

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 39500 of 2014 (O&M)
Date of Decision: 05.3.2020

Ravi Bhushan Dutta and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioners.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Ritesh Pandey, Advocate
for respondent No. 2.

HARNARESH SINGH GILL, J.

This is a petition under Section 482 Cr.P.C. for quashing of FIR No. 80 dated 26.5.2011 registered under Sections 420/ 465/ 467/ 478/ 471/ 120-B IPC, Police Station City Batala, District Gurdaspur (Annexure P-1) and report under Section 173 Cr.P.C. (Annexure P-2) and all the consequential proceedings arising therefrom.

It is a case in which respondent No. 2-Sandeep Dutta had got registered the above said FIR against the petitioners alleging that the petitioners in connivance with the revenue officials had prepared a false sale deed with an intention to dupe him of the property. In the present case, after reinvestigation challan has been presented.

As per the averments made in the petition, petitioner No. 1-

Ravi Bhushan Dutta had executed a sale deed dated 9.12.1996 with regard

to one shop in favour of Satpal Gupta and petitioner No. 2 had executed a sale deed dated 20.5.1996 in favour of Om Parkash Soni with regard to one shop. It is thus averred that the alleged occurrence is of more than 15 years back and that no offence of cheating, forgery or criminal conspiracy is made out.

In reply filed by respondent No. 1-State, it has been averred that on the basis of an enquiry conducted on the complaint received from respondent No. 2, the present FIR had been registered as the petitioners were not the exclusive owners of the shops which had been sold by them.

In reply filed by respondent No. 2, it has been stated that petitioners were not the owners of the property which had been sold by them and they by such acts of theirs had committed fraud. It has been further stated that as per the information received from the Sub-Registrar, Batala (Annexure R-1) under the Right to Information Act, no proof regarding the ownership was attached by the petitioners while executing the sale deed. It has also been averred by respondent No. 2 that he had also filed a suit for declaration on 4.6.2012 to the effect that he was owner in possession of the suit property and the said suit was decreed vide judgment and decree dated 23.4.2013 (Annexure R-2).

I have heard the learned counsel for the parties and with their able assistance have gone through the record of the case.

Learned counsel for the petitioners has argued that the petitioners had sold the property by way of registered sale deeds and it is not a case of impersonation. Rather, there was a family settlement by way of agreement dated 12.6.1989 and on the basis of said agreement, the properties in question were divided between the parties to the said

settlement and thereafter, the share was given to the petitioners which was sold by them and the said agreement was signed by all the members of the family. He further submits that the subsequent purchaser Om Parkash Soni, who had purchased the property from petitioner No. 2-Sudha Dutta on 20.5.1996, filed CRM No. M-39488 of 2012 for quashing of FIR which was allowed by this Court on 13.10.2014 (Annexure P-4) and the FIR qua him has been quashed. Learned counsel has further argued that the investigating agency without getting the opinion of the expert has drawn the conclusion that the agreement dated 12.6.1989 is a forged document. Learned counsel has relied upon the judgment of the Hon'ble Apex Court in ***Md. Ibrahim and others versus State of Bihar and another 2009(4) R.C.R. (Criminal) 369*** and that of the Kerala High Court in ***Damodara Panicker and others versus the State of Kerala represented by the Public Prosecutor, High Court of Kerala, Ernakulam-31 and others 2019(2) Crimes 465***.

Learned State counsel, assisted by learned counsel for respondent No. 2, has argued that the documents placed on record can only be adjudicated upon during the trial on the basis of evidence led and there is a finding of the Civil Court in favour of respondent No. 2-complainant vide which he was declared exclusive owner of the property. It has also been pointed out by the learned State counsel that the challan has since been presented, but charges are yet to be framed.

In ***Mohd. Ibrahim's*** case (*supra*), the Hon'ble Supreme Court has dealt with the categories of the false documents and the transfer of the property on the basis of such documents. However, in the present case, during investigation, the investigating agency has found that the alleged

family settlement was a forged document. Therefore, the judgment in **Mohd. Ibrahim's** case (supra), is of no help to the petitioner.

In the present case, the investigating agency during investigation has found that the family settlement dated 12.6.1989 is a forged document. Whether or not such document is forged, is to be adjudicated upon on the basis of the evidence to be led by the parties during the trial and, therefore, the prayer of the petitioner cannot be granted by scuttling the trial process.

The Hon'ble Supreme Court in **Dilbag Rai Vs. State of Haryana and others, 2019(5) RCR (Criminal) 217**, has held 'whether or not the accused therein had any title over the property alleged to have been transferred in favour of the complainant', is a matter of trial. Thus, while setting aside the order passed by the High Court thereby quashing the criminal proceedings, it was held as under:-

"13. The High Court was persuaded to quash the criminal proceedings purely on the basis that the FIR indicated that the vendor had refused to execute the sale deed. On this basis, the High Court held that there is no element of cheating and on reading of the FIR, the complainant had failed to make out any criminal intent on the part of the accused.

14. In arriving at this conclusion, the High Court, as would appear from the narration of facts earlier, has lost sight of crucial aspects which have emerged during the course of the investigation. The case of the complainant, it must be noted, is that though the accused did not have title to the property, she had dealt with the property and it was on that basis that the complainant was induced to part with valuable consideration."

In **Arun Bhandari Vs. State of U.P. and others, (2013)2 SCC**

801, while dealing with the factum of prima-facie case of cheating, the

Hon'ble Apex Court has held as under:-

“31. Applying the aforesaid parameters we have no hesitation in coming to hold that neither the FIR nor the protest petition was mala fide, frivolous or vexatious. It is also not a case where there is no substance in the complaint. The manner in which the investigation was conducted by the officer who eventually filed the final report and the transfer of the investigation earlier to another officer who had almost completed the investigation and the entire case diary which has been adverted to in detail in the protest petition prima facie makes out a case against the husband and the wife regarding collusion and the intention to cheat from the very beginning, inducing him to hand over a huge sum of money to both of them. Their conduct of not stating so many aspects, namely, the Power of Attorney executed by the original owner, the will and also the sale effected by the wife in the name of Monika Singh on 28.7.2008 cannot be brushed aside at this stage. Therefore, we are disposed to think that the High Court, while exercising the extraordinary jurisdiction, had not proceeded on the sound principles of law for quashment of order taking cognizance. The High Court and has been guided by the non-existence of privity of contract and without appreciating the factual scenario has observed that the wife was merely present. Be it noted, if the wife had nothing to do with any of the transactions with the original owner and was not aware of the things, possibly the view of the High Court could have gained acceptance, but when the wife had the Power of Attorney in her favour and was aware of execution of the will, had accepted the money along with her husband from the complainant, it is extremely difficult to say that an innocent person is dragged to face a vexatious litigation or humiliation. The entire conduct of the respondent Nos. 2 and 3 would show that a prima facie case is made out and allegations are there on record in this regard that they had the intention to cheat from the stage of negotiation. That being the position, the

decision in Hridya Rajan Pd. Verma & others (supra) which is commended to us by Mr. Sharma, learned senior counsel, to which we have adverted to earlier, does not really assist the respondents and we say so after making the factual analysis in detail.”

The very foundation of the proceedings initiated by the complainant revolves around alleged family settlement dated 12.6.1989. The validity of such document cannot be adjudicated upon in the present proceedings. Rather, the same can only be adjudicated upon on the basis of the evidence led by the parties. Therefore, no case is made out for quashing FIR, report under Section 173 Cr.P.C. and all the consequential proceedings arising therefrom.

In view of the above, the present petition is dismissed.

(HARNARESH SINGH GILL)
JUDGE

March 05, 2020
Gurpreet

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