

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

**CRM-M-24450-2018
Date of decision-19.08.2019**

Bachan Lal

...Petitioner

Vs.

State of U.T.Chandigarh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Ajay Pal Singh, Advocate for
Mr. SPS Tinna, Advocate for the petitioner.

Ms. Ashima Mor, APP, U.T.Chandigarh.

Mr. Arjunveer Sharma, Advocate for respondent No.3.

MANOJ BAJAJ, J.

Bachan Lal-petitioner has filed this petition under Section 482 Cr.P.C for quashing of FIR No.48 dated 20.03.2017 under Section 420 IPC registered at Police Station Sector-26, U.T., Chandigarh (Annexure P-1). The FIR was lodged by respondent No.3, namely, Sonu Goyal (son of the petitioner).

Notice of motion in this petition was issued on 01.06.2018 and thereafter, respondents had appeared through their respective counsel. The case was sent to the Mediation and Conciliation Centre of this Court vide order dated 09.01.2019, however, the same had failed and the case has been sent back before this Court. None of the respondents have filed any reply to the petition.

Brief facts leading to the petition are that

complainant/respondent No.3 had given a complaint to Senior Superintendent of Police, U.T. Chandigarh against accused-Bachan Lal, wherein it was alleged that on 07.10.2008 a family settlement took place and as per that Bachan Lal had agreed to give him 30% share in Shop-cum-flat No. 179, Sector-26, Chandigarh, whereas the complainant had agreed to pay Rs.4 lacs as consideration amount for the said transaction. Apart from it, Bachan Lal had also agreed to transfer his 7 marla land comprising in khatta No.583/664, Khasra No.21/5/2 (6-3), 7/123rd share situated at village Kisangarh, U.T.Chandigarh in favour of the complainant for a consideration of Rs.3 lacs. The complainant had paid a sum of Rs.7 lacs to Bachan Lal, and in a civil suit filed by the complainant, his father admitted that he received Rs.7 lacs from the complainant for transfer of 30 % share in the SCF and for transfer of 7 marla land situated at Village Kishangarh. As per complainant, his father cheated him by receiving Rs.3 lacs as consideration amount, whereas the said piece of land (7 marla) was sold to Gurbax Singh son of Late Pritam Singh. Apart from it, 30% share in SCF No.179, Sector-26, Chandigarh was also sold to someone else, who tried to take possession from his (complainant) tenant in the said SCF. Besides the above, Bachan Lal and others had extended threats to him. On these allegations, the impugned FIR was registered.

Learned counsel for the petitioner contends that the alleged agreement/family settlement dated 07.10.2008 is a forged document. He submits that the FIR being highly belated was aimed to falsely implicate the petitioner. It is pointed out that on the strength of the said agreement/family

settlement, a suit for mandatory injunction was filed by the complainant against the petitioner for transfer of the property, which was contested by the petitioner by raising the objection that the said family settlement is forged and fabricated. He has invited the attention of the Court to the judgment and decree dated 25.09.2015 passed by Civil Judge (Junior Division), Chandigarh (Annexure P-3), whereby the suit was dismissed. It is pointed out that against the said judgment and decree dated 25.09.2015, civil appeal was preferred by complainant and the same was also dismissed on 09.02.2018 by the Appellate Court. He contends that the Civil Court has already commented against the said family settlement and therefore, the prosecution of the petitioner on the basis of the said family settlement is nothing, but an abuse of the process of law.

Learned State counsel has apprised the Court that after completion of investigation, final report was filed whereupon charge was framed against petitioner on 09.08.2018 for the offence punishable under Section 420 IPC. However, no prosecution witness has been examined so far.

Learned counsel appearing on behalf of respondent No.3 contends that the petition is founded on disputed facts and therefore, the petition deserves to be dismissed as the issues raised herein can be raised by the petitioner during the trial. However, it is not disputed that the case of the complainant is founded on the family settlement dated 07.10.2008. He fairly states that the civil suit filed by respondent No.3 was dismissed and the said judgment and decree was upheld by the Appellate Court as well, which has

attained finality.

After hearing learned counsel for the parties, this Court finds that the allegations levelled in the FIR are based upon the family settlement dated 07.10.2008, and the validity and correctness of the same has already been tested before the Civil Court in a civil suit brought by the complainant. A categorical finding has been returned by the Civil Court that the said family settlement was never acted upon by the plaintiff himself as he had failed to vacate two rooms situated on the first floor of the said SCF, which were in his possession. Apart from it, it has been held that the said family settlement was not signed by all the members and the plaintiff has failed to prove the said agreement/family settlement. The relevant finding of the trial Court reads as under:-

“I have heard the contentions of both the counsels and have gone through case file carefully. The plaintiff has based his claim on the family settlement Ex.P-3. The bare perusal of the family settlement shows this is an unregistered family settlement which is not signed by all the members. In the settlement the only signature are of Bachan Lal and sons whereas Shiv Kumar and Raj Kumar has not signed it. Further column of witness no.1 has been left empty. The defendant's plea is that the agreement to sell was never acted upon. The family settlement is in shape of partition deed but plaintiff has not filed suit for partition or specific performance on this agreement/settlement. The authenticity of this agreement is doubtful. Further plaintiff has failed to prove this document. The only witness examined is Power of Attorney holder of plaintiff,

Mamta, wife of plaintiff who has miserably failed to establish the execution of this document and payment of consideration amount. Her cross examination reveals she has no personal knowledge qua the agreement and payment of consideration amount.”

Apart from the above, it was also held by Civil Court that the receipt of the payment allegedly made by the plaintiff was also not proved. In that regard, the report of the handwriting expert (Exhibit DW-2/B) was relied upon and according to it, signatures of Bachan Lal were forged on the said receipts. The findings returned by the trial Court were further upheld by the Appellate Court and therefore, the same are binding upon the parties.

Further, the alleged agreement/family settlement was arrived at on 07.10.2008, whereas the FIR has been lodged after a long delay in 2017 and it has not been explained. The said agreement/family settlement was not signed by brothers of the plaintiff, namely, Shiv Kumar and Raj Kumar and was signed by only two persons, i.e. complainant and accused. Of course, the complainant had mentioned the fact of filing a civil suit against his father in the FIR, but the fate of the same that it was dismissed on 25.09.2015 was not disclosed.

The scope of exercise of power under Section 482 Cr.P.C has consistently remained before the Hon'ble Supreme Court in various cases, wherein, time and again, the Hon'ble Supreme Court has laid down the guidelines and principles for exercise of such powers. In **State of Haryana and others vs. Ch.Bhajan Lal and others, 1992 Supp(1) Supreme Court Cases 335**, the Apex Court has held as under:-

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. can be exercised by the High Court 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) 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 FIR 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 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of 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.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

The above principles were reiterated by the Apex Court in the judgment passed in case of **“Hridaya Ranjan Prasad Verma Vs. State of Bihar, 2000 (2) R.C.R.(criminal) 484”**.

Since the allegations levelled in the FIR have already been looked into by the Civil Court and the said judgment and decree has a direct

bearing on the present case and therefore, the trial in the impugned FIR is meaningless. In view of the facts discussed above, it is clear that the allegations levelled in the FIR by the complainant (son of the petitioner) do not disclose commission of offence by petitioner as the dispute between the parties relating to the alleged agreement/family settlement stood adjudicated on 25.09.2015 by the Civil Court before the registration of FIR. At this stage, it will be useful to refer the judgment passed by the Hon'ble Supreme Court in “International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others Vs. Nimra Cerglass Technics (P) Ltd. and Another, 2015 (4) R.C.R. (Criminal) 883”, wherein the Apex Court after relying on various other decisions has held that the criminal liability should not be imposed in disputes of civil nature. The relevant portion is extracted below:-

“23. The above decisions reiterate the well-settled principles that while exercising inherent jurisdiction under Section 482 Cr.P.C., it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial court. High Court’s inherent powers, be it, civil or criminal matters, is designed to achieve a salutary public purpose and that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the court would be justified in quashing the

proceedings in the interest of justice.”

Thus in the facts and circumstances of this case, this Court is of the opinion that the trial in the present case would be an empty formality and the same cannot be allowed to continue for pronouncement of judgment on a later date wherein the chances of conviction are extremely bleak. Considering the findings of Civil Court on the subject agreement/family settlement dated 07.10.2008, this Court finds that the present case is a fit case for exercise of power under Section 482 Cr.P.C in order to prevent the abuse of the process of law. Resultantly, the petition is allowed and the FIR No.48 dated 20.03.2017 registered under Section 420 IPC at Police Station Sector-26, U.T.Chandigarh, as well as the proceedings arising out of it are hereby quashed.

(MANOJ BAJAJ)
JUDGE

19.08.2019
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No