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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38935-2015 [O&M]

Date of Decision : July 11, 2019

Jaspal Singh Randhawa

.... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. J.S. Bedi, Senior Advocate,
with Mr. Amit Jhanji, Advocate,
for the petitioner.

Ms. Monika Jalota, DAG, Punjab,
for respondent-State.

Mr. R.S.Bajaj, Advocate,
for the complainant.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of FIR No. 141 dated 20.09.2014 (Annexure P/16) under Sections 420, 408 and 120-B IPC registered at Police Station Division VII, Jalandhar.

2. Facts relevant for the purpose of decision of the present petition; that the petitioner alongwith other members of a Cooperative House building society namely, Graduate Employees Co-operative House Building Society Ltd. (for short, "the Society"). The Society purchased 5 acres of land and the desirous members had deposited Rs.,4,000/- each in

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the first installment and Rs.32,000/- in second installment according to the size of the plots. Swaran Singh, respondent No.2 (complainant of this case) was one of the members of the Society and had deposited Rs.4,000/- on 13.1.1982 vide receipt No. 157 and Rs.32,000/- on 5.3.1982 vide receipt No. 527 and his name was also mentioned in the record along with other members of the Society. Present petitioner, Jaspal Singh Randhawa was Secretary of the Society. As per the petitioner, after deposit of the amount, respondent No.2 had not completed the documents and had not received allotment letter of any plot. As such, the Managing Committee of the Society, on 2.6.1994 initiated enquiry into the matter as to whether allotment of plot in the name of Swaran Singh was a *benami* transaction. Pursuant to the meeting held on 10.11.1996, a letter was issued to Swaran Singh to verify the fact and for cancellation of plot and allotment of the same to some other member. On 25.11.1996, the Managing Committee authorized the petitioner to get the execution of sale deed and mutation in case of any member wanted to get the sale deed of his plot executed.

3. As per the petitioner, various intimations were sent to Swaran Singh including registered cover letter dated 20.4.1997 (Annexure P/6) at the address i.e., 126, New Grain Market, Jalandhar, but the same was received back with the report that no such person was residing at the given address. However, respondent no.2, Swaran Singh did not bother to approach the Society for allotment of plot in his favour for a period of over 15 years. The Managing Committee, vide resolution dated 2.5.1997 (Annexure P/7) cancelled the allotment of plot No. 44 reserved in favour of

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the Society and allotted the same to Manmohan Singh having membership No. 132.

4. After 31 years, the Society filed a complaint with the Police on 19.3.2013 and the matter was enquired into, but no forgery was established vide report dated 9.4.2013 (Annexure P/10). Assistant Commissioner of Police (Crime), vide report dated 11.4.2013 (Annexure P/11) recommended the application to be consigned and had given an option to the complainant to file a civil suit. Swaran Singh filed another complaint before the Police and enquiry was conducted by Additional Deputy Commission of Police, who vide report dated 27.11.2013 (Annexure P/12) again reiterated and recommended the complaint to be consigned to the record room.

5. Plea was also taken by the petitioner that the Society had filed a civil suit against the Society for permanent injunction and respondent No. 2 is contesting the same. The petitioner was being harassed by the Police time and again and he had approached this Court by filing CRM-M-12783-2014 titled **Jaspal Singh Randhawa Vs. State of Punjab** for directing the respondents not to harass the petitioner at the instance of Swaran Singh. After issuance of notice by this Court, FIR was registered against the petitioner on 22.9.2014 and subsequently, vide order dated 11.11.2014, the said petition was dismissed as withdrawn.

6. Petitioner has sought quashing of present FIR (Annexure P/16) on the ground that the same is illegal, arbitrary and abuse of process of law because :-

(i). it was the Society who had taken the decision for

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cancellation of plot and allotment of the same and the petitioner was Secretary of the Society and in his capacity as Secretary, he had sent registered letter to Swaran Singh to complete the documents. Petitioner reiterated that vide resolution dated 2.5.1997, plot meant for allotment in favour of Swaran Singh was cancelled and the same was allotted to Manmohan Singh having membership No. 132.

- ii). police had conducted the enquiry on different dates and found that the address of respondent no.2 was not genuine one and no one was residing at 126, New Grain Market, Jalandhar, but still FIR was registered.
- lii). respondent no.2 himself had admitted that he had gone abroad and was not in contact with the Society for 31 years.
- iv). the Society had already filed a suit for declaration which is pending adjudication before the Civil Court.
- v). perusal of FIR itself reveals that no offence under Sections 420, 408 and 120-B IPC is made out against the petitioner.

7. Respondent No.2 has filed separate reply taking preliminary objections that the investigation is still going on and normally, the Courts do not interfere at the investigation stage while exercising powers under Section 382 Cr.P.C. The petitioner had filed present petition by concealing certain vital facts. The petitioner is raising disputed questions of facts in

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the present petition and disputed questions of facts cannot be gone into by this Court while exercising powers under Section 482 Cr.P.C.

8. Respondent No. 2 also took the plea that it is not disputed that he had deposited Rs.4,000/- vide receipt No. 157 and Rs.32,000/- vide receipt No. 527 in the year 1982 towards full and final payment and plot No. 44 was allotted to him. No further amount was recoverable from him. In fact, the petitioner, who was Secretary of the Society wanted to favour Manmohan Singh, who was not even a member of the Society. The petitioner tampered with the record and the original list of members of the Society. As per the original list, Mohan Singh son of Malook Singh, # 184, Green Park, Jalandhar was mentioned at Sr. No. 132 and the petitioner in connivance with other co-accused tampered the record. As plot No. 44 was already allotted to Swaran Singh, complainant (respondent No.2 herein), the same could not be allotted to some other person. A forged and fabricated certificate was prepared in back date. In fact, Manmohan Singh was not the genuine buyer but some person close to the petitioner. The petitioner had made bogus enrollments of certain persons which is reflected from the fact that all of them had mentioned the same address against their names, i.e. House No. 184, Green Park, Jalandhar/Mota Singh Nagar, Jalandhar. Membership number of said members are 7, 17, 37, 132, 133, 146, 151, 153, 164, 167, 168, 184 and that clearly establishes that the petitioner was misusing his position as Secretary of the Society and tampered the record.

9. While replying on merits, respondent No.2 had taken the plea that the resolution dated 2.6.1994 (Annexure P/3) and 10.11.20196

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(Annexure P/4) were never passed by the Society and the same were forged one and prayed that the present petition be dismissed.

10. Learned senior counsel representing the petitioner while arguing the matter, contended that the registration of present FIR is complete misuse of the process of the Court. Even as per plain reading of FIR in question, no offence is made out against the petitioner and the same is not maintainable. The original owner of the plot was the Society and complainant, Swaran Singh was only a member of the Society. Plot No. 44 which was originally allotted to Swaran Singh was cancelled. The residential address of Swaran Singh was given to be 126, New Grain Market, Jalandhar. Subsequently, as per the report, it had come that no person was residing at the given address. As such, the Society had cancelled the allotment vide Annexure P/7 and re-allotted the said plot to Manmohan Singh. Manmohan Singh had sold the said plot to Saravjit Cheema, who is co-accused in this case. The earlier complaints made by Swaran Singh were looked into and enquired by the Police twice, but no substance was found. To sum-up, learned senior counsel for the petitioner mainly contended that the present FIR No. 141 dated 20.9.2014 (Annexure P/16) is liable to be quashed on the following grounds:-

- (i). There is an inordinate delay of 31 years in lodging the FIR and the dispute is primarily of civil nature, but no civil suit was filed by the complainant. Rather, the Society had filed a civil suit for permanent injunction against Swaran Singh, respondent No.2. To support the arguments, reliance was placed on the judgments from Hon`ble Apex Court in **P. Shravan Kumar**

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and another vs. State of Karnataka, 2016 ALL MR (Cri) 4492; State of Punjab vs. Davinder Pal Singh Bhullar and others, 2012(1) R.C.R.(Criminal) 126; Manoj Kumar Sharma and others vs. State of Chhattisgarh and another, 2016(4) R.C.R. (Criminal) 145; and Co-ordinate Bench of this Court in Kheta Ram vs. State of Haryana, 2007(3) R.C.R. (Criminal) 649.

- (ii). FIR at the instance of respondent No.2 is not maintainable because in such like matters of cases under Sections 420 and 415 and sale of property, FIR is to be lodged by any person who was cheated and not the owner of the property. The purchaser may lodge complaint under Section 420 IPC and FIR lodged by owner under Section 420 IPC is liable to be quashed. On this point, reliance was placed on the judgments from Hon`ble Apex Court in MD Ibrahim and others vs. State of Bihar and another, 2009(4) R.C.R. (Criminal) 369 and by Co-ordinate Benches of this Court in **CRM-M-4105-2012-Dharampal Goyal vs. State of Punjab and another, decided on 30.01.2014** and **CRM-M-37539-2011-Balbir Singh and others vs. Joginder Kaur Sangha and another, decided on 11.10.2013.**
- iii). As the present FIR is liable to be quashed being misuse of process of the Court, this Court has ample powers to quash the same while exercising powers under Section 482 Cr.P.C. On this point, reliance was placed on the judgments from

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Hon`ble Apex Court in Anand Kumar Mohatta and another vs. State (Govt. of NCT of Delhi) Department of Home and another, 2018(4) MLJ (Criminal) 732; State of Haryana and others vs. Ch. Bhajan Lal and others, 1991(1) R.C.R. (Criminal) 383; and Ajay Mitra vs. State of M.P. and others, 2003(1) R.C.R.(Criminal) 674.

11. However, while arguing on these points, learned State counsel as well as learned counsel for respondent No.2 contended that respondent no.2 still continuous to be owner of the property as the Society charged Rs. 10,000/- as development charges. On this point, reliance was placed upon some documents, but no such documents were part of the file.

12. Learned counsel representing respondent No.2 mainly contended that Swaran Singh, respondent no.2 was the owner of plot No. 44, who had already made complete payment and allotment of the said plot was due process of law. Nothing was due towards him. During enquiry, he was not associated at any stage and the Enquiry Officer was biased as he was a student of the present petitioner, who was a Professor and he was Secretary of the Society and was custodian of the record as well. Subsequently, on the basis of complaint made by respondent No. 2, statements of concerned persons were recorded so as to establish that respondent No.2, is in fact, resident of same address i.e., 126, New Grain Market, Jalandhar and in fact, the record of the Society was forged and the matter requires investigation to reach at a conclusion as to whether the resolutions were genuine or forged one. Respondent No.2 is the owner of

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the plot and the same has not been cancelled so far by any valid resolution of the Society and as there was no cancellation of the plot, no such resolution like Annexure P/7 could be passed by the Society. Respondent No. 2 was, in fact, residing at the address which is a Shop-cum-Residence. The petitioner was Secretary of the Society and was in a position to forge the record and had been maintaining the affairs of the Society in an illegal manner because there was no election of the Society after 1998.

13. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that the matter requires consideration and determination on the following points :-

- a). Whether perusal of FIR itself does not make out a case for registration of FIR?
- b). Whether continuation of proceedings on the basis of such an FIR is misuse of the process of law?
- c). Whether there was inordinate delay in lodging the FIR?
- d). What was the effect of non-filing of any civil suit by the complainant – respondent No.2?
- e). Whether inherent powers under Section 482 Cr.P.C. should be exercised to quash such proceedings or not?

14. As points No. (a) and (b) are interconnected, the Court would like to discuss and decide the same simultaneously.

15. Taking the case from undisputed facts that respondent No.2, Swaran Singh was allotted plot No. 44 and he had deposited Rs.4,000/- on 13.1.1982 vide receipt No. 157 and Rs.32,000/- on 5.3.1982 vide receipt

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No. 527 and his name was also mentioned in the record along with other members of the Society. He had given his address to be 126, New Grain Market, Jalandhar. After making of complete payment qua the said plot to the Society, practically, Swaran Singh had become full owner of the plot in question and nothing was required to be done. As is the case of the petitioner and the Society that the complainant had not contacted the Society for completing certain documents for allotment for a period of over 31 years and he was not responding to the communication including registered letter, Annexure P/6, which was received back with the report that he was not residing at the given address, the Society allotted the plot to Manmohan Singh and said Manmohan Singh further sold the said plot to Sarvajit Cheema, who is co-accused in this case. To the contrary, respondent No.2 has been able to establish on the basis of document, Annexure R/2-6 which is, statement of Niranjn Singh Dhesi having been recorded during investigation, to the effect that Swaran Singh was residing at 126, New Grain Market, Jalandhar and he was allotted plot No. 44 from the land purchased by the Society. Annexure R/2-7 is affidavit of Amarpreet Singh to the effect that Swaran Singh son of Milkha Singh is the owner of plot and Swaran Singh had done the work of foundation of plot by putting earth in the same and Swaran Singh remained in possession over the said plot No. 44. Annexure R/2-8 is statement of Sukhwinder Singh and as per him, Swaran Singh got prepared plinth of plot No. 33, Park Avenue, Kingra Jalandhar. So, at this stage, certainly it is a question of disputed facts, firstly whether Swaran Singh, respondent No.2 was in fact residing at 126, New Grain Market, Jalandhar or not and secondly, whether

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respondent no. 2 was in fact, in possession over the plot in question and got the foundation and plinth work done from Amarpreet Singh and Sukhwinder Singh, respectively as per Annexures R/2-7 and Annexures R/2-8. Such a matter is subject of investigation and appreciation by trial Judge. Hence, it is not a case where perusal of FIR itself does not make out a case for registration of FIR and as such, there is no ground for quashing of FIR on this ground. As such, the judgments referred to and relied upon by learned senior counsel representing the petitioner in this behalf are not applicable to the present set of facts.

16. As regard to point (c) regarding delay in lodging of FIR after over 31 years, rather respondent No. 2 had been contesting his claim throughout and the matter was pending by way of enquiry at one stage or the other and the civil suit was filed by the Society.

17. As regard to point (d), this Court is of the considered view that non-filing of civil suit by respondent no. 2 does not make out a case for quashing of FIR in any way. As such, on this account also, FIR is not liable to be quashed.

18. As regard to the plea taken by learned senior counsel that the subsequent purchaser has got the right to lodge FIR under Sections 420 and 415 IPC and not the complainant being owner of the plot, this Court is of the considered view that since the petitioner is owner of the property and he has been allegedly cheated by the petitioner, certainly, he has got a right to get the FIR registered and seek trial for the same. So, the judgments relied upon by learned senior counsel for the petitioner in the cases of **MD Ibrahim, Dharampal Goyal, and Balbir Singh's** are of no

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help to the petitioners being distinguishable on facts.

19. Identical matter was before Hon`ble Apex Court in **Munshiram vs. State of Rajasthan and another, 2018 AIR (SC) 1923,** wherein Hon`ble Apex Court was dealing with powers of the Court under Section 482 Cr.P.C. and had put the Court to caution to exercise this power of quashing of FIR cautiously and observed as under :-

“13. In light of the fact that the enquiry was pending and there are aspects which may require investigation, we are of the considered opinion that the High Court erred in quashing the First Information Report at the threshold itself without allowing the investigation to proceed. We cannot agree with the reasons provided under the impugned judgment concerning certain factual assertions made by the respondents as to the condition of the deceased and reasons for committing suicide because acceptance of the said would not be in consonance with the settled jurisprudence under Section 482 of Cr.P.C., 1973 as laid down by various judgments of this Court.

20. Similar matter was also before Hon`ble Apex Court in **Dineshbhai Chandubhai Patel vs. State of Gujarat and others, 2018(1) R.C.R.(Criminal) 617** and Hon`ble Apex Court observed as under:-

“28. Keeping in view the aforesaid principle of law, which was consistently followed by this Court in later years and on perusing the impugned judgment, we are constrained to observe that the High Court without any justifiable reason devoted 89 pages judgment (see-paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it

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needs further investigation to that extent in accordance with law.

29 In doing so, the High Court, in our view, virtually decided all the issues arising out of the case like an investigating authority or/and appellate authority decides, by little realizing that it was exercising its inherent jurisdiction under Section 482 of the Code at this stage.

30 The High Court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of any FIR complaining commission of several cognizable offences by accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

31. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the Complainants and visa-se-versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

21. In view of the judgment from Hon`ble Apex Court, quoted above and the facts of the present case, it is not a case where the present FIR No. 141 dated 20.09.2014 (Annexure P/16) under Sections 420, 408 and 120-B IPC registered at Police Station Division VII, Jalandhar should be quashed while exercising powers under Section 482 Cr.P.C.

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22. Resultantly, there is no merit in the present petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

July 11, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes