IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-16355-2014 (O&M)
Date of decision: 23.02.2023

KAVITA SHARMA

....Petitioner

Versus

STATE OF PUNJAB & ANR

. ..Respondents

CRM-M-18029-2015 (O&M)

SUKHWINDER SINGH

....Petitioner

Versus

STATE OF PUNJAB & ANR

...Respondents

CRM-M-18031-2015 (O&M)

PANKAJ KUMAR

....Petitioner

Versus

STATE OF PUNJAB & ANR

...Respondents

CRM-M-17432-2016 (O&M)

KULDIP KUMAR

....Petitioner

Versus

STATE OF PUNJAB & ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Veneet Sharma, Advocate
for the petitioner in CRM-M-16355-2014

Mr. Mukesh Bhatnagar, Advocate
for the petitioners in CRM-M-18029-2015,

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CRM-M-18031-2015 & CRM-M-17432-2016

Mr. Kamalpreet Bawa, AAG Punjab

Respondent No.2 in person.

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AMAN CHAUDHARY. J.

This common order shall dispose of the above-mentioned four petitions, which have been filed by the petitioners for quashing of FIR No.123 dated 19.03.2009, registered under Sections 420, 467, 468, 471, 506 and 120-B IPC at Police Station Sadar, Amritsar, Annexure P-1 and all consequential proceedings arising therefrom.

Learned counsel for submit that the petitioners have falsely been implicated in the case, whereas, no offence, under Sections as mentioned in the FIR, is made out against them. It is apparent that the dispute in the present case is with regard to plot of 200 sq. yards sold to the complainant-respondent No.2 by Sita, which was in the joint holding with Raj Karni. Petitioner-Kavita Sharma had a power of attorney of her mother-Raj Karni in her favour regarding her land. Petitioner-Pankaj Kumar on the basis of the power attorney given by petitioner-Kavita Sharma sold two plot of 100 sq. yards each to petitioner-Sukhwinder Singh, and one Meenu and Hans Raj, who further sold to petitioner-Kuldip Kumar. Petitioner-Kavita Sharma has been authorised to sell the land of her mother, as power of attorney was executed in her favour being a daughter but her statement has not been recorded. It was a case of civil dispute, but still the present FIR has been registered. Even in the final report filed under Section 173 CrPC shows

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that no investigation has been carried out but merely allegations made in FIR have been reiterated.

Learned State counsel submits that challan has been presented in the case and three accused were found to be innocent during investigation.

Complainant-respondent No.2 appears in person and submits that he is the bona fide purchaser for consideration from the rightful owner of the land and is in possession of the land in question. The civil suit filed against the complainant was dismissed and since no appeal was preferred, the same has attained finality. He, thus, has no objection for quashing of the FIR, however, the same should not have any affect on his rights.

Heard the learned counsel for the parties and perused the case file.

It would be profitable to refer to the judgment of Hon'ble The Supreme Court in the case of **Sheila Sebastian vs. R. Jawaharaj** (2018) 7 SCC 581, wherein it was observed thus:

> "19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and untill ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of

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Section 464, as the offence of forgery would remain incomplete.

20. xx xx xx

21. It is observed in the case Md. Ibrahim and Ors. vs. State of Bihar and Anr., (2009) 8 SCC 751 that-

"a person is said to have made a `false document', if

(i) he made or executed a document claiming to be someone else or authorised by someone else; or

(ii) he altered or tampered a document; or

(iii) he obtained a document by practicing deception, or from a person not in control of his senses."

22. In Md. Ibrahim (supra), this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467, IPC) and using of forged document as genuine (Section 471, IPC). While considering the basic ingredients of both the offences,this Court observed that to attract the offence of forgery as defined under Section 463, IPC depends upon creation of a document as defined under Section 464, IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471, IPC even if title of property did not vest in the executant.

23. The Court in Md. Ibrahim (supra) observed that:

"There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of `false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not

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> the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.
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> 29. ….It must be borne in mind that, where there exists no ambiguity, there lies no scope for interpretation. The contentions of the appellant are contrary to the provision and contrary to the settled law. The prosecution could not succeed to prove the offence of forgery by adducing cogent and reliable evidence. Apart from that, it is not as though the appellant is remediless. She has a common law remedy of instituting a suit challenging the validity and binding nature of the mortgage deed and it is brought to our notice that already the competent Civil Court has cancelled the mortgage deed and the appellant got back the property."

Hon'ble The Supreme Court in the cases of **Usha Chakraborty and another vs. State of West Bengal and another** 2023 Livelaw (SC) 67, **R. Nagender Yadav vs State of Telangana** (2023) 2 SCC 195 and **G. Sagar Suri V. State of U.P. and others**, (2000)2 SCC 636, observed that, the High Court in exercise of its jurisdiction under Section 482 CrPC, has to see if a matter 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. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder and the essential ingredients of a criminal offence are present or not, has to be judged by the High Court.

In **Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur and others v. State Gujarat and others**, (2017) 9 SCC 641, Hon'ble The Supreme Court held that, as distinguished from serious offences, there may be criminal cases which have an overwhelming or

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predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned. In exercise of the wide and plentitude inherent power under Section 482 CrPC, to secure the ends of justice, or to prevent an abuse of the process of any Court, a criminal proceeding or complaint should be quashed.

The factual position in the present case reveals that the genesis of the dispute involved is essentially of civil nature given a criminal texture. The ingredients of the offences are also not made out, considering the final report. The complainant-respondent No.2 has also stated that the sale deed executed in his favour was as a matter of fact from the rightful share of his vendee, civil suit filed against him regarding his plot has been dismissed and attained finality and thus, he has no objection to quashing of the FIR, he being in possession of the plot purchased by him as a bona fide purchaser for consideration. This Court finds that the continuation of proceedings against the petitioners in the aforesaid circumstances would result in abuse of the process of the Court.

Considering the peculiar facts and circumstances of the case and bearing in mind the enunciation of law in the afore-referred pronouncements, the present petitions deserve to be allowed.

Resultantly, the present petitions are allowed and FIR No.123 dated 19.03.2009 under Sections 420, 467, 468, 471, 506 and 120-B IPC registered at Police Station Sadar, Amritsar, Annexure P-1 and all consequential proceedings arising therefrom, are quashed qua the petitioners.

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However, it is made clear that the observations made hereinabove be not construed as an expression of opinion as regard any civil remedy that may be available to the complainant.

A photocopy of this order be placed on the file of connected case.

(AMAN CHAUDHARY)
JUDGE

February 23, 2023
S.Sharma(syr)

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

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