

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

240

CRR-1353-2022 (O&M)
Date of decision: 20.12.2022

HARBHAJAN SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. M.S. Yadav, Advocate for
Mr. Sunny K. Singla, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed against the impugned order dated 25.10.2021 passed by learned Judicial Magistrate Ist Class, Malerkotla vide which the complaint of the petitioner has been dismissed.

Learned counsel for the petitioner contends that the learned trial Court has failed to consider the fact that the complainant-petitioner had duly proved on record that respondent No.2 and 3 sold the land in favour of the wife of the complainant-petitioner after receiving consideration of sale deed vide two separate sale deeds dated 10.04.2014 knowingly that they are not owner of the disputed land and wrongly received an amount of Rs.18 lacs and Rs.35 lacs respectively. The sale deeds were executed by respondent No.2 and the amount was received by respondent Nos.2 and 3 in the presence of Parminder Singh Sahni, but later on the complainant-petitioner came to know that respondent No.2 has already suffered a statement in the civil suit that he has no concern with the ownership and possession of suit land purchased by the complainant-petitioner in

favour of his wife. Thus, it clearly shows that the accused persons have cheated the complainant-petitioner and his wife by receiving an amount of Rs.61 lacs for the land which did not belong to them. The complainant-petitioner has already tendered the document which duly proves that respondent Nos.2 and 3 have no concern with the land and still executed the sale deeds, thus committing cheating and fraud with the complainant.

Heard.

It is apposite to refer to the order dated 25.10.2021 passed by the learned trial Court, the relevant part of which reads thus:-

“13. Necessary outcome of above discussion is clearly that present complaint is not maintainable against same accused on same allegations regarding same incident where state case is already instituted before this complaint and is pending. The only grudge of Ld. Counsel for complainant is that some offences were not added by the Police in the FIR and present accused, although they were named in the statement by complainant before Police but they have not been named in the FIR. However, merely because some offence can be added or an accused is left to be added, is no ground to maintain a separate complaint after the main case has already started. Because these grievances can be taken care of by moving appropriate application for amendment of charge under Section 216 Cr.P.C. or by filing application under Section 319 Cr.P.C. to summon additional accused before the concerned Court and in case the concerned Court finds justification for the same such applications can be decided accordingly. But filing of subsequent criminal complaint is not the right course of action. View of this court is duly fortified by Ratio of law laid down by Hon’ble Apex Court in case titled as Jile Singh Vs. State of UP and anr. 2012 Criminal Law Reporter 236. In that case Hon’ble Apex Court held that a person named in the FIR but charge sheet not filed by the Police against such person, such person cannot be summoned as accused on private complaint filed by aggrieved person under Section 200 Cr.P.C. The person could be summoned by following procedure under Section 319 Cr.P.C. before the concerned court before whom charge sheet has been filed.

14. Therefore, in view the discussion made above, I am of the considered opinion that present complaint is not maintainable and there are no sufficient grounds to proceed against accused persons and to summon the accused under the offences mentioned in the complaint because separate case on the same

facts is already pending. Accordingly, the present complaint stands dismissed under Section 203 Cr.P.C. It is made clear that dismissal of present complainant shall have no bearing on the merits of the main case. File be consigned to record room after due compliance.”

A perusal of the same reveals that the learned trial Court had not dismissed the complaint on merits but on the ground that separate case on the same facts based on which FIR have been lodged against the accused-respondent is already pending, thus the complaint filed by the complainant-petitioner is not maintainable, merely on the ground that few sections remained to be added or some accused was left out, for which the complainant-petitioner could always file an appropriate application under the relevant sections of Cr.P.C. before the Court concerned, which would be decided accordingly. Furthermore, this Court finds that the leared Trial Court has rightly based its decision on the judgment of Hon’ble The Supreme Court of India in the case of Zile Singh versus State of U.P. and Another, 2012, Crimilnal Law Reporter 236, to draw strength to its conclusion. The trial Court has further clarified that the dismissal of the complaint shall have no bearing on the merits of the main case.

In view of the foregoing discussion, this Court finds no illegality or perversity in the order passed by the trial Court, warranting any intervention. As such, the present petition *sans* merit and is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

December 20, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>