IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31706-2013(O&M)
Date of Decision:- 03.03.2023

Subhash Chand

… Petitioner

Versus

State of Haryana and another

... Respondents

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Argued by :-
Mr. Raj Kumar Gupta, Advocate for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Amit Khatkar, Advocate for respondent No.2.

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KARAMJIT SINGH, J.

The present petition has been filed by petitioner-Subhash Chand seeking quashing of FIR No.159 dated 29.5.2013 under Section 420 IPC Police Station Uchana District Jind (Annexure P-12) and final report (Annexure P-13), submitted by the police under Section 173 Cr.P.C. and subsequent proceedings arising thereof.

FIR (Annexure P-12) was registered against the petitioner on the basis of written complaint lodged by respondent No.2-Kashmir Singh wherein it was alleged that the petitioner sold his land measuring 38 kanals 7 marlas situated in village Kalta Tehsil Narwana District Jind to complainant/respondent No.2 vide agreement to sell dated 20.12.1985

(Annexure P-3) and even the possession of the land so sold was also handed over to respondent No.2 and since then respondent No.2 is in cultivating possession of the same and at the time of execution of said agreement to sell the entire sale consideration was also paid to the petitioner. However in the revenue record ownership of the land in question was not changed from the name of the petitioner to that of respondent No.2 and taking advantage of the same, petitioner sold 23 kanals out of the aforesaid land to Kuldeep and Rishi Pal sons of Subhash vide registered sale deed dated 21.5.2013 and in this manner petitioner cheated respondent No.2, who is the owner-in-possession of the land in question since the date of execution of aforesaid agreement to sell dated 20.12.1985.

The counsel for the petitioner has contended that respondent No.2 has propounded an agreement to sell (Annexure P-3), in order to establish that he is the owner and in possession of the land measuring 38 kanals 7 marlas. The counsel for the petitioner further submitted that actually no such agreement to sell was ever executed by the petitioner regarding his land with respondent No.2 and respondent No.2 had not paid any amount to the petitioner by way of sale consideration. The counsel for the petitioner further submitted that Annexure P-3 even if taken to be true on its face value, is a mere agreement to sell and does not confer any title. The counsel for the petitioner further submitted that the petitioner was working in the Indian Railway and he gave his land on '*Batai*' to respondent No.2 and his brothers Kuldeep Singh and Joga Singh in 1987 and since then respondent No.2 and his brothers are occupying the said land in the same capacity. The counsel for the petitioner has further submitted that the petitioner requested respondent No.2 to vacate the land on number of occasions. But instead of handing over the possession of land, respondent No2 and his brother filed civil suit No.2178 of 2011 (Annexure P-1) seeking grant of decree for permanent injunction restraining the petitioner from interfering into their possession in the land in question and further restraining the petitioner from alienating the said land. The counsel for the petitioner has further contended that said suit was dismissed as being withdrawn by the plaintiffs therein on 23.01.2012 vide order Annexure P-2. The counsel for the petitioner has further submitted that in order to retain his possession over the land in question, respondent No.2 forged an agreement to sell dated 20.12.1985 (Annexure P-3). That on the basis of the said forged document, the respondent No.2 and his brother filed suit for specific performance on the basis of said fake document and the copy of the plaint of the said civil suit is Annexure P-5. That said civil suit was filed after the withdrawal of the earlier civil suit (Annexure P-1). That the petitioner contested said civil suit and filed written statement specifically denying the execution of agreement to sell (Annexure P-3). The counsel for the petitioner further submits that in the said civil suit for specific performance of alleged agreement, the counsel appearing on behalf of the petitioner herein gave undertaking not to alienate the land in question without prior information to the Court and accordingly the application moved by the opposite party under Order 39 Rule 1 & 2 was disposed of vide order dated 09.4.2012 (Annexure P-8). The counsel for the petitioner has further submitted that during the pendency of the suit, the petitioner intended to sell 23 kanals out of the total land measuring 38 kanals 7 marlas to Kuldeep

Singh and Rishi Pal sons of Subhash and in this regard application (Annexure P-9) was filed on 13.5.2013 to inform the Court about the proposed vandees. That the said information was endorsed by the Court concerned vide order dated 13.5.2013 (Annexure P-10). The counsel for the petitioner further submits that after providing the aforesaid information to the Court, the petitioner sold 23 kanals out of the land in dispute to Kuldeep and Rishi Pal for valuable consideration of `31,62,500/- vide registered sale deed dated 14.5.2013 (Annexure P-11). Immediately thereafter, respondent No.2 and his brother filed another suit for permanent injunction against the petitioner to restrain him from executing any sale deed with regard to land in question measuring 38 kanals 7 marlas. But in the said civil suit no injunction order was passed against the petitioner. Thereafter as respondent No.2 failed to get any interim relief on civil side, he got registered impugned FIR (Annexure P-12) against the petitioner.

The counsel for the petitioner has further contended that the present case involves dispute of purely civil nature and the petitioner was having no *mala-fide* intention to deceive respondent No.2 or any other person. The counsel for the petitioner has further contended that actually the fraud is committed by respondent No.2 who has forged agreement to sell (Annexure P-3) stated to be executed on 20.12.1985 and respondent No.2 filed civil suit on the basis of said fake document after lapse of about 26 years to grab the land of the petitioner and the continuity of the proceedings on the basis of the impugned FIR (Annexure P-12) would amount to abuse of process of Court as in the instant case dispute of civil nature has been given colour of criminal offence.

The present petition is contested by the State as well as the counsel for the complainant.

The counsel for the complainant has submitted that the petitioner entered into an agreement to sell his land measuring 38 kanals 7 marlas for consideration of `65,000/- with respondent No.2 and his brothers vide Annexure P-3 and at the time of execution of the said agreement, the petitioner received entire sale consideration of `65,000/- and also handed over the possession of the said land to the vendees i.e. petitioner and his brothers. The counsel for respondent No.2 has further submitted that since then respondent No.2 and his brothers are owners and in possession of the land in question. The counsel for the compalinant further submits that however the petitioner failed to execute the registered sale deed of the land in favour of respondent No.2 and his brothers on the basis of Annexure P-3 and as such in the revenue record there was no change and the land was recorded to be owned by the petitioner. The counsel for the complainant further submits that after the execution of Annexure P-3 the petitioner never objected to the possession of respondent No.2 and his brothers over the land in question for the next more than 20/22 years, but thereafter he started interfering in their possession over the land, on which they were compelled to file civil suit for permanent injunction and thereafter the petitioner started proclaiming his ownership and threatened to sell the land on which respondent No.2 and his brothers filed suit by way of specific performance of agreement to sell (Annexure P-3) and in the said civil suit the counsel for the petitioner gave undertaking that the petitioner will not alienate the land during the pendency of the suit, without prior intimation to the Court regarding proposed vendees and the relevant order of the learned trial Court is Annexure P-8 dated 9.4.2012. The counsel for the complainant has further contended that suddenly on 13.5.2013 petitioner through his counsel filed application (Annexure P-9) to inform the Court that the petitioner has agreed to sell 23 kanals out of the disputed land to Kuldeep Singh and Rishi Pal sons of Subhash. The counsel for the complainant has further submitted that on that day the presiding officer of the Court concerned was on leave and the said application was put up before the Duty Magistrate/Civil Judge (Junior Division), Narwana. That the Duty Magistrate while passing order (Annexure P-10) simply observed that an application has been filed to inform the Court about the alienation of the property in question, in compliance of previous order dated 09.04.2013 and the Duty Magistrate adjourned the case to the date already fixed i.e. 16.07.2013. The counsel for the complainant has further submitted that order (Annexure P-10) was obtained by the petitioner from the Court of Duty Magistrate, who was not well versed with the facts and circumstances of the case and the application (Annexure P-9) was never put up before the regular Court to get prior approval of the Court concerned. The counsel for the complainant further submits that the complainant/respondent No.2 was having no knowledge about the filing of application Annexure P-9 and order Annexure P-10 as no prior notice of the same was issued to him. That the petitioner procured order (Annexure P-10) in a surreptitious manner from the Court of Duty Magistrate.

The counsel for the complainant has further contended that from the perusal of the written statement (Annexure P-6), it is evident that the petitioner has admitted the possession of respondent No.2 and his brothers over the suit property. The counsel for the complainant has further submitted that immediately after getting order (Annexure P-10) in a fraudulent manner the petitioner executed sale deed (Annexure P-11) dated 14.5.2013 regarding land measuring 23 kanals in favour of Kuldeep and Rishi Pal sons of Subhash. The counsel for the petitioner further submits that in the said sale deed the petitioner falsely declared him to be owner and in possession of the land and in this manner he concealed the fact that the dispute regarding the said land was pending in the Civil Court, which has passed order that the said land could not be sold without prior intimation to the Court concerned. The counsel for the complainant has further contended that it is evident that no proper permission was taken from the Court concerned by the petitioner before execution of sale deed (Annexure P-11). The counsel for the complainant has further submitted that the sale deed (Annexure P-11) was executed by the petitioner with mala fide intention by concealing the true facts and thereby the petitioner caused wrongful loss to the complainant and his brothers and consequently FIR in question (Annexure P-12) is registered against the petitioner after due inquiry by the police. The counsel for the complainant has further submitted that civil suit (Annexure P-5), was contested by the petitioner as well as by the subsequent purchasers and finally the said civil suit was decreed vide judgment dated 30.1.2018 (Annexure A-2) and the sale deed (Annexure P-11) stands set aside. The counsel for the complainant has further contended that the petitioner was having intention from the very beginning to cheat respondent No.2 and his brothers and it being so there is no bar to proceed against the petitioner simultaneously on civil as well on criminal side. The counsel for the complainant while concluding his arguments has submitted that no ground is made out to interfere under Section 482 Cr.P.C. at this stage, when after investigation, the police has also presented challan against the petitioner to prosecute him under Section 420 IPC.

I have considered the submissions made by the counsel for the parties.

The Civil Court while passing judgment (Annexure A-2) has upheld the validity and genuineness of agreement to sell (Annexure P-3). As per said agreement to sell (Annexure P-3) respondent No.2 and his brothers paid entire sale considerations of `65,000/- to the petitioner, who handed over the possession of the land so sold to the proposed vendees i.e. respondent No.2 and his brothers.

Undoubtedly agreement to sell Annexure P-3, which is an unregistered document had not conferred any right of ownership in favour of respondent No.2 and his brothers in the light of the law laid down by Hon'ble Supreme Court of India in ***Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and Anr., (2012) 1 SCC 656*****,** wherein it has been held that no immovable property can be legally transferred or conveyed through agreement to sell, general power of attorney or 'will' and such property can be legally and lawfully transferred/conveyed only by registered deed of sale/conveyance.

Further as per the ratio laid down by the Hon'ble Supreme Court in ***Avinash Kumar Chauhan vs. Vijay Krishna Mishra (2009)2 SCC 532*****,** although ordinarily an agreement to sell would not be subject to payment of stamp duty which is payable on the sale deed but having regard to the purpose and object of Section 35 of Stamp Act, 1899, stamp duty will be required to be paid whereby possession has been transferred to the proposed vendee at the time of execution of the agreement to sell.

Further the Hon'ble Supreme Court in ***Uma Shankar Gopalika Vs. State of Bihar and another 2005 (10) SCC 336*** observed that it is well settled that every breach of contract would not give rise to any offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating.

The Hon'ble Supreme Court of India in ***Indian Oil Corporation Vs. NEPC India Ltd and others 2006(3) RCR (Cri.) 740*** cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases because civil law remedies are time consuming. The similar view was reiterated by the Hon'ble Supreme Court in ***Inder Mohan Goswami and another Vs. State of Uttranchal and another (2007) 12 SCC 1.***

The Hon'ble Supreme Court in ***Mohd. Ibrahim and others Vs. State of Bihar and others 2009(4) RCR (Crl.) 369*** observed as follows:-

> *"13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived;*

> *and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).”*

Now adverting to the facts of the present case, the FIR in question was registered on the basis of agreement to sell dated 20.12.1985, Annexure P-3, executed by the petitioner in favour of respondent No.2 and his brothers for valuable consideration of Rs.65,000/-, which was paid by the proposed vendees to the vendor (petitioner). Undoubtedly, the petitioner has admitted the possession of the respondent No.2 and his brother over the property in question. Admittedly, the agreement to sell, Annexure P-3, is an unregistered document whereby possession is also stated to have been transferred to the proposed vendee and as such, Annexure P-3, requires registration as per the judicial pronouncement in ***Avinash Kumar's*** case (supra). Law is also settled that the agreement to sell does not confer any title in favour of the proposed vendees.

In the instant case, after the execution of agreement to sell dated 20.12.1985, Annexure P-3, no suit for specific performance was filed by the proposed vendees with regard to registration of the sale deed in their favour by the petitioner, within a period of three years of the execution of said agreement to sell. From the perusal of Annexure P-5 it appears that suit for specific performance on the basis of agreement to sell (Annexure P-3) was filed by respondent No.2 and his brother, in year 2011 i.e. after lapse of about 26 years of the execution of agreement to sell Annexure P-3. In case some land out of the total land covered under the said agreement has been sold by the petitioner to some other persons without informing respondent No.2 and his brother and the Court concerned, during the pendency of the suit, the said sale would be hit by doctrine of *lis pendens* and resultantly, such sale would be subject to the decree passed in the said civil suit.

Admittedly, after execution of agreement to sell dated 20.12.1985 (Annexure P-3), both the parties remained silent for a period of about 25 years and the litigation between the parties started in year 2011. So, apparently there is nothing on the record to show that the petitioner was having *malafide* intention to cheat or deceive the proposed vendees, from the very beginning, when the agreement to sell (Annexure P-3) was executed and the petitioner received the entire sale consideration of Rs.65,000/- from the proposed vendees and handed over the possession of the land in question to them. The respondent No.2 and his brother have *prima facie* failed to establish that at the time of execution of agreement to sell, Annexure P-3, the petitioner was having dishonest intention to defraud the proposed vendees by taking Rs.65,000/- from them.

It is settled law that every breach of contract would not give rise to an offence of cheating as has already been enumerated above.

In the case of **State of Haryan**a Vs. Bhaj**an** Lal 1992 Supp.(**1) SCC 33**5, the Hon'ble Supreme Court has given the following categories of cases in which the inherent power under Section 482 Cr.P.C. can be exercised by this Court to prevent the abuse of process of law:-

> *(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."

It is settled position of law that the power under Section 482 Cr.P.C. could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In this context, reference is made to the judgment of the Hon'ble Supreme Court in **Parbhatbhai Aahir @ Parbatbhai Bhimsin**hbhai Ka**rmur & Or**s. Vs. S**tate of Gujarat & Anr. 2017(4) RCR(Crl.) 523.**

In the present case, as at the initial stage the petitioner was not having any dishonest intention and further on the basis of the agreement to sell (Annexure P-3), respondent No.2 filed a civil suit and the same has been decreed vide judgment and decree dated 30.01.2018 (Annexure A-2) and the sale deed (Annexure P-11) has been set aside, this Court is of the view that the FIR (Annexure P-12) is an abuse of process of law and the case of the petitioner falls within the caegories (1) and (3) laid down in **Bhajan Lal's** case (supra), as the facts mentioned in the FIR (Annexure P-12) even if assumed to be true do not make any offence under Section 420 IPC against the petitioner.

It is also pertinent to mention that now-a-days there is a tendency that the civil disputes are being given color of criminal disputes, to take advantage of a relatively fast relief in criminal cases as compared to that in civil disputes. The Hon'ble Supreme Court in Crl. Appeal No. 1285 of 2021 **Mitesh Kumar J. Sha Vs. The State of Karnataka & Ors.** Decided on 26.10.2021 specifically observed that such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.

Further inherent powers vested in this Court under Section 482 Cr.P.C. is to prevent abuse of process of law and thus the Court has power to quash FIR even after the charge sheet is filed by the police, as has been held by the Hon'ble Supreme Court in **Anand Kumar Mohatta & Anr. Vs. State (Govt. of NCT of Delhi),** 2019(5) RCR(Crl.) 168.

In the light of above discussion, present petition is allowed and the impugned FIR (Annexure P-12) and the charge sheet (Annexure P-13) filed against the petitioner are hereby quashed along with all the subsequent proceedings arising therefrom.

(KARAMJIT SINGH)
JUDGE

03.03.2023
Gaurav Sorot/ Jiten

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No