112 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32520 of 2016
Date of decision : February 05, 2019

Rajesh Yadav ....Petitioner

Versus

Subhash and others .....Respondents

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.D. Yadav, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

<u>ARVIND SINGH SANGWAN, J.</u> (Oral)

Prayer made in the petition is for setting aside the order dated 12.05.2015 passed by the trial Court dismissing the criminal complaint No.55 dated 26.09.2014 under Sections 420, 406, 467, 468, 471, 120-B IPC, filed by the complainant-petitioner, as also the order dated 08.08.2016, passed by learned Sessions Judge, Rewari vide which the revision petition preferred by the complainant-petitioner was dismissed.

Brief facts of the case are that respondent/accused No.1 was owner in possession of as a <u>dohlidar</u> of land measuring 17 kanals 10 marlas as detailed in para 1 of the compliant and on 03.03.2006 he entered into an agreement to sell with the petitioner/complainant for the sale of the aforesaid land for a sum of Rs.12,00,000/- and received Rs.2,00,000/- as earnest money. It is further submitted in the complaint that despite the fact that the petitioner/complainant is ready and willing to get his part of the sale deed executed, complainant and the accused No.1 has failed to perform his part of the agreement and has rather transferred the land in favour of accused No.2 to 4, who are the wife and sons of accused No.1.

After recording the preliminary evidence of the petitioner/ complainant, at the stage of summoning, the trial Court vide impugned order dated 12.5.2015 dismissed the complaint holding that the dispute between the parties is purely of civil nature which is arising out of an agreement to sell.

The petitioner thereafter preferred a revision before the Court of Sessions and the learned Sessions Judge after issuing notice to the respondent/accused dismissed the revision vide order dated 08.08.2016. Operative part of the order reads as under :-

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> xxx xxx xxx
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> 7. After due consideration of rival contentions of both the parties and after going through the preliminary evidence, it comes out that in order to appreciate the respective case of the parties, it may be noticed that under Sections 202 and 203, the very limited scope with the trial Court was only to ascertain the truth or the falsehood of the allegations made in the complaint on the basis of the material placed by the complainant before the Court and only *prima facie* evidence is to be seen. In this regard in Ram Nath Vs. State of Haryana 1991(1), C.C.Cases, 390, Hon'ble Punjab and Haryana High Court settled that :-
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> > "while declining to issue process or issuing process the Magistrate has only to weight whether there is sufficient ground for proceeding. If in his opinion there appears to be not even prima facie weight in the complainant before him and other witnesses and inquiry or investigation if any under Section 202 of the Code of Criminal Procedure, he will then dismiss the complaint

through a brief order. If on the other hand, he feels that the complaint appears to be prima facie truthful, he shall summon the accused, put them on trial before him and try the complaint in presence of the complainant and the accused. The words "sufficient grounds" used in section 203 and 204 of the Code of Criminal Procedure suggest only this much that there should be some weight in the complaint and not necessary that complaint must end in conviction."

8. Similar principle was settled by the Punjab and Haryana High Court in Ruby and others Vs. Jasbir Singh, 1996(3), RCR 650 and M/s Lily Hire Purchase Pvt.Ltd., Jalandhar Vs. Darshan Lasl, 1997(1), RCR, 580.

9. Not even this, prior to that, Hon'ble Apex Court in Chandra Deo Singh Vs. Prakash Chandra Bose and another, AIR, 1963, Supreme Court, 1430, while interpreting the scope and object of inquiry under Section 202 (1) of the Cr.P.C. settled that :

"For determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry as stated in sub-Section (1) of S.202 itself, the object of the inquiry is to ascertain the truth or falsehood of the complaint but the Magistrate making the inquiry has to do this only with reference to the intrinsic quality of the statements made before him at the inquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant."

10. Similarly the Hon'ble Supreme Court further settled that the sufficient grounds for proceeding and the materials on which the Magistrate has to pass its decision and held that :-

"Since the object of an inquiry under S.202 is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate acting under S.203 has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion, he is entitled to consider the evidence taken by him or recorded in an inquiry under S.202, or statements made in an investigation under that Section, as the case may be. He is not entitled to rely upon any material besides this. Whether there is prima-facie evidence, even through an accused may have a defence that the offence is committed by some other person or persons, the matter has to be left to be decided by this appropriate stage and issue process cannot be refused."

11. Cautioning against issuing of process so that it should not be an instrument in the hands of the private complainant as vendetta to harass the person needlessly, the Hon'ble Apex Court in Punjab National Bank and others Vs. Surendera Prasad Sinha, 1993 Supp.(1) SCC 499 held that :

"It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and host of officer. There lies responsibility and duty on the

> Magistracy to find whether the concerned accused should be legally responsible for the offence charged for only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At this stage, the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prima objects of criminal justice but it would nto be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against the appellants without any prima facie case to harass them from vendetta."

12. The Hon'ble Apex Court in the above referred case further held that many a time, complaints are filed under Section 200 Cr.P.C. by the parties with an oblique motive or for collateral purposes to harass, to wreck vengeance, to pressurize the accused to bring them to their own terms or to enforce the obligations arising out of breach of contract touching commercial transactions instead of approaching civil Courts with a view to realize money at the earliest. It is also to be kept in mind that when parties commit a wrongful act constituting a criminal offence satisfying necessary ingredients of an offence, they cannot be allowed to walk away with an impression that no action could be taken against them on criminal side. A wrongful or alleged act such as criminal breach of trust, misappropriation, cheating or defamation may give rise to action both on civil as well as on criminal side when it is clear from the complaint and sworn statements that

necessary ingredients of constituting an offence are made out. May be parties are entitled to proceed on civil side only in a given situation in the absence of an act constituting an offence but not to proceed against the accused in a criminal prosecution. Hence, before issuing a process a Magistrate has to essentially keep in mind the scheme contained in the provisions of Section 200-203 of Cr.P.C. Keeping in mind the position of law stated above and pass an order judiciously and not mechanically or in routine manner.

13. Before examining the contentions on its relative merits for the limited purpose of this bail matter, it is appropriate to notice the legal position qua criminal prosecution based on breach relating to a agreement to sell of immovable property because every breach of agreement may not result in a penal offence of cheating unless there is evidence of a mental act of fraudulent misrepresentation. An act of breach of agreement involves a civil wrong, the consequences of which may result into civil remedy but such a breach with mens rea may give rise to criminal prosecution as well. However, to see whether the offence of cheating is made out let us see what is the legal position in this regard.

14. The entire position as to what are the legal requirements and ingredients of offence of cheating was summed up by the Hon'ble Apex Court in S.W. Planitakar Vs. State of Bihar, 2002(1), Judicial Reports (Criminal) Page 521 and the Hon'ble Apex Court held that the ingredients of offence of cheating are (i) there should be fraudulent or dishonest inducement of a

person by deceiving him; (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he was not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

15. At the same time, cautioning against issuing of process so that it should not be an instrument in the hands of the private complainant to harass the person needlessly, the Hon'ble Apex Court in <u>Punjab National Bank and others Vs. Surendera Prasad Sinha, 1993, Supp.(1) SCC 499</u> held that :

> "it is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complainant was laid impleading the Chairman, the Managing Director of the Bank by name and host of officer. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At this stage, the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the

> private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prima objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against the appellants without any prima facie case to harass them from vendetta."

16. The Hon'ble Apex Court in the above referred cas further held that :

> "many a time, complaints are filed under Section 200 Cr.P.C. by the parties with an oblique motive or for collateral purpose to harass, to wreck vengeance, to pressurize the accused to bring them to their own terms or to enforce the obligations arising out of breach of contract touching commercial transactions instead of approaching civil Courts with a view to realize money at the earliest. It is also to be kept in mind that when parties commit a wrongful act constituting a criminal offence satisfying necessary ingredients of an offence, they cannot be allowed to walk away with an impression that no action could be taken against them on criminal side. A wrongful or alleged act such as criminal breach of trust, misappropriation, cheating or defamation may give rise to action both on civil as well as on criminal side when it is clear from the complaint and sworn statements that necessary ingredients of constituting an offence are made out. May be parties are entitled to proceed on civil side only in a given situation in the absence of an act constituting an offence but not to proceed against the accused in a criminal prosecution. Hence before issuing a process a Magistrate has to essentially keep in mind the scheme contained in the

provisions of Section 200-203 of Cr.P.C. Keeping in mind the position of law stated above and pass an order judicially and not mechanically or in routine manner."

17. Thus, no doubt as per the above mentioned proposition of law, at the stage of summoning as per Section 202 and 203 Cr.P.C., trial Court was required to see only prima facie evidence. Accordingly, it is argued by the learned counsel for the petitioner complainant that despite the fact that there was sufficient prima facie evidence on the file, which shows that the respondents have cheated the complainant, the learned lower Court disbelieved the same without any reasons and dismissed the complaint. As such the impugned order is illegal and liable to be set aside.

18 After due consideration of rival contentions of both the parties and after going through the preliminary evidence, it comes out that in order to appreciate the respective case of the parties, it may be noticed that during the course of arguments, it is undisputed case of the parties that when agreement to sell in question dated 3.3.2006 was executed between the parties, it was known to the complainant that the title of the respondent No.1 is not perfect as he was simply a 'Dohlidar' over suit land, as such, only agreement made by the respondent No.1 was to execute the lease deed of suit land as when required and even on 23.5.2014, when the complainant paid another sum of Rs.7 lakhs to the respondent-accused, he admitted that the sale deed will be executed after the adjudication of the dispute of title of

the respondent on sanctioning of mutation. And lastly that the title of the respondent No.1 was perfected only when Mutation of ownership was sanction in his favour. If it is so, from the very beginning, the complainant was knowing that respondent is not declared as lawful owner of the suit. As such it is apparent that no cheating whatsoever was done by respondent No.1, when agreement in question was executed as nothing was concealed by him. Rather real dispute arose when respondent No.1, failed or refused to execute the sale deed and transferred his land in the name of his family members who were respondents No.2 to 4 by way of relinquishing deed. Thus, for all facts and circumstances, it is a case of breach of agreement and the only appropriate and specific remedy for the complainant was to seek a specific performance of the agreement to sell instead of filing of this criminal appeal. Thus, in the given facts and circumstances, the learned trial Court rightly held that the entire dispute put forward by the complainant is of civil nature and it being a case of breach of agreement no criminal liability whatsoever is made out.

19. So far as the plea of the petitioner-complainant that in a case where a civil wrong as also a criminal offence result into a criminal offence, both the parties can be availed simultaneously as observed by the Hon'ble Apex Corut in <u>Vijayander Kumar and others Vs. State of Rajasthan and another, 2014(1) RCR 983(C).</u> However, in the present case, once it is prima facie established that at the time of agreement to sell no cheating was

made by the respondent Subhash as the complainant was knowing that title of Subhash is not perfect subject to a dispute with the Collector which was also going on. As such this authority is of no help to the complainant.

20. Not even this, when the copy of the notice issued by the complainant to the respondents before initiating the civil proceedings, Ex.PW-2/C was gone into, it comes out that in the entire notice the complainant has nowhere disputed the legality of the agreement to sell raising any objection that any cheating has been done by them rather the said notice was issued with the facts that he was always ready and willing to get the sale deed executed in his favour and thus, respondent No.1 should do so. AS such at no pint of time the complainant has disputed the legality of the agreement but to talk of any cheating on the part of the respondents and this plea was manipulated later on just to put pressure upon the respondents and to settle the civil dispute. Needless to say, where the vendor breached an agreement, it being purely civil dispute and there is no question of any criminal liability for want of any *malafide* intention at the time of execution of agreement. Thus, it is a dispute of civil nature, which is being camouflaged into a criminal case for obliquus purpose.

21. As such there is no prima facie evidence whatsoever to show that the respondent No.1 was having any dishonest intention or concealing anything on the complainant at the time of execution of the agreement to sell. Resultantly there is no

illegality in the impugned order and the revision is without any substance.

22. No other point was argued or survived for consideration.

23. As a sequel to above discussion, the revision in hand is dismissed. Let a copy of this judgment along with trial Court record be sent back and revision file be consigned to record room after due compliance."

Counsel for the petitioner has argued that in pursuance of agreement to sell dated 03.03.2006, accused No.1 received a sum of Rs.2,00,000/- from the petitioner/complainant. However, he failed to execute the sale deed in his favour and rather, he has further transferred the land in favour of his wife and sons.

On a Court query, counsel for the petitioner has submitted that the petitioner never opted to file a suit for specific performance of agreement to sell or in the alternate to challenge the transfer of the land in favour of accused No.2 to 4.

After hearing learned counsel for the petitioner and going through the impugned judgment passed by the Courts below, I found no ground to interfere in the findings arrived at by the Courts below. It is an admitted case of the petitioner that the subject matter of the agreement to sell is the <u>dohli</u> land and the accused No.1 was a <u>dohlidar</u> of the same and thus he could not transfer the better title than the one, he was holding and this fact was not concealed in the agreement to sell.

In view of the admitted position that the petitioner has not filed any suit for specific performance for execution of the agreement to sell or he challenged the transfer of the rights in favour of respondents No. 3 and 4, the Courts below rightly held that the dispute is purely of civil nature, which is being camouflage into a criminal case, no offence is made out against the accused persons.

The petition is, accordingly, dismissed.

(ARVIND SINGH SANGWAN)

February 05, 2019 **JUDGE**

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Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO