

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(through video conferencing)**

**CRM-M-50132-2019
Date of Decision : 20.04.2021**

Rajbir Gehlawat and another

.... Petitioners

Versus

State of Haryana and others

.... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Akshat Gupta, Advocate
for the petitioners.

Mr. Rajiv Goel, DAG, Haryana.

MANJARI NEHRU KAUL, J.

The instant petition has been filed under Section 482 Cr.PC for seeking appropriate directions in FIR No.140 dated 25.02.2015/26.02.2015 registered under Sections 420/406/120-B/34 IPC, 1860 and Sections 4/42/76 of the Chit Fund Act, 1982 at Police Station Sonipat, Haryana.

The case of the petitioners in brief as urged by the learned counsel for the petitioners may be noticed as under:

That they had been made a scapegoat by one Raj Bala (complainant) and certain other unknown persons with an oblique motive to pressurize and extract money from them even though they were not even remotely connected with any of the alleged offences in the FIR in question and the investigating agency and the complainant in collusion with each other had

thereafter foisted a false and fabricated case upon them. It was in fact the complainant Raj Bala, who befriended petitioner No.2 Rani in the year 2014 and thereafter on winning her confidence, lured her to invest her money in a “committee business”, which was being run by the former. However, no sooner did petitioner No.2 realise that Raj Bala-complainant was illegally running the aforementioned business and had been duping innocent people of large sums of money, she immediately stopped investing her money in the committee. It was thus, in this background that the complainant by way of a pre-emptive move, in order to thwart any criminal case being registered against her for her illegal activities, got the FIR in question registered against the petitioners. Learned counsel has also submitted that petitioner No.2 had lodged a complaint against the complainant Raj Bala and her son, who is a police official, on 17.12.2014 but to their dismay, the police officials for reasons best known to them and rather obvious, failed to act on her complaint. Thereafter, the petitioners were continuously subjected to harassment and given threats of dire consequences including false implication in cases. Subsequently, in the year 2016, the complainant Rajbala resolved and settled the dispute with the petitioners wherein she gave an affidavit to the effect that she did not want to continue with any proceedings against them. It was therefore, urged that the factum of the

complainant arriving at a settlement with the petitioners further left no manner of doubt that the petitioners were indeed innocent and had been victims of false implication at the hands of complainant and the investigating agency.

Learned counsel has invited the attention of this Court to Annexure P-3 dated 27.09.2019, which was a communication sent to petitioner No.2 Rani Gehlawat, wife of petitioner No.1- Rajbir Gehlawat vide which she had been intimated by the Estate officer, HSVP Sonipat, HSVP Complex, Sector-15, Sonipat, Haryana, that a letter had been received from the Police Chowki, Sector 23, Sonipat on 04.03.2015 wherein he had been directed not to permit the sale or transfer of various immovable properties including House No.1911, Sector 23, Sonipat. Learned counsel has submitted that it was only on receipt of the aforementioned communication it came to the notice of the petitioners that the following properties had also been seized, attached or blocked from being sold or transferred by the investigating agency:

Properties belonging to petitioner No.1:

- i) Account bearing No.60441140129094, bank: HDFC Bank, Branch: Gurgaon, Haryana.
- ii) Mahindra XUV (Car) bearing No.HR 10U 2006
- iii) Mahindra Quanto (Car) bearing No.HR 10 U 3323
- iv) House No.1911, Sector 23, Sonipat, Haryana (owned jointly by petitioners No.1 and 2)

Properties belonging to petitioner No.2:

- i) House No.1911, Sector 23, Sonipat, Haryana (owned jointly by petitioners No.1 and 2)
- ii) Shop No.19, Sector 23, Sonipat, Haryana
- iii) DSO No.25, Sector 23, Sonipat, Haryana
- iv) Plot No.1983, Sector 23, Sonipat, Haryana
- v) Ford Eco Sport (Car) bearing No.HR 10 V 4060
- vi) Account bearing No.107810011060729; Bank: Andhra Bank; Branch: Vasant Kunj, New Delhi

Learned counsel has contended it was totally false and incorrect that the above-mentioned moveable and immoveable properties had been purchased after duping Raj Bala-complainant and others of their money, which found credence from the fact that petitioner No.1 had been declared innocent by the investigating agency during the investigation of the FIR in question and no challan had been presented against him. Learned counsel thus, submitted that it was indeed strange that even though petitioner No.1 was declared innocent yet his moveable and immoveable properties had been ordered to be seized and attached illegally. Learned counsel has further submitted that as far as house No.1191, Sector 23, Sonipat is concerned though it was owned jointly by both the petitioners, however, the said house was purchased by them way back in the year 2006 and it was also a matter of record that it was petitioner No.1, who had been paying monthly installments to repay the loan raised by him for the purchase of the said property. Learned counsel placed reliance upon *Nevada Properties Private Ltd. vs. State of Maharashtra & another (Crl. Appeal*

No.1481 of 2019) wherein the Supreme Court held in no uncertain terms that immoveable property could not be seized or attached by the investigating agency under Section 102 Cr.PC. It was also urged that the properties qua which intimation had been sent by the investigating agency for attachment were not even case property nor was there any report sent to the Judicial Magistrate as required under Section 102 Cr.PC with respect to the attachment of the properties. Moreover, since petitioner No.1 was innocent, no order for attachment of his properties could have been made, which on the face of it was an illegal order.

On being put to notice, replies by way of separate affidavits dated 25.01.2020, 04.03.2021 and 03.04.2021 respectively were filed by the State. Learned State counsel has submitted that the FIR in question, which was registered on the complaint made by the complainant Raj Bala, was thoroughly investigated into. During investigation, it came to light that petitioner No.2 along with her husband i.e. petitioner No.1 had lured the complainant and others to invest money in their Chit Fund business, by giving false assurance of handsome returns. Resultantly, the complainant Raj Bala on being taken in by their false promise and allurements, invested a total amount of Rs.39,00,662/-. When the complainant Rajbala demanded back her money, both the petitioners extended threats to her by boasting of their high contacts and the fact that since petitioner No.1 was an advocate, he was well-versed with the legal nitty gritty. It was also stated by the State counsel that petitioner No.2 had cheated about 50-60 other innocent families in the same manner to the tune of approximately Rs.4 crores by

luring them to invest their hard earned money in the chit fund business being run by them and with the ill-gotten money, the petitioners had then purchased moveable and immoveable properties, already detailed hereinabove. Hence, it was urged that the submissions made by learned counsel for the petitioners that a false case had been planted upon them at the behest of the complainant was totally misleading and belied by the material and other evidence, which had been collected by the investigating agency subsequent to the registration of the FIR in question. Learned State counsel submitted that it was in this background that vide Annexure R-2 (annexed with reply dated 04.03.2021), a communication dated 27.03.2015 was sent by the investigating agency to the Deputy Commissioner, Sonipat asking him for the attachment of the following properties of petitioner No.2:

- i) House No.1983, Sector 23, Sonipat, Haryana
- ii) House No.1911, Sector 23, Sonipat, Haryana
- iii) Shop No.19, Sector 23, Sonipat, Haryana
- iv) Shop No.25, Sector 23, Sonipat, Haryana
- v) Plot No.476, Omaxe Limited

Learned State counsel also controverted the submissions made by learned counsel for the petitioners that they had been cooperating with the investigating agency. It was submitted that in fact petitioner No.2 was untraceable for quite sometime subsequent to the registration of the FIR in question, as a result of which, proceedings under Section 82 Cr.PC were also initiated against her. He further submitted that petitioner No.2 thereafter did join the investigation but only after issuance of non-bailable

warrants. However, she had not been cooperating with the investigating agency during the investigation. Learned counsel for the State submitted that as far as petitioner No.1 was concerned since no incriminating evidence had come to light against him and their son, both of them were declared innocent in the case and thus, challan not presented against petitioner No.1. Learned State counsel referred to the following observations made by this Court vide order dated 08.03.2021:

“This Court is rather shocked at the manner in which the investigating agency has investigated the case with such wide ramifications wherein innocent and vulnerable people had been prima facie duped of their hard earned money. This Court is being compelled to observe that the manner in which the investigating agency has investigated the case in question, smacks of malafides. On the one hand, the investigating agency has sought to attach the properties of the petitioners more specifically those belonging to petitioner no.1 and on the other hand, has gone ahead by declaring him to be innocent, even though as submitted by the State in their reply and reiterated by the State counsel that all these properties had been purchased by the petitioners from the crime money. Prima facie, it does appear that the investigating agency is trying to soft pedal the issue and has intentionally left gaping holes during the investigation which without a doubt could enure to the benefit of the accused persons in the long run.

This Court has thus, no hesitation in observing that the standard of investigation in the case in question reflects a very sorry state of affairs. The manner in which the matter has been investigated

requires a thorough probe. Petitioner No.1, who is the husband of petitioner No.2, has been shown to be in possession/ ownership of the properties, as per reply filed by the State and as also reiterated by the State counsel, purportedly purchased and procured from the crime money. The two limbs of the State plea that the properties belonging to petitioner No.1 were purchased out of the ill-gotten wealth accumulated by his wife i.e. petitioner no.2 and that petitioner No.1 is innocent cannot stand together as they are mutually exclusive.

In the facts and circumstances of the case, this Court deems it fit that Director General of Police, Haryana be directed to file an affidavit to explain how the aforementioned pleas of the State can be reconciled.”

Learned State counsel while referring to the affidavit dated 03.04.2021 filed by Director General of Police, Haryana pursuant to the aforementioned observations of this Court submitted that the ASP, Gohana, Sonipat was assigned by the Superintendent of Police, Gohana, Sonipat to scrutinize the nature and quality of the investigation done in the case. The ASP, Gohana thereafter submitted a detailed report wherein she pointed out that the investigation was deficient, in particular, qua the exoneration of petitioner No.1 for which initiation of disciplinary proceedings had been recommended against the erring police officials as the collusion of the police officials with the petitioners(accused) could not be ruled out. Learned State counsel submitted that in the wake of the aforementioned, there was every likelihood of a supplementary challan being filed against petitioner No.1 in the near future. He further submitted that the case was

now fixed for framing of charges before the Court of Chief Judicial Magistrate, Sonipat. Learned State counsel vehemently reiterated that all the moveable and immovable properties had been procured by the petitioners with the crime money. He thus, submitted that once communication dated 27.03.2015 (Annexure R-2) had been sent to the Deputy Commissioner, Sonipat, the investigating agency could not be faulted with, as the provisions of Section 102 Cr.PC. stood complied with.

I have heard learned counsel for the parties and perused all the material on record.

Before proceeding further, it would be apposite to reproduce Section 102 Cr.PC, which is as under:

“102. Power of police officer to seize certain property.

- 1. Any police officer, may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.*
- 2. Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.*
- 3. Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.”*

A perusal of the aforementioned Section reveals that for attracting Section 102 Cr.PC, the properties, which are being sought to be seized or frozen must be either stolen properties or they should have some nexus with the offence in question. Hence, the provision of Section 102 Cr.PC can without a doubt be invoked only with respect to such properties which may have a connection with an offence.

In the case in hand, though the State in two of its replies dated 25.01.2020 and 04.03.2021 respectively had conceded that petitioner No.1 and his son Chirag were found innocent and no incriminating material had come to light against them during the investigation but in the third affidavit dated 03.04.2021 filed by the Director General of Police, Haryana, it has admitted that the investigation into the matter had been shoddy leading to the exoneration of petitioner No.1, for which disciplinary proceedings had been recommended against the erring officials and there was a likelihood of a report under Section 173 (8) Cr.PC being filed in Court against petitioner No.1.

It is certainly not the case of the petitioners that any of their properties including House No.1191, Sector 23, Sonipat have been seized or sealed by the investigating agency. In the instant case, only a communication dated 27.03.2015 (Annexure R-2) was sent by the investigating officer to the Estate Officer asking him not to grant permission to the petitioners to transfer or sell the property in question. It may be noticed from the memo of parties of this petition that both the petitioners are still residing in House No.1191, Sector 23, Sonipat. No doubt, *Nevada*

(supra) clearly lays down that the investigating agency cannot dispossess a person from his immovable property, however, nowhere does it say that the investigating agency is prohibited from seizing documents etc. relating to immovable property which may have some link with the commission of an offence. In the instant case, neither have the premises of the petitioners been sealed or seized and nor have the petitioners been dispossessed as conceded. Further, the learned counsel for the petitioners has even conceded that the original title deeds of the aforementioned properties were in the possession of the petitioners, leading to a conclusion that in fact the properties in question were not attached. Mere mention of the word “attachment” by the police officials in the communication dated 27.03.2015 sent to the Estate Office, HSVP, Sonipat will be of no consequence, as the prohibition regarding sale of the case properties is in order, and to prevent third party rights from being created with respect to the properties linked with the offences. A reading of the above communication dated 27.03.2015 and Annexure R-5 with the affidavit dated 04.03.2021 filed by the Deputy Superintendent of Police, City Sonipat reveals that the sale of the above properties was sought to be prevented as petitioner No.2 was not cooperating with the investigating agency, and there appears to be a genuine apprehension that the properties could change hands, leading to further complications. Every law derives its legitimacy from justice, and justice should be the end product. Clever drafting and legal devices cannot be allowed to perpetrate injustice. It may be noticed that the prayer clause is couched in a language which is vague and is an attempt to pre-empt further

investigation and seeks to include reliefs, which are on an unsure footing, as the petitioners are themselves not sure or are evasive about the fact whether the properties have been seized/ attached/blocked or not.

From the above, it is apparent that there has been no violation of Section 102 Cr.PC as alleged by the petitioners, in view of which, the present petition stands dismissed.

20.04.2021
sonia

(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned	Yes
Whether Reportable:	Yes