

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29661-2017 (O&M)
Date of decision: April 23, 2019

Ram JiwanPetitioner
Versus
State of Punjab and anotherRespondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vinay Preet Singh Advocate
for the petitioner.

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

ARVIND SINGH SANGWAN J.

Prayer in the present petition is for quashing of FIR No.319 dated 3.10.2015 under Sections 419, 420, 467, 468, 471 and 120-B IPC registered at Police Station Tripuri Town, Patiala.

Brief facts of the case are that the impugned FIR was got registered by respondent No.2-Jagdeep Singh against the accused persons with the allegations that his mother Nasib Kaur was the owner of 11 acres 02 kanals of land situated in village Phagan Majra, District Patiala, which was sold by her in the month of March, 2012 for a sum of Rs. Six Crores. She deposited an amount of Rs.69 lacs in the bank account of Krishan Kumar, who was introduced to the complainant by Chamkaur Singh. The applicant also purchased 02 acres of land in village Nangla, District Sangrur. Accused-Krishan Kumar is a friend of aforesaid Chamkaur Singh, who had purchased 9½ acres in village Khadial, which was sold by Nasib Kaur, and in this regard a fake sale deed dated 14.12.2012 in favour of Nasib Kaur was

done. Prior to this, an agreement to sell dated 16.4.2012 was executed by accused Kulwinder Kaur and both these documents are fake and forged documents. Chamkaur Singh was one of the witnesses to the same. Later on, Chamkaur Singh murdered his father Nahar Singh. Thereafter, on the basis of the fake sale deed, Krishan Kumar has sold the property to different persons as named in the FIR. Petitioner-Ram Jiwan is alleged to be an associate of Krishan Kumar, who has sold the same property and, later on, executed an exchange deed regarding 8 acres of land in the village Chhahar, District Sangrur and 6 acres of land in village Nagri, Tehsil Sunam and got a fake mutation of exchange. In the FIR, the manner in which the alleged fraud was played, is also given in detail.

The police has already submitted report under Section 173 Cr.P.C. and a supplementary report under Section 173(8) Cr.P.C. Thereafter, charge was framed and the case is now fixed for recording of the prosecution evidence.

As this petition is pending since 2017 and the FIR pertains to the year 2015, the trial Court was directed to send report regarding delay in disposal of the case.

The trial Court has submitted the report dated 14.3.2019 stating therein that initially the challan was presented against accused-Krishan Kumar and Chamkaur Singh on 15.2.2016 and, supplementary challan was presented against the petitioner under Section 173(8) Cr.P.C. on 5.9.2017. After the presentation of the challan, charges were framed on 21.5.2016 against Krishan Kumar and Chamkaur Singh. Later on, the petitioner was arrested on 27.2.2017. Thereafter co-accused Krishan Kumar defaulted in

appearance on 25.5.2017 and the case is now fixed for issuance of proclamation proceedings against Krishan Kumar to declare him a proclaimed offender and on that account the case was delayed.

Counsel for the petitioner has further argued that, in fact, it is a civil dispute. Counsel for the petitioner further submitted that the petitioner was granted anticipatory bail by the Hon'ble Supreme Court on 5.4.2017 and in the meantime, the petitioner was declared a proclaimed offender and, later on, he has joined the proceedings.

Counsel for the petitioner has raised the following points for quashing of the FIR :-

- (a) from the bare perusal of the FIR, no *prima facie* offence is made out;
- (b) continuation of prosecution against the petitioner is abuse of process of law;
- (c) the petitioner is neither a privy nor has signed any forged documents, which perpetuated the transfer of the property in the name of respondent No.2 and there is no role of the petitioner as he was not a party to the transactions;
- (d) there are bald allegation of giving 1.50 Crores to the petitioner without any evidence; and
- (e) the prosecution of the petitioner is *mala fide*.

Reply by way of affidavit of Deputy Superintendent of Police, City-II, Patiala is on record and as per the reply, during investigation it is

found that the complainant has given a complaint against 25 persons, on the basis of which the FIR was registered. It is further stated that the petitioner and one Monika Rani initially told respondent No.2-complainant that they have purchased 54 kanals 17 marlas of land in village Harigarh, District Sangrur in the name of co-accused-Krishan Kumar, who executed an agreement to sell dated 16.4.2012 and thereafter the petitioner obtained Rs.60 lacs from respondent No.2, which was 2/3rd share as per the agreement to sell dated 16.4.2012.

It is further stated that the petitioner further obtained Rs.40 lacs from respondent No.2, which was to be adjusted in the purchase of the land but the same were never adjusted. The petitioner obtained another Rs.50 lacs from Nasib Kaur, mother of the complainant at the time of the purchase of the land. It is further stated that co-accused-Krishan Kumar and Sukhwinder Singh sold 67 kanals 8 marlas of land to the complainant in village Nangla, Tehsil Lehragga vide agreement dated 20.4.2012 and obtained Rs.45 lacs from respondent No.2 despite the fact that they were not owners of the land and, thus, played a fraud with the complainant and is mother Nasib Kaur. It is further stated that the charges have already been framed against the petitioner on 21.9.2017 and the case is now fixed for prosecution evidence. It is further stated that till date the other accused, namely, Kanta Rani and Vishal Goyal have not been arrested and one Sukhwinder Singh has been declared as a proclaimed offender. It is denied that the dispute is only of civil nature.

In response to the arguments raised by the counsel for the petitioner, the learned State counsel has submitted as under :-

- (i) the petitioner and one Monika Rani have allured the complainant to pay Rs.60 lacs for 2/3rd share from the agreement to sell on 16.4.2012, a document which was found to be a fake and forged document. Similarly, the petitioner further obtained Rs.40 lacs from the complainant and Rs.50 lacs from Nasib Kaur and have cheated them;
- (ii) even co-accused Krishan Kumar and Sukhwinder Singh have made similar fake agreement on 20.4.2012;
- (iii) the investigation is complete, the challan against the petitioner is submitted and charges have been framed by the trial Court;
- (iv) the petitioner has received 1.50 crores from the complainant and his mother on three different occasions as detailed above; and
- (v) the allegations of conspiracy and cheating are made out from the statement of the complainant, his mother and the witnesses, recorded by the police during the investigation, in which the details of the amount Rs.1.50 crores are given.

The petitioner has filed a counter affidavit to the reply filed by the State and reiterated the version given in the main petition.

After hearing counsel for the parties and on going through the

contents of the FIR, the report under Section 173 Cr.P.C. and the document relied upon by the petitioner and the reply by way of affidavit of the DSP, City-II, Patiala, I do not found any merit in the present petition.

It is well settled principal of law that no FIR can be quashed on the basis of the evidence which the accused want to produce in his defence, as at this stage, only the allegations in the FIR are to be seen.

From a bare perusal of the FIR, the allegations of fraud committed by the petitioner and the co-accused with the respondent No.2 and his mother are apparent. The petitioner could not deny that two agreements to sell dated 14.12.2013 and 16.4.2012 are fake documents, on the basis of which the accused person allured the complainant and his mother to part away with Rs.1.50 crores.

Needless to say, the charges have already been framed and the case is fixed for recording the prosecution evidence and the accused persons are avoiding proceedings of the Court by jumping the bail for which the Court has to proceed for declaring co-accused-Krishan Kumar as a proclaimed offender, therefore, in view of the judgment of the Hon'ble Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, 1991(1) RCR (Criminal) 383, I do not found it to be a fit case where in exercise of the power under Section 482 Cr.P.C. the FIR can be quashed.

There is no merit in the present petition, therefore, the same stands dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

April 23, 2019
satish

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

IN CRM-M-29661-2017

In view of the order of Hon'ble the Supreme Court passed in SLP (Criminal) No.9654 of 2019, the observation made in the order dated 23.4.2019 in CRM-M-29661-2017 to the effect “.....the allegations of fraud committed by the petitioner and the co-accused with the respondent No.2 and his mother are apparent. The petitioner could not deny that two agreements to sell dated 14.12.2013 and 16.4.2012 are fake documents, on the basis of which the accused person allured the complainant and his mother to part away with Rs.1.50 crores” are not to be read as the part of the judgment and stands deleted.

Registrar Judicial is directed to get the aforesaid orders uploaded on the website in the concerned case file.

November 14, 2019
satish

(ARVIND SINGH SANGWAN)
JUDGE