

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-7351-2023
Reserved on 12.04.2023
Pronounced on: 18.04.2023

Harcharan Singh and others

.....Petitioners

Versus

Kulwinder Singh Sandhu

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. I.S. Khosa, Advocate
for the petitioners.

Mr. Rajat Malhotra, Advocate
for the respondent.

MANJARI NEHRU KAUL, J.

1. The petitioners are seeking quashing of the summoning order dated 10.01.2023 (Annexure P/1) passed in Complaint Case No.COMI/745/2022 dated 30.11.2022 (Annexure P/2) along with complaint (Annexure P/2) and all subsequent proceeding arising therefrom.

2. Learned counsel for the petitioners submits that the petitioners entered into an agreement to sell dated 13.07.2022 (Annexure P/4) with the respondents for purchasing the land detailed therein. However, soon thereafter, the respondent repeatedly threatened the petitioners to alienate the said land in favour of a third party, in breach of the aforementioned agreement to sell. Therefore, in order to protect their rights, the petitioners instituted a civil suit for permanent injunction against the respondent. It has been submitted that after the

institution of suit the Civil Court concerned, was pleased to grant ex-parte temporary injunction in favour of the petitioners by restraining the respondent from alienating the suit land. Learned counsel has further contended that after the summons in the aforementioned civil suit were served upon the respondent, instead of filing his reply and written statement, he moved an application under Section 156(3) of the Cr.P.C. wherein the Trial Court after taking cognizance of the offences alleged, erroneously summoned the petitioners to face trial. Learned counsel has asserted that the malafides on the part of the respondent are evident from his conduct and criminal proceedings have been initiated by him only to exert pressure upon the petitioners to withdraw the civil suit and rescind the agreement to sell (Annexure P/4). Learned counsel has still further submitted that since the agreement to sell dated 13.07.2022 (Annexure P/4) was the subject matter of the civil suit, criminal proceedings alleging forgery and fabrication of the said agreement to sell could not be sustained, being an abuse of the process of law.

3. It has also been further contended by the learned counsel for the petitioners that if a defendant wants to challenge the authenticity of some document which is the subject matter of a civil suit, he can do so by leading evidence in his support in the civil suit itself and he can certainly not be permitted to initiate separate criminal proceedings. Learned counsel has still further argued that if after the conclusion of the trial, the documents are proven to be not genuine, then the defendant would still have the right to pursue his remedy under the criminal law against the petitioners. However, the continuation of criminal proceedings during the pendency of a civil suit would unduly

hinder its progress and final outcome. Learned counsel has also contended that the respondent who is a defendant in the civil suit in question cannot be allowed to lean on State machinery to collect evidence in support of his case. It has been, thus, urged that on the face of it, a civil dispute is being deliberately given a criminal colour and thus, the impugned order (Annexure P/1) as well as the complaint (Annexure P/2) deserve to be quashed. In support of his submissions, learned counsel has placed reliance upon *Paramjeet Batra Vs. State of Uttarakhand and others : 2014(6) RCR (Criminal) 187*; *Usha Chakarborty and another Vs. State of West Bengal and another (Criminal Appeal No.256 of 2022 decided on 30.01.2023)*; *R. Nagender Yadav Vs. The State of Telangana and another : 2023(1) PLR 102*; *Harcharan Singh and others Vs. Satvinder Satara : 2012(2) RCR (Criminal) 136*; *Mohni Bala Verma and others Vs. State of Bihar : 2009(7) RCR (Criminal) 251*; *S. Giridharan and others Vs. State of Tamil Nadu and others : 2021(3) MadWN (Cri) 488*; *Inderjeet Singh Vs. Ram Kanwar Chhikara : 2021(1) Law Herald 350*; *Shri Subhkaran Luharuka and another Vs. State (Govt. of NCT of Delhi) and another : 2010(7) RCR (Criminal) 595* and *B. Sriram and others Vs. Govt. of NCT of Delhi: 2015(30) RCR (Criminal) 572*.

4. Per contra, learned counsel appearing for the respondent while controverting the submissions made by the counsel opposite has vehemently submitted that the agreement to sell dated 13.07.2022 (Annexure P/4) has been forged and fabricated by the petitioners in order to grab the valuable land of the respondent, at a throwaway price.

He submits that the plaint, in the civil suit filed for permanent injunction reveals that the petitioners have cleverly withheld and not disclosed about the agreement to sell dated 02.01.2021 entered into between the parties wherein the sale consideration was fixed at ₹92 lakh per acre. The petitioners instead of getting the sale deed executed in pursuance of that agreement to sell dated 02.01.2021, hatched a conspiracy to pressurize the respondent to sell the land at an imaginably low price of just ₹25 lakhs per acre. Learned counsel while inviting the attention of this Court to the agreement to sell dated 02.01.2021, which is taken on record subject to all just exceptions, submits that the cheque through which earnest money was paid at that time is the same, as the one mentioned in the fabricated agreement to sell dated 13.07.2022 (Annexure P/4). The sale consideration agreed in the first agreement to sell dated 02.01.2021 is ₹92 lakhs per acre whereas in the second one it is ₹25 lakhs. Learned counsel has further submitted that even on a bare perusal, it is evident that the font on the last page of the agreement to sell (Annexure P/4), which allegedly bears the signatures of the parties, has been fabricated in such a manner so as to adjust the signatures from which it is discernible that a blank signed paper has been converted into an agreement to sell by the petitioners. Learned counsel submits that the civil suit was immediately instituted by the petitioners after 10 days of forging the agreement to sell dated 13.07.2022, which also raises a big question mark qua its authenticity. He has submitted that merely because a document is a subject matter of civil suit, it cannot be a ground to quash criminal proceedings as both civil and criminal

proceedings can proceed simultaneously. He has controverted the submissions made by the counsel opposite that a civil dispute is being given a criminal colour and has rather asserted that it is the other way round that the crime committed by the petitioners is being given the cloak of a civil dispute. Learned counsel has also argued that if the submissions made by the learned counsel for the petitioners are accepted that if at the conclusion of the trial, the respondent would be at liberty to pursue remedy under the criminal law, in case the documents are proved to be forged, then it would become very convenient for all accused persons to file a civil suit on the basis of forged documents, in anticipation of criminal proceedings, and thereafter take a defence that as the documents are subject matter of civil proceedings, there would be a bar to criminal proceedings.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. The petitioners are seeking quashing of complaint (Annexure P/2) and summoning order dated 10.01.2023 (Annexure P/1) on the following grounds:-

(i) that the agreement to sell dated 13.07.2022 is subject matter of a civil suit for permanent injunction, hence, no criminal proceedings could have been initiated for the same; and

(ii) that the authenticity of a document which is subject matter of a civil suit can be only challenged and proved by the defendant in that civil suit and no separate criminal proceedings for the said purpose can be pursued as it would amount to an abuse of the process of law.

7. This Court does not find any force or merits in the submissions made by learned counsel for the petitioners. It is settled principle of law that while exercising inherent jurisdiction under Section 482 of the Cr.P.C., the Court has to only consider as to whether the allegations levelled in the FIR or complaint, as the case may be, discloses the commission of a cognizable offence or not.

8. It would be relevant to observe here that mere pendency of a civil suit qua a document i.e. agreement to sell in the present case, cannot be a ground to quash the criminal proceedings. Criminal and civil proceedings are distinct in nature. The scope and even the standard of proof in both the proceedings varies from each other significantly. The allegations in the FIR or a complaint, as the case may be, have to be proved independently and the decision in a civil suit cannot in any manner affect outcome of the criminal case. If the submissions of the learned counsel for the petitioners are to be accepted, it would lead to dangerous repercussions and the transgressions of unscrupulous elements might go unrestrained.

9. The Hon'ble Supreme Court in ***M. Krishnan Vs. Vijay Singh and another : 2001(4) RCR (Criminal) 405***, while dealing with a similar issue observed as under:-

“5. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil

court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of. The High Court was not, in any way, justified to observe :

"In my view, unless and until the civil court decides the question whether the documents are genuine or forged, no criminal action can be initiated against the petitioners and in view of the same, the present criminal proceedings and taking cognizance and issue of process are clearly erroneous.""

10. The Hon'ble Supreme Court in ***Md. Allauddin Khan Vs. The State of Bihar and others : 2019(5) RCR (Criminal) 695***, while holding that pendency of a civil suit cannot be a ground to quash criminal proceedings observed as under:-

"10. First error is that the High Court did not examine the case with a view to find out as to whether the allegations made in the complaint prima facie make out the offences falling under Sections 323, 379 read with Section 34 I.P.C. or not.

11. Instead the High Court in Para 6 gave importance to the fact that since there was a dispute pending between the parties in the Civil Court in relation to a shop as being landlord and tenant, it is essentially a civil dispute between the parties.

12. It is on this ground, the High Court proceeded to quash the complaint. This approach of the High Court, in our view, is faulty.

13. Though the High Court referred to the law laid down by this Court in the case of State of Haryana & Ors. v. Ch. Bhajan Lal & Ors. (1991(1) RCR (Criminal) 383 : AIR 1992 Supreme Court 604) but failed to apply the principle laid down therein to the facts of this case.

14. The High Court failed to see that mere pendency of a civil suit is not an answer to the question as to whether a case under Sections 323, 379 read with Section 34 I.P.C. is made out against respondent Nos. 2 and 3 or not.

15. The High Court should have seen that when a specific grievance of the appellant in his complaint was that respondent Nos. 2 and 3 have committed the offences punishable under Sections 323, 379 read with Section 34 I.P.C., then the question to be examined is as to whether there are allegations of commission of these two offences in the complaint or not. In other words, in order to see whether any prima facie case against the accused for taking its cognizable is made out or not, the Court is only required to see the allegations made in the complaint. In the absence of any finding recorded by the High Court on this material question, the impugned order is legally unsustainable.”

11. In the instant case, a perusal of the allegations levelled in the complaint (Annexure P/2) prima facie reveals the commission of a cognizable offence and it cannot be said that the dispute between the parties is purely civil in nature. Furthermore, this Court cannot be expected to conduct a mini trial by delving into the merits of the allegations levelled in the complaint at this stage. The genuineness or otherwise of the allegations levelled by the respondent would be appreciated by the Trial Court, after the parties have led their respective evidence.

12. This Court has no hesitation in observing that in the instant case no miscarriage of justice would be committed if the criminal proceedings are allowed to continue.

13. The decision of the Hon'ble Supreme Court in ***Paramjeet Batra's case (supra)*** on which a great deal of reliance was placed by the learned counsel for the petitioners, would not further the cause of the petitioners as in that case the dispute was indeed purely of a civil nature. Still further, the Hon'ble Supreme Court quashed the proceedings in ***Paramjeet Batra's case (Supra)*** after taking into consideration a number of factors which are clearly evident from its observations which stand reproduced hereinbelow:-

“8. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by respondent 2 against him alleging offence under Section 406 of the IPC. Possession of the shop in question has also been handed over by the appellant to respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise.”

14. As a sequel to the above discussion and in the facts and circumstances of the instant case coupled with the observations of the Hon'ble Supreme Court in ***M. Krishnan's case (supra)*** and ***Md. Allauddin Khan's case (supra)***, this Court is not inclined to invoke its inherent jurisdiction under Section 482 of the Cr.P.C. and quash the complaint in question and` summoning order.

15. Accordingly, the instant petition being devoid of any merit is dismissed.

16. However, it is made clear that anything observed

hereinabove shall not be construed to be an expression of opinion on the merits of the case.

18.04.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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