

CRM-M-40167-2022

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-40167-2022

Date of decision: 05.09.2022

Asha Anjaan and another

...Petitioners

Versus

U.T. Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Ravinder Malik, Advocate,
for the petitioners.

Mr. Rajiv Anand, APP, U.T. Chandigarh.

HARNARESH SINGH GILL, J. (ORAL)

Through this petition, the petitioners seek quashing of FIR No.23 dated 01.02.2022, registered at Police Station Sector 36, Chandigarh, under Sections 120-B, 420, 467, 468 and 471 IPC (however offences under Sections 467, 468 and 471 IPC deleted at the time of filing the challan).

Learned counsel for the petitioners submits that respondent No.2-PNB Housing Finance Limited had extended the loan facility to the petitioners to purchase three floors each, constructed in three plots, from respondent No.3-Builder; that the petitioners had mortgaged the aforesaid property with respondent No.2 as a security; that the petitioners are the *bonafide* purchasers of the aforesaid plots/flats; that respondent No.3 has fraudulently sold the property, already sold to the petitioners, to third parties, and that a civil dispute has been given the cloak of criminal

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liability.

I have heard the learned counsel for the petitioners.

As per the prosecution version, the petitioners had mortgaged three properties i.e. Flat No.75, ground, first and second floors, Flat No.92, ground, first and second floors and Flat No.91, ground, first and second floors, situate at Maa Shimla Homes, Tehsil Kharar, with respondent No.2 while obtaining the loan, and that an amount of Rs.1,26,00,000/- had been disbursed to the petitioners by respondent No.2. There are allegations against the petitioners that when they did not comply with the repayment schedule, respondent No.2 had got made an inquiry and found that the petitioners were not the owners of the same and it had been sold to various persons by the builder.

It is the case of the petitioners themselves that they had purchased the properties in question, which was sold by respondent No.3 – Builder fraudulently to the third parties. The complainant in this case is a Bank and it has also come on record that when the petitioners did not repay the instalments of the loan amount, their account was declared as NPA and the proceedings under the SARFAESI Act, were also initiated against them. Apart from that, upon inquiry, it was revealed that the properties, which stood as (collateral) security to the loan amount, were sold to some other persons. It was under these circumstances that the Bank got the FIR registered.

This Court cannot go into the question as to who had sold the property and to whom. The only question that requires to be determined at this stage is whether the registration of the FIR is an abuse of process of

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law. However, on the basis of facts on record coupled with the arguments raised by the counsel for the petitioners, this Court does not find the proceedings to be an abuse of process of law.

The disputed questions of facts relating to the title of the properties are involved, which can only be determined on the basis of evidence to be led by the parties. In exercise of the powers under Section 482 Cr.P.C., this Court cannot conduct a mini trial so as to go into said questions. As noticed above, such inherent powers are to be exercised by this Court only under exceptional circumstances and when the proceedings, on the face of record, appear to be an abuse of process of law.

In the judgment of State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335, which has been followed in umpteen number of subsequent judgments, the Hon'ble Apex Court, has held that when a criminal proceeding is instituted with mala-fide intention to harass the person, the Court can quash the entire proceeding for the ends of justice. It was held as under:-

“(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 a 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

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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 a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the 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.”

The instant case does not fall under any of the above parameters laid down by the Hon’ble Supreme Court.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

05.09.2022

parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No