

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205

CRM-M-20234-2015

Date of Decision: 10.10.2022

Santokh Singh & Anr.

... Petitioners

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. JK Thind, Advocate for the petitioners

Mr. Rajiv Verma, DAG Punjab

Mr. Vivek K Thakur, Advocate for respondent No.2

Sandeep Moudgil, J. (Oral)

The petitioners, who are NRI and are residing in Canada, seek quashing of the FIR No.307 dated 14.09.2007 under Sections 420/406 IPC registered at Police Station City Kapurthala (Annexure P4) and order dated 22.11.2011 passed by JMIC, Kapurthala and challan/report dated 22.04.2015 under Section 173 CrPC (Annexure P13).

Brief facts of the case are that the petitioner No.2 is the real brother of respondent No.2, who is allegedly having an eye on the property of petitioners in India. Petitioner No.2 had purchased about 17 acres of land in village Badshahpur, District Kapurthala from one Ranjit Singh who had executed power of attorney in favour of petitioner No.2 on 06.06.2006. Out of this land, some land was transferred to Nishan Singh etc. by way of registered sale deed and some land was transferred in the name of the mother of the petitioner No.1 (wife of petitioner No.2) by way of registered sale deed. Respondent No.2 is alleged to have forged an agreement to sell executed by petitioner No.2 with regard to 34 kanals of land out of the above mentioned land purchased by him in village Badshahpur. The said agreement

that an amount of Rs.10 lakh was paid in advance to the petitioner No.2. On the basis of this forged agreement respondent No.2 got the above-said FIR registered against the petitioners.

It is submitted that the investigation in the FIR was conducted by DSP Sub Division Kapurthala and it was found that the agreement alleged to be executed in favour of respondent No.2 was a forged document and accordingly cancellation of FIR was recommended. Thereafter, SP (D) on 18.02.2008 directed to re-verify the matter and during re-investigation, it was found that respondent No.2 had arrived at a compromise with petitioner No.2 and statements were recorded and on that basis, again cancellation of the FIR was recommended. The petitioners left for Canada and out of greed, respondent No.2 made a statement in the Court that he does not agree with the cancellation report filed by the police and thus, the CJM, Kapurthala on 22.11.2011 (Annexure P10) ordered that the police file be returned to concerned SHO for reinvestigation after separating judicial papers.

The petitioners filed CRM-M-9445-2012 seeking cancellation of the above FIR as well as order dated 22.11.2011 but the same was withdrawn since it was averred by the State counsel that the investigating agency is proposing to file cancellation report within three week. The cancellation report was prepared and submitted on 20.05.2014 (Annexure P12) before DSP Sub Division, Kapurthala who did not agree with the cancellation report directed filing of challan on the ground that the petition filed by the petitioners had been dismissed by the court and that the matter could not be compromised. Thereafter, the police, allegedly in connivance with respondent No.2, managed to filed challan dated 22.04.2015 under Section

173 CrPC against petitioner No.2 and kept petitioner No.1 in column No.2 (Annexure P13).

Learned counsel for the petitioners contended that the agreement relied upon by respondent No.2 is a forged document as neither any evidence with regard to payment of Rs.10 lakh has been produced nor any suit for specific performance has been filed. It is further submitted that the dispute, if any, is of civil nature and the same has been given criminal colour just to harass the petitioners. Moreover, as per the contents of the FIR, no offence of misappropriation or cheating is made out nor does the FIR disclose any dishonest intention of the petitioners at the time of execution of the agreement.

Learned counsel for the petitioners urged that even before compromise, during investigation, it was revealed that FIR had been wrongly registered and no offence was made out and cancellation of same had been recommended and subsequently also on reinvestigation, respondent No.2 again stated that the matter had been compromised, cancellation of FIR was recommended then as to how any offence is made out against the petitioners.

Notice of motion was issued on 22.06.2015 and thereafter respondent No.1 has filed reply dated 30.10.2015 by way of affidavit of Daljit Singh, DSP, Sub Division, Kapurthala wherein it is averred that pursuant to the presentation of report by the District Police before the Id. Court of competent jurisdiction, the complainant did not agree with the cancellation report as the terms and conditions laid down in the compromise agreement were not fulfilled and consequently, further investigation was directed in the present FIR. On re-investigation, the facts as mentioned in the report of the then SHO were found to be correct and cancellation report was prepared but

the then DSP after perusing the report of the then SHO did not agree with the same and ordered presentation of challan report under Section 173 CrPC. Out of four accused, three accused stands arrested and one accused namely Santokh Singh – petitioner No.1 could not be arrested. During investigation, the offences against the accused persons were duly proved and consequently, report under Section 173 CrPC was prepared on 22.04.2015 and presented before the competent court on 25.05.2015.

Respondent No.3 has also filed reply dated 10.10.2015 by way of affidavit of Mohinder Singh DSP, Sub Division, District Kapurthala maintaining that the complainant was summoned who made a statement before the Magistrate that he does not agree with the report and therefore the case was sent back for reinvestigation and report under Section 173 CrPC has been submitted against accused Darshan Singh, Karnail Singh and Daljit Singh and in such circumstances the law would take its own course during trial. In para 8 it was averred that the answering respondent No.3 did not agree and directed the SHO to submit challan in trial court in view of statement of respondent No.2 that he did not agree with the cancellation report filed at first point of time. Respondent No.2/complainant did not retract from his statement made before the court during re-investigation. The offence under Section 307 IPC is non-compoundable, whereas offence under Section 406/420 IPC are compoundable with the permission of Court.

Reply has been filed by respondent No.2 on 28.08.2016 stating that the order dated 22.11.2011 passed by JMIC is a revisable order as it is settled law that the order giving or taking away the rights of the parties is revisable and as such the petitioners have got alternative remedy to file revision petition before the learned Sessions Judge under Section 397 CrPC.

It is further averred that the petitioners had already approached this Court in CRM-M-9445-2012 which was dismissed as withdrawn with liberty to take appropriate remedy and now the petitioners cannot approach this Court again with similar prayer.

Learned counsel for the respondent No.2 urged that after presentation of challan, the petitioner never appeared before the learned Magistrate, despite the fact that they have been summoned through non-bailable warrants and are absconding their arrest and this fact of issuance of non-bailable warrants has also been concealed by the petitioners. It is further averred that petitioners themselves backed out of the compromise as earlier when the FIR was registered, they agreed to transfer the land measuring 34 kanals in favour of respondent No.2 and at the time of compromise, another agreement to sell was executed in favour of Jagir Singh s/o of Jhanda Singh.

I have heard learned counsel for the parties and gone through the record.

The petitioners were summoned by local court on their local address and non-bailable warrants were issued against petitioner No.2 who is living in Canada and was absconding his arrest until the execution of bailable/non-bailable warrants was stayed by this Court vide order dated 13.01.2016.

It is also an admitted fact that the compromise was effected between the parties but the petitioners backed out the same by not executing the sale deed in favour of the complainant. As far as re-investigation of the case is concerned, since the offences under Section 420/406 IPC are non-

compoundable, therefore, the question of filing the cancellation report on the basis of compromise does not arise.

Even otherwise, this Court has serious doubts regarding the maintainability of the present petition under Section 482 CrPC since the impugned order dated 22.11.2011 passed by JMIC is a revisable order and as such the petitioners have got an alternative remedy to file revision petition before the learned Sessions Judge under Section 397 CrPC. That apart, the question of quashing the FIR does not arise at all since during investigation, the offences against the accused persons were duly proved and consequently, report under Section 173 CrPC was prepared on 22.04.2015 and presented before the competent court on 25.05.2015.

For the reasons aforesated, this Court does not find any ground to quash the FIR/order/challan impugned in the present petition and the same is accordingly dismissed.

Ordered accordingly.

10.10.2022
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No