

CRM-M-1611 of 2016

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

CRM-M-1611 of 2016
Reserved on: - 21.02.2023
Pronounced on: - 10.03.2023

Ajit Kaur @ Jeeto and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Ms. G.K. Mann, Sr. Advocate,
with Mr. Gursharan Singh, Advocate, for the petitioners.

Mr. Jashanpreet Singh, DAG, Punjab.

Mr. M.K. Dogra, Advocate, for respondent No.2.

NAMIT KUMAR, J.

This petition has been filed by the petitioners under Section 482 Cr.P.C. for quashing of FIR No.169 dated 24.04.2012 under Sections 420/467/468/471 IPC, registered at Police Station Civil Lines, District Amritsar City and all consequential proceedings arising therefrom.

Brief facts of the case are that present FIR was registered on the complaint of Harinder Singh-respondent No.2 alleging therein that petitioners executed one sale deed on 05.10.2009, registered on the same day in his favour showing themselves to be owners of 1/12th share

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in the area measuring 832 sq. yards out of khasra No.584 min (1-9) 584 min (2-0) 584 (6-6) 584 (505) 583 min (0-14) 583 (0-15) 583 (3-0) situated at Sultanwind Sub Urban Taraf Mahal II, Tehsil and District Amritsar. Thereafter, when he approached the halqa patwari for getting the mutation sanctioned of the said property in his favour on the basis of aforesaid sale deed, he was shocked to know that the land sold by the petitioners was not in existence and they were not owners of 832 sq. yards of land. After inquiry made by respondent No.2 it came to his knowledge that there was no land measuring 1 kanal 19 marlas in khasra No.584 min and the land shown as 6 kanals 6 marlas was actually 6 kanals 4 marlas and land measuring 5 kanals 5 marlas shown in the said sale deed also did not belong to khasra No.584 min and total land which falls under khasra no.584 min is 8 kanals 4 marlas only and not 15 kanals 12 marlas, as shown by the petitioners in the said sale deed. The total share of the petitioners in khasra No.583 is 4 kanals 9 marlas. Thus total land falling in khasra Nos.583 and 584 is 12 kanals 13 marlas i.e. 8 kanals 4 marlas in khasra No.584 and 583 to the extent of $1/12^{\text{th}}$ share which comes to 1 kanal 1 marla only and accordingly mutation of only that part of the land i.e. 1 kanal, owned by the petitioners was sanctioned by the revenue authorities in favour of respondent No.2 and mutation of remaining 332 sq. yards was not sanctioned as they were not owners of 332 sq. yards of land. It was alleged that thus the petitioners have defrauded and cheated respondent No.2.

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Learned counsel for the petitioners submitted that present FIR is the misuse of process of law as the civil dispute has been given the criminal tinge and respondent No.2 wants to usurp the land of the petitioners free of cost. He further submits that no offence under Section 420 IPC is made out as petitioners are owners in possession of the land. He further submits that respondent No.2 also filed a civil suit against the petitioners after a period of 2.5 years from the date of legal notice sent to him by petitioners regarding cancellation of agreement for possession by way of specific performance of agreement to sell dated 22.09.2009, which has been dismissed by the Additional Civil Judge (Senior Division) Amritsar, vide judgment and decree dated 17.05.2016 with the observations that complainant himself was not ready and willing to get executed the sale deed and the appeal preferred by respondent No.2 against the said judgment and decree has also been dismissed by the Additional District Judge, Amritsar, vide judgment dated 22.12.2017 and the same has attained finality. He further submits that petitioner No.2 has died in the year 2018 and petitioner No.1 is a 85 years old lady. He submitted that present FIR, which is a misuse of process of law, may be quashed along with all consequential proceedings arising therefrom.

Learned State counsel as well as learned counsel for respondent No.2 opposed the prayer for quashing of the aforesaid FIR against the petitioners submitting that petitioners have cheated and defrauded respondent No.2, therefore, they are liable to be tried under

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the criminal law. Thus, no ground is made out to quash the FIR in question.

I have heard learned counsel for the parties and perused the record.

The Hon'ble Supreme Court in ***Mitesh Kumar J. Sha Vs. State of Karnataka and others, reported as 2021 AIR (Supreme Court) 5298***, has held as under: -

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2. This appeal is directed against the judgment and order dated 13.08.2019 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No. 2691 of 2016, filed by the Appellants under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') challenging the FIR No. 185/2016 dated 29.03.2016 implicating the appellants for offences under Section 420 read with Section 34 IPC and to quash the proceedings in C.C. No. 20609 of 2017 on the file of VI Additional CMM, Bengaluru, initiated pursuant to charge sheet dated 29.03.2017 against the appellants for offences punishable under Sections 406, 419, 420 read with Section 34 of IPC. The High Court vide order impugned herein dismissed the same.

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Respondent No. 2 on the other hand filed a police complaint claiming that the sale of flats was in excess of the share agreed between the parties. The complaint (Respondent No.2), inter-alia, had two contentions-

- *First, that the GPA was not executed in favour of the company, therefore, company could not have sold the said apartments.*

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• Secondly, flats sold by the company belonged to Respondent no. 2's share. Flats alleged to have been sold in excess bearing No. 002, 301, 304, 404.

10. Pursuant to this complaint, FIR No. 185/2016 dated 29.03.2016, was registered against Appellant No. 1 and 2 for offences punishable under section 420 read with 34 of Indian Penal Code. Appellants herein, thereby approached the High Court of Karnataka seeking quashing of the said FIR invoking Section 482 of CrPC.

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It was further observed that since there are allegations against the Appellants for having sold the flats contrary to the terms of MoU, there were no grounds to interfere with the matter. The Appellants herein, thereby approached this court by way of the present Special Leave Petition.

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18. Respondent No. 2 who appeared in person on the contrary submits that the developer company of the Appellants being entitled to sell only 9 flats has executed a sale deed for 13 flats in all. Further the sale of 4 flats (flat nos. 002, 301, 304 & 404) beyond the 9 flats is in excess of the Appellants company's share and therefore Respondent No. 2 has been constrained to lodge a complaint for cheating against the Appellants.

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24. It is further contended that sale deed in respect of 8000 sq. ft. area cannot be executed by the Appellants as Respondent No 2 had not given GPA to sell the said area. Therefore, the sale made by the Appellants in excess of their authority is unlawful and is indicative of the criminal intent of the appellants.

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26. Having perused the relevant facts and contentions made by the Appellants and Respondents herein in our considered opinion, the following three key issues require determination in the instant case: - Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?

- Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?

- Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

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As has been rightly emphasised upon by this court, by way of an observation rendered in the case of M/s India n Oil Corpora tion v. M/s. NEPC India Ltd & Ors., (2006) 6 SCC 736 , as under :-

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law."

42. It was also observed:-

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement.

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Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged."

43. On an earlier occasion, in case of G. Sa ga r Su ri a nd Anr. v. State of UP and Ors., (2000) 2 SCC 636 , this Court has also observed:-

"8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

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The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it.

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47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in

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contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.

48. In view of the above facts and discussions, the impugned order dated 13.08.2019 passed by the High Court of Karnataka is set aside. The impugned F.I.R. No. 185 of 2016 dated 29.03.2016 and proceedings in C.C.No. 20609 of 2017 on the file of VI Additional CMM, Bengaluru, in pursuance of charge sheet dated 29.03.2017 against the appellants for offences under Sections 406, 419, 420 read with Section 34 IPC stands quashed.

49. As a result, appeal stands allowed."

Perusal of the above judgment would show that petition filed under Section 482 Cr.P.C. by the petitioner therein challenging the FIR registered under Section 420 IPC was dismissed by the High Court, but in the appeal filed by the accused persons, the same was allowed and the criminal proceedings were quashed. In the said case, as per the allegations made by complainant therein, it was stated that accused persons therein, had sold flats contrary to the MoU and had sold 13 flats although, they were entitled to sell 9 flats. The Hon'ble Supreme Court had framed three issues, out of which, two specific issues were: 1. "whether the sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating" and 2. "whether the dispute is one of entirely civil nature and therefore liable to be quashed". The Hon'ble Supreme after relying upon a series of judgments including the judgment **M/s Indian Oil Corporation v. M/s. NEPC India Ltd & Ors., reported as (2006) 6 SCC 736** and after noticing a growing tendency in business circles to convert purely

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civil disputes into criminal cases, allowed the said appeal, set aside the Order passed by the High Court and quashed the criminal proceeding. It was observed that the complainant therein had made an attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it and the same was done merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute and such an exercise was held to be nothing but an abuse of the process of law, which is required to be discouraged. The principle as laid down in the said judgment fully applies in the present case also.

Perusal of record makes it clear that it is purely a civil dispute between petitioners and respondent No.2, which has been given the criminal tinge. Moreover, respondent No.2 also filed a civil suit against the petitioner on the same allegations, which has been dismissed by the trial Court vide judgment and decree dated 17.05.2016 and appeal preferred against the said judgment and decree also stands dismissed by the appellate Court vide judgment dated 22.12.2017, which has attained finality as no Regular Second Appeal has been filed against the said judgment by respondent No.2. As the present FIR has been registered containing the same allegations as have been pleaded by respondent No.2 in separate proceedings before the civil Court, which have been disbelieved by both the Courts below, therefore, present FIR is liable to be quashed.

In view of the above, FIR No.169 dated 24.04.2012 under Sections 420/467/468/471 IPC, registered at Police Station Civil Lines, District Amritsar City and all consequential proceedings arising

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therefrom are quashed qua petitioner No.1. Petition qua petitioner No.2
stands abated.

The petition is accordingly allowed.

10.03.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

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Yes/No

Whether Reportable

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Yes/No