

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37880-2017 (O&M)

Date of Decision: 20.02.2020

Sukhwinder Singh

.. Petitioner

Vs.

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Ms. Sukhpreet Kaur, Advocate for the petitioner.

Ms. Monika Jalota, DAG, Punjab.

Mr. J.S. Thind, Advocate
for respondent No.2.

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Manoj Bajaj, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of FIR No.111 dated 09.07.2015, under Section 420 IPC, registered at Police Station Division No.7 Jalandhar, District Jalandhar City (Anneuxre P-2) and the proceedings arising out of it.

The above FIR was registered on the basis of written complaint given by Chander Kanta w/o late Kamal Singh (respondent No.2), wherein it was alleged that she was working at Dr. Sarwinder Singh's Children Medical Center Model Town, Jalandhar. She purchased a plot measuring 2 marlas at Kuki Dhab Jalandhar and spoke to one Rahul regarding construction of house, as he used to work with her. It was told to her by Rahul that his brother-in-law Sukhwinder Singh was working as a building contractor and he would raise the construction of her house. According to the complainant, Rahul called his brother-in-law Sukhwinder Singh at the clinic of Dr. Sarwinder Singh, who agreed to construct the house for a total

sum of Rs.2,50,000/- which included lanter, water pipes, boundary walls, etc. It was assured by him that the house would be constructed within a period of one month and upon this assurance, she paid a sum of Rs. Rs.2,20,000/- to Sukhwinder Singh in the presence of Rahul and Dr. Sarwinder Singh. On these broad allegations, the above FIR was registered for commission of offence of cheating.

After completion of the investigation, the final report under Section 173 Cr.P.C, dated 11.10.2015 (Annexure P-3) was filed against Sukhwinder Singh (petitioner) and his co-accused Rahul.

Notice of motion in the petition was issued on 09.10.2017.

Pursuant to the said order, a reply dated 11.12.2018 by way of affidavit of Naveen Kumar, Assistant Commissioner of Police, Model Town (IV), Jalandhar on behalf of respondent-State of Punjab was filed. However, no reply was filed on behalf of the complainant, despite various opportunities.

Learned counsel for the petitioner contends that the whole case of the complainant is regarding breach of the oral agreement and, therefore, the dispute between the parties is purely of civil nature and the cognizance by police is not justified. She has argued that the FIR itself contains the fact that the petitioner carried the construction and, therefore, no criminal offence would be made out. She invited the attention of the Court to the photographs appended with the petition as Annexure P-1 (colly) to contend that the amount allegedly paid by the complainant was utilized in construction of the walls etc., at the plot of the complainant. According to her, the complainant did not make the payment for further construction and, therefore, the construction was stopped. According to her, only a sum of

Rs.1,50,000/- was paid by complainant and she referred to the statement of Dr. Sarwinder Singh (Annexure P-4) recorded by police under Section 161 Cr.P.C., wherein the witness stated that only a sum of Rs.1,50,000/- was paid by Chander Kanta. She has further submitted that the final report filed by the police is founded on the allegations as contained in the FIR. According to the learned counsel, the FIR is nothing but an abuse of process of law and, therefore, the same deserves to be quashed.

On the other hand, learned State counsel has opposed the prayer on the ground that the investigation of the case is complete and after considering the final report, the trial Court has framed the charges. However, it is not disputed that no witness has been examined by the prosecution in support of its case.

Mr. J.S. Thind, learned counsel for the complainant has contended that a sum of Rs. 2,20,000/- was paid by the complainant to the petitioner and, therefore, by not completing the construction work, the petitioner has committed the offence of cheating. During the course of hearing, it is not disputed by Mr. J.S. Thind, counsel for respondent No.2 that indeed construction was raised by petitioner at the plot owned by the complainant. He has submitted that the petition is founded on disputed facts and, therefore, the petition deserves to be dismissed and the petitioner can raise all these issues during the trial.

At this stage, learned counsel for the petitioner has contended that the revision petition filed by co-accused Rahul against the order of charge passed by the trial Court was accepted vide order dated 21.09.2019 (Annexure P-6) and the case was remanded back to the trial Court for deciding it afresh.

Ms. Sukhpreet Kaur, learned counsel for the petitioner has contended that the revisional Court has specifically observed that agreement was partly performed by the accused and the trial Court proceeded to frame the charges without recording the satisfaction that a prima facie case for commission of offence punishable under Section 420 IPC was made out. She has submitted that though the said observation is regarding co-accused Rahul, but the fact remains that the dispute between the parties is purely of civil nature. She has argued that the amount allegedly paid by the complainant was utilized towards construction of the house and, therefore, she has suffered no loss.

After hearing learned counsel for the parties, this Court finds that it was the complainant, who herself expressed her desire to get the construction done at her plot from the petitioner and had allegedly paid a sum of Rs.2,20,000/-, therefore, it is not a case where any inducement was given by the petitioner to the complainant to part away with the amount thereby causing any loss, particularly when the construction at the plot was raised by the petitioner. It is not in dispute that the photographs attached with the petition clearly reflect the erection of walls and even the doors and the windows were fitted with wooden brackets. It can be safely inferred that the amount of approx two lacs paid by the complainant has been used in construction by the petitioner. These photographs have not at all been disputed by complainant either by filing any reply to the petition or by her counsel by addressing any arguments. Further it was also not disputed by Mr. Thind, learned counsel for the complainant that the amount was paid only at the initial stage of the agreement and subsequently, no further amount was paid to the petitioner by the complainant. Therefore,

considering the background of this case, the dispute between the parties, if any, is apparently regarding breach of an oral agreement and would be of civil nature.

The scope of exercise of power under Section 482 Cr.P.C. has been examined consistently by this Court as well as the Hon'ble Supreme Court in number of cases, laying down the guidelines and principles for invoking the inherent powers of the High Court. In **State of Haryana and others vs. Ch. Bhajan Lal and others, 1992 Supp(1) Supreme Court Cases 335**, the Apex Court has held as under:-

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. can be exercised by the High Court 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 FIR 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 FIR 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 Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of 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.

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 FIR 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.”

The above view was further reiterated by the Supreme Court in

M/s Pepsi Foods Ltd. vs. Special Judicial Magistrate 1997(4) RCR (Criminal) 761.

By applying the above test in this case and considering the allegations made in the FIR and the conclusion drawn by the police in the final report (Annexure P-3), this Court finds that no offence would be made out for prosecution of petitioner much less for cheating. It is also settled law that where the allegations made in the FIR or the final report do not constitute of any offence, the High Court would be justified in exercising its inherent powers under Section 482 Cr.P.C. to quash the penal proceedings. Further in **S.W. Palanitkar vs. State of Bihar 2001(4) RCR (Criminal) 572**, the proceedings under challenge pertained to a complaint case brought under Chapter XV of the Code of Criminal Procedure and the Hon'ble Supreme Court while dealing with the powers under Section 482 Cr.P.C., made the following observations :-

“27.The approach and considerations while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms of Sections 200 to 203 under Chapter XV of Criminal Procedure Code, having due regard to the position of law explained in various decisions of this Court, and whereas while exercising power under Section 482 of Criminal Procedure Code the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under the Criminal Procedure Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 Criminal Procedure Code should be consistent with the scope and ambit of the same in the

light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of the Court may not be allowed to be utilised for any oblique motive. When a person approaches the High Court under Section 482 Criminal Procedure Code to quash the very issue of process, the High court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred.”

Considering the above law and the facts and circumstances of the case, it is clear that mere non-completion of construction in the given facts would not constitute an offence punishable under Section 420 IPC, therefore, it is a fit case for exercising the inherent powers under Section 482 Cr.P.C. Resultantly, the petition is allowed and the FIR No.111 dated 09.07.2015, under Section 420 IPC, registered at Police Station Division No.7 Jalandhar, District Jalandhar City (Anneuxre P-2) as well as the final report (Annexure P-3) are quashed qua the petitioner.

20.02.2020
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No