

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30061-2019 (O&M)

Date of decision: 31.07.2019

Brij Mohan and others

..... Petitioners

Versus

State of Punjab through Vipin Gulati and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Piyush Sharma, Advocate
for the petitioners.

ANIL KSHETARPAL, J.

The petitioners six in number, have filed the present petition under Section 482 of the Code of Criminal Procedure, invoking inherent jurisdiction of this Court for quashing the complaint bearing No. COMI/139/2015 instituted on 12.08.2015 under Sections 420/120-B of the Indian Penal Code pending before the Judicial Magistrate Ist Class including the order dated 23.07.2015 passed by the Judicial Magistrate Ist Class, Ferozepur in FIR No.163 dated 09.10.2013.

Brief facts of the case are that Brij Mohan and Satish Dura were ordered to be released on bail in a criminal case arising from FIR No.163 dated 09.10.2013. Krishna Devi, Vikas Wadhwa, Honey Wadhwa, Dayal Saroop, Municipal Commissioner along with two accused Brij Mohan and Satish Deora furnished their bail bonds and surety bonds. It was disclosed that Krishna Devi is owner of the property purchased by her pursuant to a sale deed dated 17.05.2004. In both the cases, same property

was given in support of surety bonds furnished for both the accused. Later on, application under Section 340 of the Code of Criminal Procedure read with Section 195, Cr.P.C. was filed to initiate proceedings against the petitioners on the ground that they have played fraud and concealed material facts from the Court. Learned Court after examining the evidence prima facie found that the petitioners have in fact played fraud as also concealed material facts from the Court on two grounds. First Smt. Krishna Devi has furnished surety bond by declaring that the property in question to be owned by her whereas it has come in evidence that she had already sold major part thereof vide two sale deeds dated 05.02.2007 and 25.03.2010 Ex. P-12 and P-11. Thus, the Court, after noticing various role played by each of the accused in the same, directed its reader to file the complaint before the Court of learned Chief Judicial Magistrate vide order dated 23.07.2015. Pursuant to the directions, the complaint was filed on 12.08.2015. Now the petitioners pray for quashing thereof.

This Court has heard learned counsel for the petitioners at length.

Learned counsel for the petitioners has submitted that the Court is permitted to order prosecution for contempt of lawful authority of public servants for offences against public justice and for offence relating to documents given in offence only with respect to the offence which has been mentioned in Section 195(1) of the Code of Criminal Procedure. Hence, he submitted that the offence under Section 420/120-B of the Indian Penal Code is not maintainable at the behest of the Court.

This Court has considered the submissions of learned counsel for the petitioners. On careful reading of Section 195(1) Cr.P.C., it is

apparent that it deals with certain offences as per Clause 'a' and 'b' of sub-section (1) of Section 195 and prohibits the Court to take cognizance except on the complaint in writing of that Court or by such Officer of the Court as that Court may authorize in writing in this behalf or of some other Court to which that Court is subordinate. Section 195 of the Code of Criminal Procedure is extracted as under:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

1. No Court shall take cognizance—

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of Sub-Section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint;

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of Sub-Section (1), the term “Court” means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of Sub-Section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate;

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

Section 195 nowhere debars the Court to take cognizance of offences other than specified in Section 195(1) of the Code of Criminal Procedure. Once it comes to the notice of the Court that certain persons/accused /sureties/persons who stood surety or identified the sureties had committed wrong while filing documents in the Court and declaration

given by them is factually incorrect, the Courts are not debarred from initiating proceedings by filing the complaint.

Still further, the petitioners have invoked extraordinary jurisdiction of the Court. This Court is not inclined to exercise its inherent jurisdiction in favour of the persons who alleged to have prima facie committed cheating with the Court.

Learned counsel for the petitioners have submitted that in FIR No.163 dated 09.10.2013, the parties have arrived at a compromise and the aforesaid FIR has been quashed. Be that as it may, once the Court of Judicial Magistrate Ist Class after examining facts on record has formed a prima facie opinion that the petitioners have committed the offence and a direction to file a complaint against the petitioners has been issued, settlement between the parties in the previous case would not entirely absolve the petitioners. Learned trial Court shall be entitled to examine this aspect at appropriate stage.

Hence, the petition is dismissed.

Needless to observe that the Court shall decide the case independently, without influenced by observations made in this order.

31.07.2019

D.Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No