jaskarandeep Singh and Surjit Singh (the present petitioner) had entered into a family settlement and the petitioner consented to keep $\frac{1}{2}$ share out of the aforesaid 33 kanals 07

marlas of land (subject-matter of the agreement to sell dated 03.05.2005) and the remaining ½ share was given to Jaskarandeep Singh.

With the aforesaid allegations, the complaint No.250 dated 15.06.2011 (Annexure P2) was filed that a fraud has been committed with the complainants, who have been induced to pay the earnest money as the property was not free from any encumbrances and had a disputed title.

Thereafter, the complainant led his preliminary evidence and appeared himself as CW1 and stated on the line of the version given in the complaint.

Khajinder Singh was examined as CW2, who also deposed on the same line.

One of the attesting witness to the agreement to sell namely Ravinder Singh appeared as CW3 and proved the same.

Thereafter, the complainant tendered into evidence certified copy of the family settlement (Ex.CX/1) dated 12.05.2002, allegedly entered into between the petitioner/accused namely Surjit Singh and Jaskarandeep Singh, which is the sole basis on which the impugned complaint was filed.

The trial Court on the basis of the preliminary evidence holding that the petitioner/accused as per the family settlement dated 12.05.2005 was not owner of the whole property i.e. 33 kanals 07 marlas, therefore, fraudulently entered into agreement to sell dated 03.05.2005 and induced the complainant to pay the earnest money and summoned him under Section 420 IPC.

The petitioner filed the present petition impugning the aforesaid complaint (Annexure P2) and the summoning order dated 16.09.2015 (Annexure P5) which is pending since 2016.

Counsel for the petitioner has raised the following arguments:-

1. The agreement to sell is dated 03.05.2005 and it is own case of the complainant that in pursuance thereof, he obtained a general power of attorney from the petitioner qua 07 kanals and 19 marlas of land along with his partner – Khajinder Singh and also obtained the possession of the land. The complainant party, thereafter, sold the aforesaid land vide sale deed dated 05.05.2008, in favour of one Harcharan Singh for a sum of Rs.20 lacs and handed over the possession of the same.

Counsel for the petitioner while relying upon the sale deed (Annexure P1) has submitted that once the complainant himself has taken the benefit of agreement to sell and has sold the part of the land for Rs.20 lacs, it does not lie in his mouth that any fraud was committed by the petitioner while executing the said agreement to sell.

2. Counsel for the petitioner has further submitted that it is also the case of the petitioner as set up in the complaint that he has even filed a suit for possession by way of specific performance of the remaining land. He has relied upon the judgment dated 15.12.2009 passed in this Civil Suit No.170 instituted on 13.06.2008 (Annexure P9), vide which the suit filed by the complainant and his partner namely Khajinder Singh was decreed in their favour for the remaining 24 kanals 08 marlas of land.

Counsel for the petitioner has further submitted that this suit was decreed *ex parte*. The operative part of the Civil Court judgment, reads as under:-

“7. The entire oral as well as documentary ex parte evidence on record led by the plaintiff remained unrebutted and unchallenged on the record in the light of the fact that the defendant has opted not to contest the claim of the plaintiff and remained ex parte throughout the proceedings of this case, meaning thereby that he has indirectly admitted the claim of the plaintiff. Moreover, there is no reason to discard the entire oral as well as documentary ex parte evidence on the record. Hence, in the light of aforesaid unrebutted and unchallenged ex parte oral as well as documentary ex parte evidence on the record. It is held that the plaintiff is entitled to possession by way of specific performance of the agreement to sell dated 03.05.2005 in respect of land measuring 24 kanals 08 marlas. Bearing Khasra No.9/9 (1), 10/1 (3), 10/16 (5-9), 9/11/1 (1-15), 10/15/2 (4-4) Khata Khatoni No.86/176, 87/177 as mentioned in the jamabandi for the year 2003-2004 situated at village Kala Ghanupur Sub Urban, Tehsil and District Amritsar and the defendant is restrained from alienating, mortgaging, selling, leasing out, letting or transferring in any other manner the suit property in favour of any other person except the plaintiffs. The defendant is directed to execute the sale deed in favour of plaintiff after receiving the balance sale consideration within a period of two months from the date of passing this order, failing which the plaintiff will deposit the balance sale consideration in the Court within two months and get the assistance of the Court for getting the sale deed executed.

8. Having regard to the discussion made in

foregoing paragraphs and the findings returned above, the suit of the plaintiff is hereby decreed ex parte with costs. Decree sheet be prepared. File be consigned to the record room.

*Pronounced in open Court
Dated:-15.12.2009*

*Sd/-(Daljit Kaur)
Civil Judge (JD), Amritsar.
15.12.2009.”*

Counsel for the petitioner has, thus, argued that a clear 02 months time was given to the complainants to deposit the balance sale consideration and for getting the sale deed executed with assistance of the Court, which they never complied with.

3. Counsel for the petitioner has further submitted that, thereafter, the complainant filed a petition on 26.04.2010 to execute the aforesaid decree dated 15.12.2009. However, the complainant being the decree-holder failed to comply with the directions of the Civil Court to deposit the balance sale consideration within 02 months from the date of decree i.e. 15.12.2009 and vide order dated 06.09.2014, the Executing Court, at one point of time, dismissed the execution for non-prosecution by passing the following order (Annexure P10):-

“Present: None for DH

JD ex parte

Today, case called several times but neither the DH nor anyone else has appeared on his behalf in the Court. It is 3:30 PM. This Court is satisfied that the decree holder is not interested to contest the present execution application. Hence the case is dismissed in default. The file be consigned to the record room, Amritsar after due compliance.

Pronounced in open Court

Sd/- (Navreet Kaur)

Dated:-06.09.2014

*Civil Judge (Jr. Division)
Amritsar.”*

Counsel for the petitioner has, thus, submitted that for a period of 04 years, the complainant, who is the decree-holder, could not deposit the amount for getting the sale deed executed in their favour, which is clear from this order, though later on, an application for restoration of this petition was allowed and the same is still pending.

4. Counsel for the petitioner has further argued that, though, a suit was filed by Jaskarandeep Singh and his mother namely Bhupinderjeet Kaur, against the petitioner claiming for ½ share in the aforesaid property, however, the said Civil Suit No.247 dated 12.08.2005, was dismissed on 23.08.2011. It is further submitted that the Civil Court recorded a categorical finding that the complainants – Jaskarandeep Singh and others (in the said civil suit), have no right on the basis of the family settlement dated 12.05.2002 and are not entitled to declaration that they are owner in possession of the ½ share. It is also submitted that the Will dated 16.11.1984 set up by the petitioner/accused in the said civil suit was upheld by the Civil Court vide (Annexure P3).

5. Counsel for the petitioner has further submitted that the Civil Court has rejected the family settlement by observing that the same requires compulsory registration and in the absence of the same, it cannot be read in evidence. It is also held that since all the family members of deceased – Jaswant Singh, are not party to this settlement, no right flows in favour of the plaintiffs – Jaskarandeep Singh and others, on the basis of the family settlement. The operative part of the

finding of the Civil Court is reproduced as under:-

“...The use of future tense i.e. word “will get” means that this is not memorandum of family settlement and hence, it required compulsorily registration. Since, it is not registered it cannot be read into evidence. Moreover, as mentioned above, this settlement do not involve all family members of deceased – Jaswant Singh. Hence, no right flows to the plaintiff on the basis of family settlement.”

Counsel for the petitioner has further argued that with regard to the Will, the Civil Court has recorded a finding that the Will is a genuine document and was executed by testator, Jaswant Singh, the common ancestor of the petitioner (defendant in said suit) and the aforesaid Jaskarandeep Singh and others. The operative part of the finding recorded by the Civil Court is also reproduced hereinafter, for ready reference:-

“34.....Therefore, this will cannot discarded on this ground alone. The plaintiffs have admitted that after severance of jamabandi house hold, they never visited deceased Jaswant Singh. Hence, no suspicious shrouds this will. Hence, the will is genuine one and the defendants have consented to it. However, there is other point in this will that at page No.2 the testator Jaswant Singh had stated that he got a house in Chowk Prag Dass, Amritsar from his aunt and this house is item no.2 in the suit property mentioned in the plaint. However, no independent proof of the ownership of this house has been placed on file. It was duty of the plaintiff and defendant being propounder of the will to link this house that some cogent independent evidence as to title of Jaswant Singh, but failed to do so. No adjudication on the house mentioned in

the plaint can be given because this Court does not found as to whom house belongs. However, this may act estoppel between the parties to the suit.

35. As an outcome of above discussion, issue Nos.1 and 2 are decided against the plaintiffs and in the favour of defendants.”

6. Counsel for the petitioner has also stated at bar that the aforesaid Civil Court decree dated 23.08.2011, holding the ownership of the property over the land (subject-matter of the agreement to sell) has become final as no appeal was preferred by Jaskarandeep Singh and others and, therefore, the mere fact of pendency of the suit in no way created any hindrance for execution of the sale deed as the complainant party have failed to produce on record that there was any injunction prohibiting the execution of the sale deed in pursuance of the agreement to sell especially when the complainant themselves have pleaded in the complaint that part of the land was sold by them on 05.05.2008 to Harcharan Singh.

7. It is further submitted that, in fact, it is civil dispute, which has been given the colour of criminal litigation because the complainants were not having sufficient money to get the sale deed registered and, in fact, even *qua* part of the land i.e. 07 kanals 09 marlas, they could not get the same registered in their name and rather sold it to a third party i.e. Harcharan Singh, to which the petitioner never objected.

8. Counsel for the petitioner has also submitted that it is evident from the Civil Court decree that despite giving 02 months time to the complainants, they could not deposit the amount before the

Court to show their *bona fide*.

9. It is further submitted that, even otherwise, the agreement to sell is dated 03.05.2005 and the complaint was filed after a period of 06 years i.e. much after the expiry of period of limitation to file a suit for specific performance and once the complainants have availed their remedy to file a suit for possession by way of specific performance, which was decreed *ex parte* in their favour and later on, despite a condition of depositing the balance sale consideration within 02 months, their execution was, at one point of time, dismissed in default in the year 2014, demonstrates that the complainants have tried to convert the civil litigation into a criminal litigation.

Counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court “**Joseph Salvaraja vs State of Gujarat and others**”, 2011(3) RCR (Criminal) 632, wherein it has been held that where there is no default on the part of the seller, the criminal prosecution can be quashed. The operative part of the said judgment is reproduced as follows:-

*“In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in **Devendra v. State of U.P., 2010(4) R.C.R.(Criminal) 448 : 2010(6) Recent***

Apex Judgments (R.A.J.) 105 : (2009)7 SCC 495, in which, it was held (para 27) that a distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.”

Counsel for the petitioner has further relied upon the judgment of the Hon'ble Supreme Court **“M/s. Thermax Limited and others vs K.M. Johny and others”**, 2011(4) RCR (Criminal) 409, wherein it has been held that where a criminal prosecution is launched on the basis of an agreement to sell, much after expiry of period of limitation to file a suit for possession by way of specific performance, the same is not maintainable. Though, in the present case, the complainant's suit for specific performance has already been decreed, yet he has failed to deposit the balance sale consideration. The operative part of the judgment **M/s. Thermax Limited's case (supra)** is reproduced as under:-

“29. The entire analysis of the complaints with reference to the principles enunciated above and the ingredients of Sections 405, 406, 420 read with Section 34 Indian Penal Code clearly show that there was inordinate delay and laches, the complaint itself is inherently improbable contains the flavour of civil nature and taking note of the closure of earlier three complaints that too after thorough investigation by the police, we are of the view that the Magistrate committed a grave error in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune. In view of those infirmities and in the light of Section 482 of the Code, the High Court

ought to have quashed those proceedings to safeguard the rights of the appellants. For these reasons, the order passed by the Judicial Magistrate First Class, Pimpri in CC No. 12 of 2002 on 20.08.2007 and the judgment of the High Court dated 11.01.2008 in Criminal Writ Petition No. 1622 of 2007 are set aside. The complaint filed by Respondent No. 1 herein is quashed.

30. For the reasons stated above, the appeal is allowed.”

Counsel for the petitioner has also relied upon the judgment **“Suresh vs Mahadevappa Shivappa Danannava and another”**, 2005(2) RCR (Criminal) 29, wherein the Hon'ble Supreme Court in para 12 and 13 has held as under:-

“12. As already noticed, the complaint was filed on 17.05.1999 after a lapse of 11½ years and, therefore, the very private complaint filed by the respondent No. 1 is not at all maintainable at this distance of time. It is the specific case of accused No. 1 that he has not executed any agreement to sell or received any advance payment. In our view, the complaint does not disclose the ingredients of Section 415 of Criminal Procedure Code and, therefore, we have no hesitation to set aside the order passed by the Magistrate taking cognizance of the offence alleged. It is also not clearly proved that to hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. The order of the Magistrate and of the High Court requiring the accused No. 1 appellant herein to face trial would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for setting aside the order of the Magistrate as confirmed by the High Court of issuance of process and the proceedings itself.

13. We, therefore, set aside the impugned order of the High Court and of the Magistrate. The complaint is liable to be dismissed on the question of inordinate latches on the part of the complainant himself. Viewed from any angle, we do not find any good reasons to maintain the order passed by the learned single Judge of the High Court confirming the orders of the Magistrate. Accordingly, this appeal stands allowed and the judgment and order dated 17.02.2004 in Criminal Revision Petition No. 932/2000 of the High Court of Karnataka at Bangalore is set aside.

Appeal allowed.”

10. Counsel for the petitioner has further argued that the petitioners have been summoned under Section 420 IPC and on the face of it, from a bare perusal of the complaint and the preliminary evidence led by the complainant party, the offence of cheating, is not made out. He has also relied upon the judgment of the Hon'ble Supreme Court **“Vesa Holdings Private Limited and another vs State of Kerala and others”**, 2015(2) RCR (Criminal) 442, wherein the Hon'ble Supreme Court has held as under:-

“8. From the decisions cited by the appellant, the settled proposition of law is 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 other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where

allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show 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. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. 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 the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.”

11. Counsel for the petitioner has also submitted that prior to institution of the complaint dated 15.06.2011 (Annexure P2), the Civil Court vide judgment dated 23.08.2011 had already dismissed the suit filed by Jaskarandeep Singh and others holding that the petitioner/accused is the owner of the entire 33 kanals 07 marlas of land along with some other property and therefore, at no point of time, there was any bar on the petitioner not to execute the sale deed on the basis

of the agreement to sell and, therefore, the criminal prosecution of the petitioner is nothing but abuse and misuse of process of law.

In reply, learned counsel for the State as well as counsel for respondent No.2/complainant has submitted that, though, the petitioner has filed the present petition for quashing of the complaint (Annexure P2) and the summoning order dated 16.09.2015 (Annexure P5), the petitioner alternatively also filed a revision challenging the summoning order and he cannot avail both the remedies. On merits, counsel for the complainant/respondent No.2 has admitted that the sale deed dated 05.05.2008 qua 07 kanals 09 marlas of land, was executed in favour of Harcharan Singh by Khajinder Singh, partner of the complainant, on the basis of a registered power of attorney dated 10.06.2005, executed by the petitioner. Counsel for the complainant also admitted that the complainant had filed a suit for possession by way of specific performance and the same was decreed on 15.12.2009, however, it is further submitted that an application under Order 9 Rule 13 CPC was filed. It is further submitted that the execution application, which was dismissed for non-prosecution was restored and is pending. However, counsel for the complainant/respondent No.2, could not rebut the statement made by counsel for the petitioner at bar that the civil suit decree dated 23.08.2011, dismissing the suit for Jaskarandeep Singh and others, has not been challenged in appeal.

In reply, counsel for the petitioner has submitted that the revision filed before the Court of Additional Sessions Judge, Amritsar was withdrawn as inadvertently, he has availed 02 remedies.

After hearing counsel for the parties, I find merit in the

present petition for the following reasons:-

(a) It is well settled principle of law that a civil litigation based on an agreement to sell where the proposed purchaser himself has defaulted in getting the sale deed executed and later on, resorted to criminal litigation is likely to be quashed in view of the judgment of the Hon'ble Supreme Court in *Joseph Salvaraja's case (supra)*.

(b) Admittedly, the agreement to sell is dated 03.05.2005 whereas the instant complaint was filed after a period of 06 years i.e. much after expiry of period of limitation, for filing a suit for specific performance. It is own case of the complainant that he had already filed a suit for specific performance, which has been decreed *ex parte* on 15.12.2009 and, thereafter, he has filed the execution. It is also not disputed that in the execution, the complainant could not deposit the balance sale consideration within 02 months period granted by the Civil Court vide its decree dated 15.12.2009 (Annexure P9). The present complaint has been filed, after a period of 02 years of passing of the aforesaid decree, which shows that the complainant having failed to comply with the decree passed in his favour, with *mala fide* intention has resorted to filing the impugned complaint in view of the judgment of the Hon'ble Supreme Court of India in *M/s. Thermax Limited' case (supra)*.

(c) It is also apparent on record that the complainant and his partner – Khajinder Singh, are the

beneficiary of the agreement to sell and they have sold part of the land in favour of Harcharan Singh on 05.05.2008 and, therefore, at a subsequent stage, they cannot allege that they were induced by the petitioner/accused, knowingly as there was a defect in title.

(d) The petitioner is held to be owner of the entire land, which is subject-matter of the agreement to sell by the Civil Court decree dated 23.08.2011, upholding a Will in his favour and discarding the family settlement dated 12.05.2002, set up by Jaskarandeep Singh, which was the sole basis for filing the impugned complaint by the present complainant that there is a dispute over the title of the land. It is not the case of the complainant that there was any injunction.

(e) It is civil dispute, which has been given the colour of criminal litigation because the complainants were not having sufficient money to get the sale deed registered and, in fact, even *qua* part of the land i.e. 07 kanals 09 marlas, they could not get the same registered in their name and rather sold it to a third party i.e. Harcharan Singh, to which the petitioner never objected.

(f) It is evident from the Civil Court decree that despite giving 02 months time to the complainants, they could not deposit the amount before the Court to show their *bona fide*.

(g) From a bare perusal of the complaint and the

preliminary evidence, the ingredients of Section 420 IPC are not made out in view of the judgment of the Hon'ble Supreme Court in “*Vesa Holdings Private Limited's case (supra)*).

In view of what has been discussed hereinbefore, I hold that the prosecution of the complainant in pursuance of the impugned complaint dated 15.06.2011 (Annexure P2) and the summoning order dated 16.09.2015, is nothing but abuse and misuse of the process of law. Accordingly, the present petition is allowed, the summoning order dated 16.09.2015 (Annexure P5) is set-aside and the complaint No.250 dated 15.06.2011 (Annexure P2) is ordered to be quashed.

(ARVIND SINGH SANGWAN)
JUDGE

06.08.2018
yakub

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