

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-321-2020 (O&M)

Date of Decision: 06.02.2023

Kamal Singh & Ors.

... Petitioners

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sumit Sangwan, Advocate for the petitioners

Mr. Ashok Kumar Sehrawat, DAG Haryana

Mr. Aman Pal, Advocate and

Mr. Ajay Kirpal Singh, Advocate for respondent No.2

Sandeep Moudgil, J.

The petitioner seeks quashing of the FIR No.167 dated 15.12.2019 (Annexure P1) under Sections 120-B/406/420/447/467/468/471/506 IPC, registered at Police Station Bond Kalan, District Charkhi Dadri and consequential proceedings arising therefrom.

Learned counsel for the petitioners submits that the petitioners are in possession of the property in dispute by virtue of an agreement to sell dated 10.02.1998 (Annexure P4) which was executed by Om Parkash with the father of petitioner No.1. According to him, it has been recorded in this agreement that the possession is given to the petitioners and full consideration of Rs.2,50,000/- has been paid. Since then the purchaser is in possession of land in dispute and is running a dhaba there. Om Parkash Agarwal, Krishan father of the complainant and Sadhu Ram had passed away. The complainant appeared and claimed his ownership on the suit land then immediately Kamal Singh filed Civil Suit for injunction and vide order dated 19.12.2019

(Annexure P5), the trial court granted status quo. Though the seller did not execute any sale deed in favour of the petitioners but he executed a sale deed dated 27.05.1999 (Annexure P8) in favour of Krishan Singh, father of the complainant, whereby the same property was sold for consideration of Rs.2,00,000/-.

The present FIR has been lodged at the instance of Satyapal Singh s/o Krishan Singh alleging that he has constructed three shops for rent near the bus stop of village Ranilla. Out of this shop, one shop is in illegal possession of Kamal s/o Sadhu Singh and he has fraudulently installed electricity meter. On asking to vacate the shop, the said Kamal is alleged have misbehaved and threatened to kill Satyapal. During investigation, the police recorded statements of both the parties and found that the petitioners in conspiracy with each other have prepared a false and fabricated agreement to sell and as such the present FIR was lodged against them.

It is further contended that petitioner No.1 had filed a suit for permanent injunction against the complainant and his two brothers regarding the property and vide order dated 19.12.1999 (Annexure P5), the trial Court had ordered the parties to maintain *status quo qua* possession of the suit land. The *status quo* order is continuing till date. According to him, in such circumstances, FIR No.167 dated 15.12.2019, under Sections 120-B, 406, 420, 447, 467, 468, 471, 506 IPC, registered at Police Station Bond Kalan, District Charkhi Dadri, is an abuse of the process of law inasmuch as under the grab of FIR, the complainant is seeking possession of the property from the petitioners. He further placed reliance upon the judgments of co-ordinate Bench of this Court in **Surjit Kaur and others Vs.State of Punjab and others, 2019 (4)**

R.C.R. (Criminal) 50 and **CRM-M-41226-2015 (Ravi Kukreja and another Vs. State of Haryana and another)** decided on 19.11.2019.

Learned counsel for the petitioner contended that no offence as alleged, is made out against the petitioners. The respondent No.2 in connivance with the local police wants to forcibly take possession of the land in dispute despite the fact that suit proceedings are pending. The sole basis for registration of the FIR is the alleged fake expert report. Since the petitioners are in possession of the land in dispute, offence under Section 447 IPC is not made out. It is further contended that the petitioners also examined the signatures of the agreement to sell and the sale deed in the office of Sub Registrar and the same were found to be correct.

It is urged on behalf of the petitioners that signatures cannot be obtained from photocopy for comparison. The petitioner No.1 had no concern with any alleged forgery or cheating as he was not present at the time of execution of agreement to sell. It is vehemently contended that there is an inordinate and unexplained delay of 22 years in lodging the FIR and as such the action of the respondent-complainant is barred by limitation.

Learned counsel further averred that the sole ground for lodging the FIR against the petitioners is the expert report sought by the police from a private finger print and handwriting expert but the police did not call for the petitioner No.1 to provide his signatures and as such the signatures of the petitioner No.1 was obtained from photocopy of the agreement to sell which is against law as it is well settled that photocopy of the signature and handwriting cannot be compared. He placed reliance on **Jatinder Singh vs. Satinder Singh** **2018(4) Law Herald 3223.**

Written statement has been filed by respondent No.2 stating that the petitioners have concealed the true facts and has succeeded in getting the stay on the proceedings of the FIR which is otherwise untenable in view of *M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, 2021 SCC Online SC 315.* In fact, petitioner No.1 has no right, title and interest in the property in question and respondent No.2, who is an NRI and stays at Italy, is the recorded owner of the property measuring 3 kanal 13 marlas and had constructed a building and even obtained electricity connection in the year 2013. He had let out three shops and a service station to petitioner No.3 on rent at the rate of Rs.6200/- vide rent note dated 30.05.2018 (Annexure R1). On 28.11.2019, the respondent No.2 gave a complaint to SP, Charkhi Dadri to get vacated the premises which is in illegal possession of the petitioners.

Learned counsel for the respondent No.2 averred that the petitioners, on coming to know about the registration of FIR against them, very cunningly filed a suit for permanent injunction on the very next day i.e. on 16.12.2019 in order to give colour of civil nature case and save themselves from criminal proceedings.

Mr. Aman Pal, Advocate assisted by Mr. Ajay Kirpal Singh, Advocate vehemently urged that the property in dispute was purchased by father of respondent No.2 from one Omprakash Aggarwal vide sale deed dated 27.05.1999 (Annexure R3) and mutation No.173 was also registered in Jalseaam. The said property was transferred in the name of respondent No.2 vide gift deed dated 10.07.2006 (Annexure R4) which was duly entered in the revenue record also.

It is further averred that the petitioner No.1 is of a criminal antecedents and bad character as is evident from the RTI information gathered by respondent No.2 (Annexure R5).

At this stage, learned State counsel has handed over a list of criminal cases pending against the petitioner No.1 Kamal Singh s/o Sadhu Ram village Ranilla. A perusal of the said list makes it crystal clear that there are criminal antecedents of the petitioner No.1 inasmuch as, 17 cases, including of forger and cheating, are registered against him. The same is taken on record as Mark 'A'. Learned counsel for respondent No.2 has also supplied a copy of judgment passed by Civil Judge (Sr.Divn.), Charkhi Dadri in CS-1303 of 2020 dated 20.10.2020 vide which the civil suit filed by the petitioner No.1 has been dismissed.

Having heard learned counsel for the parties and after going through the record, this Court is of the considered view that this petition ought to fail.

The Supreme Court in **State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779**, the powers under Section 482 CrPC or under Article 226 of the Constitution of India to quash the first information report is to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That such power has to be exercised sparingly, with circumspection and in the rarest of rare cases.

In **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque (2005) 1 SCC 122**, the Supreme Court held that the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise and the High Court, being the highest court of a State, should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more-so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.

In **M/s Neeharika Infrastructure Pvt. Ltd.** case (supra), the Supreme Court held that in cases where it is found that non-interference would result into miscarriage of justice, the High Court, in exercise of its inherent powers under Section 482 CrPC and/or Article 226 of the Constitution of India, may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. It further cautioned that the Courts should be slow in interfering the criminal proceedings at the initial stage, i.e., quashing petition filed immediately after lodging the FIR/complaint and when no sufficient time is given to the police to investigate into the allegations of the FIR/complaint, which is the statutory right/duty of the police under the provisions of the Code of Criminal Procedure.

In the present case, the complaint was filed by the respondent No.2 on 22.11.2019 which culminated in registration of FIR on 15.12.2019. The date of filing of the civil suit is 16.12.2019. It is amply clear that it is only after coming to know that the real owner of the property (respondent No.2) has

filed complaint on 22.11.2019 and that the police has filed the FIR against petitioner No.1, he immediately filed civil suit on 16.12.2019 to give civil colour to the already launched criminal proceedings against petitioner No.1.

There is no gainsaying that petitioner No.1 very cunningly filed civil suit just to prolong the litigation and to mentally harass respondent No.2. Even otherwise, the civil suit filed by petitioner No.1 has been dismissed holding respondent No.2 to be true owner as he has successfully shown his possession over the property and restraining petitioner No.1 from interfering into peaceful possession of the suit property of respondent No.2.

The antecedents of petitioner No.1 is writ large from the fact that not one or two, a total of 17 criminal cases, under various provisions of the law, adorn the name of petitioner No.1. This Court has no hesitation to state that the petitioner No.1 is of criminal antecedents and bad character and the possibility of forging the signatures, making fake sale deed, breach of trust, criminal trespass, etc. cannot be ruled out at this stage.

For the reasons discussed above, this Court does not find any ground to quash the FIR registered at the petitioners, at this stage.

Dismissed.

Pending application(s), if any, also stand disposed of accordingly.

06.02.2023

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No