

CRM-M-44288-2019 (O&M)
Date of Decision: October 18, 2022

Versus

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Mr. J.S. Bhatia and Mr. Rajan Gupta, Advocates
for respondent No.2.

Challenge in the present petition filed under Section 482 of the Code of Criminal Procedure is laid to an order dated 02.08.2019, Annexure P-1, passed by the learned Judicial Magistrate 1st Class, Faridabad.

Learned counsel for the parties are *ad idem* that a compromise has since been effected between the parties. Pursuant thereto, two sale deeds have also been executed on 28.02.2020, which was the bone of contention between the parties.

Learned counsel for the petitioners refers to an order dated 05.12.2019 passed by this Court to submit that the same stands complied with, in letter and spirit. It is his further submission that in view of the same, the impugned order is liable to be set aside, wherein without any fresh facts having been brought out by the investigating agency after the cancellation was filed by it on the ground that the matter was of civil nature,

the learned trial Court had still granted liberty to the investigating agency to conduct further investigation, which was contrary to law.

On the other hand, learned counsel for respondent No.2 states that he has specific instructions from his client that the land for which the sale deeds were executed by the petitioners has even been further sold to another party and that respondent No.2 has no objection in case the present petition is allowed by setting aside the impugned order dated 02.08.2019, in view of the compromise.

Heard the learned counsel for the parties.

Perusal of the record shows that in the present case, the cancellation report was accepted vide order dated on 3.5.2018, Annexure P-13, wherein, as the complainant was represented through Sh.Ankur Gosain, Advocate, the trial Court presumed that the complainant agreed with the investigation conducted by the police.

A perusal of the impugned order reveals that after lodging of the FIR No.197 dated 18.10.2016, under Sections 406, 420, 467, 468, 471 and 120-B IPC at Police Station Tigaon, a compromise had been arrived at between the parties and cancellation report was filed by the investigating agency on the ground of the matter being of civil nature, which was even accepted by the Illaqa Magistrate. Thereafter, the complainant is stated to have filed another complaint bearing No.256 dated 27.2.2019 and complaint bearing No.A-99-E.O.W.C. Dated 24.5.2019 to the Senior Police Officer, based on which the application was filed by the SHO, PS Tigaon, Faridabad for further investigation in the matter.

It is apparent from the record, that the parties had compromised

the matter through deeds dated 5.1.2017 and 3.7.2017 and yet again during the pendency of the present petition, as having been stated before the Court today, which both the learned counsel submit, has even been acted upon. The learned counsel appearing for respondent No.2 has infact further stated, that consequent to the sale deeds executed between the parties, his client has gone a step further and even sold the same to another party, thus has no objection for setting aside the order impugned order passed pursuant to filing of the fresh complaint.

It is apposite to refer to the judgment of Hon'ble The Supreme Court of India in the case of **Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel and others** in Criminal Appeal No.1171-2016, wherein it was observed that the police had a right of further investigation after seeking a formal permission from the Court, new facts come to light. However, in the present case, though the trial Court referred to the aforesaid judgment, but nowhere in the impugned order has it mentioned that the investigating agency had as a matter of fact brought before it some new facts that may have emerged after the cancellation report had been accepted. The trial Court vide the impugned order without first examining and coming to a conclusion as to whether any new facts had emanated, requiring to investigate the matter further, had in a routine manner, disposed of the application, granting liberty to the investigating agency to conduct further investigation, by observing therein that if, they think that due to some fresh facts, further investigation is necessary. This conclusion of the trial Court is *ex facie* unsustainable in law and liable to set

aside.

Consequently, and as a sequel thereto, the present petition is allowed. The order dated 02.08.2019 passed by the Judicial Magistrate 1st Class, Faridabad is set aside.

October 18, 2022
sarita

(AMAN CHAUDHARY)
JUDGE

Whether reasoned/speaking:	Yes	/	No
Whether reportable:	Yes	/	No