

CRM-M-10120-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-10120-2022

Reserved on: 06.07.2022

Date of decision: 25-07-2022

Satish Kumar Jain

...Petitioner

Versus

State of Punjab & others

...Respondent(s)

AND

CRM-M-13082-2022

Satish Kumar Jain

...Petitioner

Versus

State of Punjab & others

...Respondent(s)

CORAM: HON'BLE MR. HON'BLE JUSTICE ANOOP CHITKARA

Present: Mr. Puneet Bali, Senior Advocate with
Mr. P.S. Ahluwalia, Advocate
Mr. Rajinder Singla, Advocate
Mr. Sachin Jain, Advocate and
Mr. Jashandeep Kumar Mann, Advocate
for the petitioner(s).

Mr. Harpreet S. Multani, AAG, Punjab.

Mr. Aman Pal, Advocate
for the complainant.

ANOOP CHITKARA, J.

Aggrieved by registration of FIR No.79 dated 16.07.2020 under Sections 406, 420, 467, 468, 471, and 120-B IPC, Police Station City Zira, the accused has come up before this Court by filing CRM-M-10120-2022, claiming that the allegations in the present FIR are a replica of an earlier FIR iNo.139 dated 22.10.2019 under Sections 406, 420, 465, 467, 471, 120-B IPC registered at Police Station Sri Chamkaur Sahib, District Rupnagar, in which, the petitioner was found innocent after proper investigation. Thus, contends that registration of new FIR on the same set of allegations amounts to reopening of the closed investigation in the garb of fresh FIR, which is impressible in law and seeks directions to the official respondents not to act in a purely civil dispute about the partition of land, which a Revenue official had partitioned, in quasi-judicial authority, following revenue laws.

2. Petitioner has also filed another identical writ petition, i.e., CRM-M-13082-2022, with somewhat similar prayers, with an additional prayer that appropriate directions be issued to the official respondents not to overreach the order dated 15.3.2022 (Annexure P-13) passed by this Court in CRM-M-10120-2022, which was an interim order, directing the State to seek the permission of the Court before filing a final report since the second petition is only for the grievance relating to the interim order dated 15.3.2022 (Annexure P-13) passed by this Court in CRM-M-10120-2022, as such, the outcome of the second petition, i.e., CRM-M-13082-2022 shall be covered by the decision of CRM-M-10120-2022, which is the main petition. As such, both the matters are being decided together, though facts are being taken from CRM-M-10120-2022.

3. The facts relevant to decide the present petition are that in December 2009, M/s PACL India Pvt. Limited had purchased lands from the legal heirs of one Hira Singh through different sale deeds. Similarly, in May 2016, another company named M/s Malwa Developers Pvt. Ltd, in which the petitioner is one of the Directors, had also purchased lands in Village Chhat from the legal heirs of one Inder Singh through four different sale deeds. Since the ownerships were in shares and the lands had not been partitioned, the petitioner party approached the Assistant Collector Ist Grade, Zirakpur, for partition of land purchased by M/s Malwa Developers Pvt. Limited. The petitioner claims that the revenue authorities had partitioned the land following the revenue law. However, on

coming into effect of such partition, various complaints were filed before the revenue authorities by the authorized signatories of M/s PACL India Pvt. Ltd., based on which the revenue department-initiated proceedings in the matter. The petitioner filed a writ petition, i.e., CWP No.9167-2021 *Satish Kumar Jain v. State of Punjab & others* (Annexure P-1), in which, as per the petitioner, the proceedings of the revenue department were stayed vide order dated 30.04.2021 (Annexure P-2) passed by this Court.

4. Since allegations leveled against the directors of M/s PACL India Pvt. Ltd. were for embezzlement of funds of the investors, it led to the registration of FIR No.139 dated 22.10.2019 under Sections 406, 420, and 120-B IPC and added Sections 465, 467, 471 IPC registered at Police Station Sri Chamkaur Sahib, District Rupnagar. The allegations were of selling/transferring the properties owned by M/s PACL India Pvt. Ltd. in contravention of the stay granted by Hon'ble the Supreme Court of India.

5. The petitioner claims that during the investigation, notice was issued to him under Section 41-A CrPC, and he joined the investigation. The petitioner approached the concerned Senior Superintendent of Police, Rupnagar, seeking a free and fair investigation of the entire matter. Later on, the matter was enquired into, and the investigation into FIR no.139 registered at Chamkaur Sahib revealed that the petitioner had not bought the land from M/s PACL India Pvt. Ltd. As such, the Investigator declared the petitioner innocent in the said FIR. Copies of the inquiry report and report under Section 173 CrPC are annexed as Annexures P-5 and P6, respectively.

6. The petitioner further claims that despite having been declared innocent in the aforesaid FIR, another FIR, i.e., FIR No.79 dated 16.07.2020 under Sections 406, 420, 467, 468, 471, and 120-B IPC, Police Station City Zira (Annexure P-7) was registered at the instance of one Pradeep Singh with the same set of allegations. Thus, feeling aggrieved because of the registration of the second FIR, the petitioner had come up before this Court by filing the present petition under Section 482 CrPC, on the ground that although the petitioner had duly apprised the Special Investigation Team about his being absolved in the matter, vide an affidavit dated 4.6.2021 (Annexure P-9) given by him to the Special Investigation Team, despite that, he is being dragged into the present FIR.

7. Petitioner's grudge is that once clean chit had been given to him in the matter, it is illegal on the part of the investigator to order him to join the investigation again or issue notices asking him to join the investigation. He claims that the entire matter in dispute is a revenue matter regarding the partition of land, which was done correctly and as per the revenue laws. The petitioner further claims that if the aggrieved persons/parties would proceed to file separate FIRs in the matter, then there will be around 100 FIRs, as there are around 100 investors of M/s PACT India Pvt. Ltd., which is not permissible under criminal jurisprudence. The petitioner has referred to pronouncements of Hon'ble the Supreme Court in the cases of T.T. Anthony v. State of Kerala 2001(3) RCR (Criminal) 436; *and* Amitbhai Anil Chandra Shah v. The Central Bureau of Investigation 2013(2) RCR (Criminal) 819.

8. On the other hand, the learned State's counsel has submitted that the Special Investigation Team has conducted the investigation on various aspects of the matter and found a violation of the directions of the Hon'ble Supreme Court dated 25.07.2016 in Civil Appeal No.13301/2015 *Subrata Bhattacharya v. Securities & Exchange Board of India*). Learned Counsel referred to paragraph 17 of the status report, wherein it has been mentioned explicitly that the Naib Tehsildar, who had partitioned the land, has been arraigned as an accused in FIR No.79 dated 16.07.2020 under Sections 406, 420, 467, 468, 471 and 120-B IPC, Police Station City Zira, because no consent was obtained from the Hon'ble Justice Lodha Committee (the Committee constituted by Hon'ble the Apex Court in the matter), whose permission/approval was required before selling/transferring/alienating any of the properties where M/s PACL India Pvt. Ltd. has, in any manner, a right/interest situated either within or outside India. It is further stated that at the time of partition, neither Hon'ble Justice Lodha Committee nor M/s PACL India Pvt. Limited was made a party to the partition proceedings. In paragraph 19 of the status report, it has been explicitly mentioned that the earlier inquiry never attained finality because no cancellation report was filed in the Court.

9. In reply to paragraph 9 of the petition, on merits, it has been explicitly stated that the petitioner was declared innocent by Inspector, CIA, Rupnagar on the mere ground that he had purchased the lands from farmers and not bought/sold any land from PACL India Pvt. Ltd. or its subsidiaries. It has been averred explicitly in the reply that the criminal offence committed by the

petitioner and his associates do not relate to the sale/purchase of the land from M/s PACL India Pvt. Ltd. but fraudulently partitioning the land in the joint ownership of M/s PACL India Pvt. Ltd. without obtaining the necessary NOC from Hon'ble Justice Lodha Committee and as such, the earlier investigation conducted in the matter is irrelevant to the offences being investigated by the present Special Investigation Team for the offences of cheating and criminal conspiracy by the petitioner in connivance with revenue authorities.

10. I have heard Mr. Puneet Bali, learned Senior Advocate, assisted by Mr. P.S. Ahluwalia, Advocate, Mr. Harpreet Singh Multani, Assistant Advocate General, Punjab, and Ld. counsel, appearing on behalf of the complainant and gone through the record.

11. M/s PACL India Pvt. Ltd. was a company that took money from investors under the garb of purchasing properties and making profits in its transactions. The investors noticed colossal embezzlement of money by the directors and officials of M/s PACL India Pvt. Ltd., which led to the filing of complaints and multiple litigations/FIRs, which went up to the Supreme Court. Finally, Hon'ble the Supreme Court in Civil Appeal No.13301/2015 **Subrata Bhattacharya v. Securities & Exchange Board of India** passed the following order: -

"Applications for directions:

Heard the learned counsel.

Prayer in terms of para(a) is granted, which reads thus:

"(a) Pass an order directing that PACL Ltd. And/or its Directors/Promoters/agents/employee/Group and/or associate companies be restrained from in any manner selling/transferring/alienating any of the properties wherein PACL has, in any manner, a right/interest situated either within or outside India".

12. As per paragraph 10 of the preliminary submissions in the reply, Hon'ble the Supreme Court in **Subrata Bhattacharya v. Securities & Exchange Board of India**'s case (*supra*) passed following order on 2.2.2016: -

"3. The SEBI shall constitute a Committee for disposing of the land purchased by the Company so that the sale proceeds can be paid to the investors, who have invested their funds in the Company for purchase of the land. Hon'ble Mr. Hon'ble Justice R.M. Lodha, the former Chief Hon'ble Justice of India, would be the Chairman of the said Committee. It would be open to the Hon'ble Chairman of the Committee to appoint such experts or other persons, as he might think it necessary, in consultation

with the SEBI, so as to enable the Committee to sell the land and pay to the investors in a manner that might be decided by the said Committee.”

13. After that, on 25.7.2016, Hon’ble, the Supreme Court explicitly restrained selling/transferring/alienating any of the properties where M/s PACL India Pvt. Ltd. has, in any manner, a right/interest situated either within or outside India. Vide order dated 2.2.2016, it had empowered only Hon’ble Mr. Justice Lodha Committee to grant permission to sell the land and pay to the investors in a manner that the said Committee might decide.

14. Despite such mandatory and binding directions of Hon’ble the Supreme Court, the petitioner’s company, entered into a partition of land without making Hon’ble Justice Lodha Committee a member and got transferred prime and the plum portion of the property in its favor through *an ex-parte* partition, thereby depriving the investors of their rights in the said land.

15. As per the inquiry report (Annexure P-5) made in pursuance of application No.2542/SSP dated 25.11.19 made by Satish Kumar Jain and Rahul Kumar Jain, declaring them innocent in case No.139 dated 22.10.19 under Sections 406, 420, 465, 67, 471, 120-B IPC, the Incharge, CIA Staff, Rupnagar concluded that as per the investigation conducted by him, there was no involvement of Satish Kumar Jain and Rahul Kumar Jain in the said matter regarding buying or selling from the companies of M/s PACL India Pvt. Ltd. illegally and no evidence had come against them, and therefore, Incharge, CIA Staff-2, Rupnagar declared Satish Kumar Jain and Rahul Kumar Jain innocent.

16. Based on this conclusion, the petitioner was not prosecuted, and they were not arrayed as accused in a report under Section 173 CrPC along with other accused.

17. Now, one Pradeep Singh (who has not been arraigned as a respondent in any of the present two petitions), who claimed to be an investor in M/s PACL Ltd., made a complaint to the Director General of Police, Punjab, alleging that by partitioning the land of M/s PACL Ltd. illegally, the accused persons who had illegitimate possession through their relatives, have wrongly sold valuables worth crores of rupees and sold the sand through mining in a false manner and have done misappropriation of crores of rupees. This complaint was marked for inquiry.

18. The inquiries concluded that the representatives and accomplices of the accused, in connivance with revenue authorities, have usurped the PACL land, depriving the legitimate investors of their refunds.

19. The petitioner's grievance is that the present FIR is a replica of the earlier FIR in which he was declared innocent. To answer this contention, it is relevant to refer to the earlier FIR, i.e., FIR No.139 dated 22.10.2019 under Sections 406, 420, and 120-B IPC and added Sections 465, 467, 471 IPC registered at Police Station Sri Chamkaur Sahib, District Rupnagar (Annexure P-3). This FIR was registered based on the complaint of one Brij Mohan Bansal, Vice President of Investors Awareness Society, in which it was alleged that PACL had defrauded a large number of people for multiple crores of rupees by promising to double their income. Later on, the directors of the company started selling the properties which had been purchased from the money which innocent people had invested. All this was done despite the stay order of the Hon'ble Supreme Court. It was further alleged that illegal mining was also being done in these properties, and Catechu trees were also being felled. A perusal of the report dated 29.1.2020 (Annexure P-5) vide which the petitioner was declared innocent relates to the partition of land by revenue authorities. Although the complainant had mentioned illegal mining felling of trees, no investigation was conducted in that regard, and indeed, the accused were declared innocent in the record for the reasons that the partition was lawful. Thus, the earlier report cannot be conclusive, especially concerning the sale of sand extracted from the land.

20. The judicial pronouncements relied upon by learned counsel for the petitioner are not attracted to the facts and circumstances of the present case and thus, are not applicable in this case.

21. In FIR No.79 dated 16.07.2020 under Sections 406, 420, 467, 468, 471, and 120-B IPC, Police Station City Zira, the allegations are against the selling of sand through illegal mining, selling of wood worth crores of rupees. Also, the complainant has alleged the illegal sale of land in contravention of the orders of Hon'ble the Supreme Court. Needless to say, in the previous inquiry, there was neither any investigation concerning sand mining nor of selling of wood by illegal felling of trees and no fraudulent sale of land. The previous investigation is confined only to sale and purchase of land. There is no inquiry concerning M/s

Malwa Developers Pvt. Ltd. getting prime and the plum portion of the land, based on *ex parte* partition of land, in which the PACL Limited did not participate. Furthermore, no direction was obtained from Hon'ble Justice Lodha Committee for alienating the said land. Thus, the new complaint/FIR is undoubtedly not a reproduction of the earlier one, and it seeks investigation on four counts (which was not done in the previous FIR No.139), as follows: -

- i). Handing over of the prime portion of the land to M/s Malwa Developers Pvt. Ltd. in *ex parte* partition proceedings, which could have also gone to the share of M/s PACL India Pvt. Ltd. and that too, at their back;
- ii). Sale of sand from the land in question in illegal mining and sale of wood worth crores of rupees, which could have also fallen to M/s PACL India Pvt. Ltd. in case proper partition had taken place;
- iii). How many lands were illegally sold and transferred from M/s PACL India Pvt. Ltd. in favor of M/s Malwa Developers Pvt. Ltd., its subsidiaries, or the petitioner?
- iv). The investigation also requires to be conducted to determine whether a prime chunk of land was partitioned in favor of M/s Malwa Developers Pvt. Ltd., leaving the inferior quality of land in favor of M/s PACL India Pvt. Ltd. to the detriment of the investors' interest?

22. Since there was no investigation of illegal mining and felling of trees in the previous FIR, it cannot be said that the new FIR is a reinvestigation of the already investigated allegations.

23. Given the above, the grievance of the petitioner that the new FIR is a reiteration of the earlier one is illegitimate, unfounded, misconceived, and is just an attempt to take advantage of the earlier conclusion in which the concerned Naib Tehsildar was arrested and facing prosecution. Consequently, there is no merit in the petition and is dismissed with aforesaid observations.

24. Given the order passed in the main petition i.e., CRM-M-10120-2022, the second petition i.e., CRM-M-13082-2022 is rendered infructuous and the same is also dismissed.

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25. Accordingly, the earlier interim orders dated 15.3.2022 passed in CRM-M-10120-2022 and interim order dated 29.03.2022 passed in CRM-M-13082-2022 are hereby recalled with immediate effect.

26. A photocopy of this order be placed in the file of other connected case.

Petitions dismissed in aforesaid terms. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

July 25, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.