

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-22722 of 2012

Date of Decision: January 05, 2023

Modan and others

---Petitioners

versus

State of Haryana and another

---Respondents

Coram: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Manish Soni, Advocate and
Mr. Amit Kumar Boken, Advocate
for the petitioners

Mr. Karan Sharma, DAG, Haryana

Mr. K.S.Godara, Advocate
for respondent No. 2

JAGMOHAN BANSAL. J (ORAL)

1. The petitioners through instant petition under Section 482 Cr.P.C are seeking quashing of FIR No. 161 dated 21.05.2010 under Sections 420, 467, 468, 471 & 120B IPC registered at Police Station Rania, District Sirsa and consequent proceedings arising therefrom.

2. The FIR in question is outcome of litigation between family members, with respect to distribution of land of one relative who died issueless. Parties are contesting since 1976. This petition vide order dated 29.07.2013 was ordered to be heard alongwith RSA No. 407 of 1995 and 1550 of 1995.

Brief Facts:

3. Before advertng with the issues involved and arguments of both sides, it

would be inevitable to look at pedigree of the disputing parties. The pedigree

table is reproduced as below:-

Nanu					
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!				!	!
Phalli				Sobha	Kallu
!				!	!
Dhannu		Lakha		Rampat	
!		!			
!	!	!	!	!	!
Wazira	Modan	Siri	Puran	Inder	Smt. Biro
		Chand	Singh	Singh	
!					
	!	!	!	!	
	Angad	Sispal	Jagdish	Ram Gopal	

4. The brief facts emerging from the record and necessary for the adjudication of present petition are that Rampat (deceased) executed Will dated 19.2.1968 with respect to his agricultural land measuring 170 Kanal and 2 Marla in favour of respondents No. 2 and his brothers. The petitioners challenged the Will by way of civil suit which came to be decreed in their favour vide judgment and decree dated 29.8.1979. Civil Judge vide judgment and decree dated 29.8.1979, declared aforesaid Will invalid and made petitioners entitled to half share of the aforesaid land.

An appeal by family members of respondent No. 2 came to be filed before Additional District Judge, Sirsa assailing decree dated 29.8.1979. During the pendency of the appeal, a compromise came to be arrived at between the contesting parties. According to compromise dated 6.8.1980, 62 kanal land came in the share of petitioners. The Appellate court vide judgment and decree dated 01.05.1980 passed compromise decree which came to be challenged before this

Court in RSA No. 2330 of 1981. This Court vide order dated 29.10.1984 upheld the compromise decree, however, remanded the matter to the extent of rights of two persons who were contesting the matter before courts below but were not party to the compromise.

The Additional District Judge, Sirsa after remand passed judgment and decree dated 6.8.1985 and according to which, half share of the suit land came in the share of father of respondents and his sibling. 62 kanal land came in the share of petitioners. The rest 23 kanal and 01 marla came in the share of respondents No. 2 and his brothers.

5. The respondents No. 2 and his brother vide Civil Suit dated 12.09.1985 challenged compromise judgment(s) and decree(s) dated 1.5.1980 and 6.8.1985 passed by Additional District Judge on the ground that compromise decree has been passed in violation of mandate of Order 32 Rule 7 of the Code of Civil Procedure (for short "CPC") because at the time of compromise, they were minor.

5.1 Senior Sub Judge dismissed suit of respondent No. 2 and his brother vide judgment and decree dated 12.2.1990. The respondents No. 2 and his brother filed appeal before Additional District Judge which came to be allowed vide impugned judgment and decree dated 16.12.1994.

5.2 The petitioners preferred aforementioned two regular second appeals before this court, assailing judgment and decree dated 16.12.1994 whereby compromise, judgment and decree (s) dated 01.05.1980 and 06.08.1985 passed by Additional District Judge have been set aside.

6. The petitioners during the pendency of RSA before this court sold 62 kanal of land which was in their possession. The land has been sold to family members who are party to civil litigation. The respondent No. 2 has lodged afore-mentioned

FIR against the petitioners alleging that act of sale of land amounts to commission

of offence punishable under different Sections of IPC.

Contention of the petitioners:

7. Learned counsel for the petitioners submitted that dispute between the parties is a purely civil dispute which is evident from the fact that two RSA(s) *qua* land in question are pending before this Court. The respondent just to pressurize the petitioners has lodged FIR and unfortunately police is supporting case of the respondents. The respondent No.2- complainant had no locus standi to lodge FIR against the petitioners because as per judgment of Hon'ble Supreme Court in ***Md. Ibrahim & Ors. Versus State of Bihar report as 2009 (4) RCR (Criminal) 369***, only buyer could lodge FIR against the petitioners. The private respondents filed an application under Order 39 Rule 1 and 2 of CPC before Civil Judge (Sr. Divn.), Sirsa to restrain the petitioners from interfering into their possession over the suit land. Learned Additional Civil Judge (Sr. Divn.), Sirsa vide order dated 02.12.2009 rejected the application of the respondent No.2 on the ground that as per Jamabandi for the year 2006-2007, they are in possession of 105 Kanals 14 Marlas land and there is nothing on record to show that they are in possession of 170 Kanals 2 Marla land. The respondent No.2 unsuccessfully challenged order dated 02.12.2009 before the Appellate Court. The respondent No. 2 and his brother filed suit for declaration that they are in possession of land in question and declaration to the effect that sale deed dated 18.06.2009 is null and void. The said application came to be dismissed vide order dated 14.10.2010 passed by Civil Judge (Sr. Divn.), Sirsa. The respondent No.2 unsuccessfully challenged order dated 14.10.2010 before the Appellate Court.

Contention of the respondents:

8. Learned State counsel and counsel for the private respondent would submit that petitioners had sold land in question, though matter *qua* ownership of the said

land was pending before this Court, thus, act of petitioners amounted to cheating in terms of Section 415 and 420 of IPC. The respondents had every right to lodge FIR because their rights over land in dispute are adversely affected. The rejection of various applications or appeals seeking injunction or interim relief do not bar filing of FIR and consequent proceedings.

Findings:

9. I have heard the arguments and with the able assistance of counsel for the parties perused the record.

10. The conceded facts emerging from record are that civil dispute between the parties qua ownership of land in question is pending since 1976. In the form of RSA(s), second round of litigation is pending before this Court. The petitioners at the time of sale were in possession of the land in question. The sale has been effected between the family members who are party to civil litigation, thus, nobody can claim ignorance. The respondent No.2 and his brothers had filed various applications and appeals seeking possession over land and restraining the petitioners from selling the land, however, there is no order in favour of the respondents. The present petition is ordered to be listed alongwith pending RSA(s).

11. Before adverting with the controversy involved, it would be appropriate to look at judicial pronouncement qua jurisdiction of High Court to entertain quashing petition.

A two judge bench of Supreme Court in **State of Haryana & others Vs Bhajan Lal & others 1992 Supp (1) SCC 335** after considering plethora of judgments has illustrated circumstances where High Court in exercise of its power under Article 226 of Constitution of India and Section 482 of Cr.P.C. can quash FIR. The Supreme Court has reminded the courts that power should be exercised

in exceptional cases and with full circumspection. Relevant paragraphs and findings read as:

83. The Judicial Committee in its oft-quoted decision, namely, *Emperor v. Khwaja Nazir Ahmad* [AIR 1945 PC 18 : 71 IA 203 : 46 Cri LJ 413] though strongly observed that the judiciary should not interfere with the police in matters which are within their province, has qualified the above statement of law by saying : (AIR p. 22)

“No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation”

85. Gajendragadkar, J. speaking for the Court while considering the inherent powers of the High Court in quashing the first information report under Section 561-A of the old Code (corresponding to Section 482 of the new Code) in *R.P. Kapur v. State of Punjab* [(1960) 3 SCR 388, 396 : AIR 1960 SC 866 : 1960 Cri LJ 1239] at page 393 made the following observation:

“Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.

93. The Supreme Court in *State of Bihar v. J.A.C. Saldanha* [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] examined the question whether, when the investigation was in progress, the High Court was justified in interfering with the investigation and prohibiting or precluding further investigation in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. On the facts of that case, this Court set aside the order of the High Court quashing the order of the Magistrate

of completion of further investigation, directed by the State Government was submitted to him and held that the High Court in exercise of its extraordinary jurisdiction committed a grave error in giving the direction virtually amounting to mandamus to close the case before the investigation was complete.

95. The classic exposition of the law is found in *State of W.B. v. Swapan Kumar Guha* [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : (1982) 3 SCR 121] . In this case, Chandrachud, C.J. in his concurring separate judgment has stated that “if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received”. Justice A.N. Sen who wrote the main judgment in that case with which Chandrachud, C.J. and Varadarajan, J. agreed has laid the legal proposition as follows : (SCC pp. 597-98 paras 65 and 66)

“... the legal position is well settled. The legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of

the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence.”

98. Speaker for the bench, Ranganath Misra, J. as he then was in *Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] has expounded the law as follows : (SCC p. 695, para 7)

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage.”

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in

Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

A two judge bench of the Supreme Court in **M/s Neeharika Infrastructure Pvt. Ltd. Versus State of Maharashtra and others 2021 SCC online SC 315** has considered at length scope of powers of high court to quash FIR and grant stay of further investigation. The Supreme Court has culled out few principles on the basis of precedents which read as:

10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of *Khawaja Nazir Ahmad (supra)*, the following principles of law emerge:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more

particularly the parameters laid down by this Court in the cases of *R.P. Kapur (supra)* and *Bhajan Lal (supra)*, has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

11. Whether the High Court would be justified in granting stay of further investigation pending the proceedings under Section 482 Cr.P.C. before it and in what circumstances the High Court would be justified is a further core question to be considered.

Before passing an interim order of staying further investigation pending the quashing petition under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, the High Court has to apply the very parameters which are required to be considered while quashing the proceedings in exercise of powers under Section 482 Cr.P.C. in exercise of its inherent jurisdiction, referred to hereinabove.

12. In a given case, there may be allegations of abuse of process of law by converting a civil dispute into a criminal dispute, only with a view to pressurize the accused. Similarly, in a given case the complaint itself on the face of it can be said to be barred by law. The allegations in the

FIR/complaint may not at all disclose the commission of a cognizable offence. In such cases and in exceptional cases with circumspection, the High Court may stay the further investigation. However, at the same time, there may be genuine complaints/FIRs and the police/investigating agency has a statutory obligation/right/duty to enquire into the cognizable offences. Therefore, a balance has to be struck between the rights of the genuine complainants and the FIRs disclosing commission of a cognizable offence and the statutory obligation/duty of the investigating agency to investigate into the cognizable offences on the one hand and those innocent persons against whom the criminal proceedings are initiated which may be in a given case abuse of process of law and the process. However, if the facts are hazy and the investigation has just begun, the High Court would be circumspect in exercising such powers and the High Court must permit the investigating agency to proceed further with the investigation in exercise of its statutory duty under the provisions of the Code. Even in such a case the High Court has to give/assign brief reasons why at this stage the further investigation is required to be stayed. The High Court must appreciate that speedy investigation is the requirement in the criminal administration of justice.

12. In the case in hand, dispute qua ownership of land in question is pending before this Court. As per compromise decree(s) dated 01.05.1980 and 06.08.1985 passed by ADJ, Sirsa, the petitioners became owner of 62 Kanals land which is subject matter of FIR. Judgment and decree dated 16.12.1994 declared compromise decree dated 01.05.1980 and 06.08.1985 null and void, however, judgment and decree dated 29.08.1979 passed by Civil Court, Sirsa whereby Will was declared invalid was never set aside. The petitioners at the time of sale were in possession of the land in question. The respondents preferred various

applications and appeals before courts seeking possession of land and declaring sale of land invalid, however, no Court passed interim or final order in favour of the respondents. RSA No. 407 and 1550 of 1995 filed by petitioners are listed alongwith this petition. By separate order of even date, RSA(s) have been decided whereby petitioner herein are declared owner of the land in dispute.

From above facts, it comes out that dispute between the parties was purely a civil dispute, thus, FIR was not maintainable and interference of this Court, in view of above-cited judgments of Apex Court, is warranted. The filing of multiple applications before Courts qua possession of land and declaring sale invalid confirms the fact that respondent has put criminal law into motion for the same relief for which civil proceedings were either pending or unsuccessfully initiated later on.

13. In view of above findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The FIR No. 161 dated 21.05.2010 under Sections 420, 467, 468, 471 & 120B IPC registered at Police Station Rania, District Sirsa and consequent proceedings arising therefrom are hereby set aside.

(JAGMOHAN BANSAL)
JUDGE

5.1.2023

paramjit

Whether speaking/reasoned : Yes

Whether reportable : Yes