

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

205

**CRM-M-36313-2017
Date of decision: 27.05.2020**

Raj Kumar Sharma

.....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Argued by: Mr. Manoj Kaushik, Advocate
for the petitioner.

Mr. Arjun Singh Yadav, AAG, Haryana
for respondent No. 1

None for respondent No. 2

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of FIR No. 691 dated 21.10.2016 registered under Sections 420, 447 and 448 of the Indian Penal Code, 1860 (for short 'the I.P.C.') at Police Station Sarai Khawaja, District Faridabad along with final report dated 19.03.2017 and all other subsequent proceedings arising therefrom.

2. Briefly stated, factual matrix of the case is that Parwati Devi submitted written complaint to the Commissioner of Police, Faridabad alleging that she purchased a plot measuring 100 square yards from Mukesh Panchal vide registered sale deed No.17840 dated 20.03.2015 registered with the Sub Registrar, Faridabad regarding which mutation No.2523 dated 28.09.2015 was sanctioned in her

favour. The above said plot was owned by Raj Kumar Sharma and Mukesh Panchal, as his General Power of Attorney, got the sale deed executed and registered in respect of plot measuring 50 square yards in her favour and executed agreement to sell agreeing to sell remaining plot measuring 50 square yards in favour of Saroj. After purchase of the plot she got the boundary wall of the said plot constructed and also put some building material on the said plot. The accused persons came to her plot and gave beating to the construction workers and forced them to run from there. When she objected, the accused threatened to kill her and her family members and forced her to go away from the plot. Subsequently, she came to know that accused persons in conspiracy with each other got sale deed No.3286 dated 22.05.2015 registered from the Office of Sub Registrar, Faridabad by producing fake witnesses. She purchased the plot by using the compensation amount received by her due to death of her son in road accident and her hard earned money. The accused are doing the business of property dealing and grab money of innocent persons and they may be stopped from interfering in her plot. After verification of facts by inquiry above said FIR was registered. The police investigated the case and on completion of investigation on finding sufficient evidence against the petitioner, filed report under Section 173(2) of the Cr.P.C. against him.

3. The petitioner has filed the present petition pleading that the petitioner borrowed Rs.8 lacs from Mukesh Panchal and kept his plot measuring 100 square yards as security with him by executing General Power of Attorney (for short 'the GPA') dated 11.03.2015 registered in the office of Sub Registrar, Noida. The original GPA dated

11.03.2015 was kept by the petitioner and was agreed to be cancelled after repayment of the loan amount of Rs. 8 lacs. Mukesh Panchal with mala fide intention procured certified copy of the GPA dated 11.03.2015 and on the basis thereof executed sale deed dated 20.03.2015 for plot measuring 50 square yards in favour of complainant Parwati Devi and agreement to sell regarding remaining plot measuring 50 square yards in favour of Saroj after receiving full and final payment. Thereafter, Mukesh Panchal executed and got registered sale deed dated 22.05.2015 in favour of Pankaj Sharma and Mukesh Sharma but subsequently Pankaj Sharma and Yogesh Sharma executed GPA dated 28.05.2015 regarding the same in favour of Mukesh Panchal. The petitioner returned the loan amount of Rs.8 lacs to Mukesh Panchal and thereafter cancelled the GPA on 25.05.2015. After a few days, the petitioner came to know that Mukesh Panchal had executed the above said two sale deeds on the basis of registered GPA dated 11.03.2015 without his knowledge and against his wish in favour of his agents to grab the land of the petitioner. The petitioner made complaint dated 06.10.2015 to the Joint Commissioner of Police, Faridabad on which enquiry was got conducted. The accused persons being very influential persons having high political links succeeded in getting the enquiry filed without any action against them. The petitioner filed representation dated 15.01.2016 before the Commissioner of Police, Faridabad but no action was taken by the Police Commissioner, Faridabad. The petitioner approached this Court by filing CRM-M-9090-2016 on which directions were issued by this Court vide order dated 28.03.2016 to the Commissioner of Police, Faridabad to decide

the representation of the petitioner. The petitioner also filed a civil suit for declaration and permanent injunction against the complainant challenging sale deed in her favour on which status quo order dated 27.05.2016 has been passed in favour of the petitioner. In his written statement filed in that case Mukesh Panchal has admitted that possession of the land was never handed over to him by the petitioner. The petitioner did not make any inducement to the complainant and did not receive any money from her. The petitioner was in possession of the plot and question of forcible dispossession of the complainant from the same did not arise. The petitioner has accordingly sought quashing of the above-said FIR alongwith final report and all subsequent proceedings arising therefrom.

4. The petition has been opposed by respondent No.1-State in terms of reply filed by way of affidavit dated 11.04.2018 of Yashpal Singh, HPS, Assistant Commissioner of Police, Sarai, Faridabad. In the affidavit, it has been submitted that the petitioner executed GPA in favour of Mukesh Panchal in respect of plot measuring 100 square yards situated at Sehatpur, Faridabad. Mukesh Panchal sold plot measuring 50 square yards in favour of Smt. Parwati Devi. The petitioner has forcibly taken possession over the plot sold to the complainant and committed offences punishable under Sections 447 and 448 of the I.P.C. and acts of cheating. The facts were further got verified by Sub Inspector Mahender Pal of Police Station Sarai. There was sufficient evidence showing the involvement of the petitioner in the matter. There is no abuse of process of law in the present case.

Therefore, the petition may be dismissed.

5. I have heard the arguments of learned Counsel for the parties and gone through the record.

6. Learned Counsel for the petitioner has argued that the petitioner took loan of Rs.8 lacs from Mukesh Panchal and kept his plot measuring 100 square yards as security with him by executing the GPA dated 11.03.2015 which was agreed to be cancelled after repayment of the loan amount. Original GPA was retained by the petitioner and after repayment the petitioner cancelled the GPA on 25.05.2015. Mukesh Panchal with mala fide intention procured certified copy of the GPA dated 11.03.2015 and on the basis thereof executed sale deeds in favour of his own persons to grab his plot as also proved by the fact that Mukesh Panchal executed the sale deed dated 22.05.2015 in favour of Pankaj Sharma and Mukesh Sharma who subsequently executed GPA dated 28.05.2015 in his favour. There is no allegation of the petitioner having made any inducement to the complainant and having received any money from her and offence under section 420 of the IPC is not made out. Since the possession of the plot in question was never handed over to Mukesh Panchal and the petitioner continued to be in possession of the same, question of the petitioner having forcibly taken possession thereof from the complainant did not arise and offences punishable under sections 447 and 448 of the I.P.C. are not made out. The petitioner has already filed civil suit for declaration and permanent injunction and the FIR has been lodged thereafter by giving civil dispute colour of a criminal offence. The FIR does not disclose any offence and is gross abuse of the process. Therefore, the FIR along with final report and all subsequent proceedings arising therefrom may be

quashed for the ends of justice.

7. On the other hand learned State Counsel has argued that Mukesh Panchal purchased the plot from the petitioner and got the GPA executed in his favour. Mukesh Panchal executed sale deed in favour of the complainant, agreement to sell in favour of Saroj and sale deed in favour of Pankaj Sharma and Mukesh Sharma on the basis thereof. The petitioner has cheated and forcibly taken possession of the plot sold to the complainant and committed offences punishable under Sections 420, 447 and 448 of the I.P.C.. The FIR discloses commission of cognizable offences by the petitioner who has been rightly charge sheeted to face trial and the FIR, the Final Report and subsequent proceedings do not constitute abuse of process. Therefore, the petition may be dismissed.

8. Section 482 of the Cr.P.C., which saves inherent powers of the High Court, reads as under :-

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any orders of this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice".

9. In ***State of Haryana and others Vs. Bhajan Lal and others : 1991(1) R.C.R. (Criminal) 383*** Hon'ble Supreme Court observed as under:-

"107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 F.I.R. 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 F.I.R. 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 a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. 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 a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the 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.

*108. 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 F.I.R. 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.” (emphasis supplied)

10. In **Rishipal Singh v. State of U.P. And another 2014(4)**

Recent Apex Judgments 324 Hon'ble Supreme Court observed as under:-

“10.A bare perusal of Section 482 Cr.P.C. makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of Court and to secure ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The Courts have to be very circumspect while exercising jurisdiction under Section 482 Cr.P.C.

*11. This Court in **Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. And Others, 2000(2) R.C.R. (Criminal) 122 : 2000 (3) SCC 269**, has discussed at length about the scope and ambit while exercising power under Section 482 Cr.P.C. and how cautious and careful the approach of the Courts should be. We deem it apt to extract the relevant portion from that judgement, which reads:*

"Exercise of jurisdiction under inherent power as envisaged in section 482 of the Code to have the complaint or the charge sheet quashed is an exception rather than rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution with the lodgement of First Information Report. The ball is set to roll and thenceforth the law takes it's own course and the investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and it's undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the fact of it does not constitute or disclose any offence alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situations as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness

through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount".

12. This Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 Cr.P.C. In **State of Haryana v. Bhajan Lal, 1991(1) R.C.R.(Criminal) 383 : 1992 Supp(1) SCC 335**, this Court has listed the categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this Court in (1) **Central Bureau of Investigation v. Duncans Agro Industries Ltd., 1996(3) R.C.R.(Criminal) 60 : 1996 (5) SCC 592**; (2) **Rajesh Bajaj v. State NCT of Delhi, 1999(2) R.C.R.(Criminal) 160 : 1999 (3) SCC 259** and; (3) **Zandu Pharmaceuticals Works Ltd. v. Mohd. Sharaful Haque & Anr., 2004(4) R.C.R. (Criminal) 937 : (2005) 1 SCC 122**. This Court in **Zandu Pharmaceuticals Ltd.**, observed that:

*"The power under section 482 of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under section 482 of the Code must be exercised and proceedings must be quashed". Also see **Om Prakash and Ors. v. State of Jharkhand, 2012(4) R.C.R.(Criminal) 662 : 2012(5) Recent Apex Judgments (R.A.J.) 127 : 2012 (12) SCC 72**.*

*What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. **While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.**"*
(emphasis supplied)

11. Accordingly, it is now well settled that High Court, in

exercise of its inherent jurisdiction under Section 482 of the Cr.P.C. would not make any roving inquiry into the questions of fact and record any findings. High Court has only to scrutinize the FIR /complaint and take the allegations/averments made in the complaint on their face value and quash the proceedings if the FIR/complaint does not disclose commission of any offence. For judicial precedents reference may also be made to judgments of this Court in ***Gurbachan Singh Bhasin Vs. State of Punjab 2013 (4) RCR (Criminal) 512 and Arvind Vs. State of Haryana 2014 (38) RCR (Criminal) 290.***

12. In the present case the petitioner has claimed that he executed the GPA in favour of Mukesh Panchal by way of security for repayment of loan of ₹ 8 lakhs taken from him and on repayment of loan the petitioner cancelled the GPA but Mukesh Panchal cheated him and without his consent and without making any payment to him executed sale deeds in favour of his persons to grab his plot. The petitioner has also claimed that the petitioner did not make any inducement to the complainant; did not receive any money from her and due to the petitioner being in possession of the plot sold to the complainant, question of taking forcible possession of the plot by him from the complainant did not arise. On the other hand, as per written statement filed in the civil suit filed by the petitioner, copy of which has been placed on record by the petitioner, Mukesh Panchal has claimed that he had purchased the plot from the petitioner and got the GPA executed from him and validly executed sale deeds on the basis thereof. The complainant has claimed that after purchasing the plot from Mukesh Panchal as the GPA of the petitioner, she constructed the

boundary wall and put her construction material in the plot but the accused gave a beating to her labourers, threatened to kill her and forced the complainant and her labourers to leave the plot. The case involves questions as to (i) Whether the petitioner took loan from Mukesh Panchal and executed the GPA as security or sold the plot to Mukesh Panchal, a property dealer and executed the GPA authorising him to execute sale deeds as per such practice followed by the property dealers; (ii) whether Mukesh Panchal cheated the petitioner by fraudulently executing the sale deeds on the basis of the GPA as claimed by the petitioner or Mukesh Panchal, being the property dealer having purchased the plot and duly authorised by the GPA in his favour sell the same, legitimately sold the same on the basis of the GPA as claimed by him (iii) What is the effect of admission of Mukesh Panchal in his written statement as to possession of the plot not having been given to him by the petitioner and (iv) whether the petitioner continued to be in possession of the plot illegally sold to the complainant and did not forcibly take over possession of same or Mukesh Panchal being the GPA duly authorised to sell the plot and hand over possession thereof, sold the same and handed over possession thereof to the complainant and the petitioner forcibly took over possession of the plot sold to the complainant from her. These questions have to be decided on the basis of evidence to be produced during trial and this court cannot go into and adjudicate upon these disputed questions of facts in the instant petition under section 482 of the Cr.P.C..

13. In the present case, if the allegations made in the First Information Report are taken at their face value and accepted in their

entirety prima facie case as to commission of offences punishable under Sections 420, 447 and 448 of the I.P.C. is made out against the petitioner and Mukesh Panchal. On investigation, Mukesh Panchal has been exonerated by the police on the ground of sale deeds having been validly executed by him and in view of such exoneration, prima facie, due to there being no cheating/dishonest inducement by the petitioner of the complainant offence under Section 420 of the I.P.C. is not made out but even as per the allegations verified by investigation as mentioned in the final report of forcibly taking over by the petitioner of possession of the plot sold to the complainant, prima facie case at least as to commission of offence punishable under Section 447 or 448 (in case the plot with boundary walls constructed thereon was being used for custody of property) of the I.P.C. is made out against the petitioner. Consequently, the FIR, final report and subsequent proceedings arising therefrom can not be said to be an abuse of process and no ground is made out for quashing of the same by exercise of powers under Section 482 of the Cr.P.C. for securing the ends of justice.

14. No doubt, the petitioner has already filed civil suit for declaration and permanent injunction against Mukesh Panchal and others including the complainant, but the same set of facts as averred by the complainant gives rise to cause of action under civil law as well as criminal law. In ***Court on its own motion Vs. Smt. Kailash Rani : 1993(1) R.C.R.(Criminal) 661*** this Court held that mere pendency of civil proceedings cannot ipso facto, block criminal proceedings concerning the same cause of action nor can it be taken to be the intention of law that if criminal proceedings are pending, all that an

accused has to do is to file civil suit on the same cause of action, no matter how weak or tenuous his claim may be, and criminal proceedings have necessarily to be stayed thereafter to await the result of the civil suit. To adopt such a course, may, in fact, defeat the ends of justice keeping in view the long delays that usually occur in the disposal of the civil suits, thereby enabling a guilty culprit to be at large with impunity for years and in the meanwhile intervening factors like witnesses suffering loss of memory after such a long time or not being available and the like coming in, to provide an escape route to such an accused in the criminal proceedings. In *Vijay Kumar Vs. State of Punjab : 1991 (2) R.C.R. (Criminal) 220* and *Rakesh Kumar Vs. Vanish Kumar : 1993(2) R.C.R.(Criminal) 599* it was held by this Court that there can be no bar to continuation of Civil suit and criminal proceedings side by side in a case where the same set of facts gives rise to cause of action under civil and criminal law. In view of this legal perspective, the FIR, final report and all subsequent proceedings arising therefrom cannot be said to be an abuse of process and are not liable to be quashed on the ground of the case involving civil dispute only and pendency of the civil suit already filed by the petitioner.

15. In view of the above, the petition, being devoid of any merit, is accordingly dismissed with no order as to costs.

(ARUN KUMAR TYAGI)
JUDGE

27.05.2020
kavneet singh

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