

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

227

CRM-M-3118-2016 (O&M)

Date of decision: 04.08.2023

DR. GURPAL SINGH

... Petitioner

Versus

BALWINDER SINGH KAILEY AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Mandeep S. Sachdeva, Advocate
for the petitioner.

Mr. Baltej Singh Sidhu, Senior Advocate with
Ms. Gagandeep Kaur Sidhu, Advocate
for the respondents.

HARNARESH SINGH GILL, J. (ORAL)

1. Challenge is to the order dated 16.11.2015 passed by the learned Additional Sessions Judge, Jalandhar, vide which the appeal preferred by the petitioner against the order dated 11.03.2013 passed by the learned Judicial Magistrate, 1st Class, Jalandhar, dismissing the complaint filed under Sections 379, 380, 34 IPC by the petitioner against the respondents, was dismissed.

2. The petitioner and respondent No.1 are the real brothers. Respondent No.2 is the wife of respondent No.1 and sister-in-law of the petitioner. Harbans Singh, father of the petitioner and respondent No.1, expired on 09.02.2010. The dispute, thereafter, arose between both the brothers.

3. As per the petitioner, Harbans Singh, gave a house (haveli) and open land with boundary wall situated in Ade Kali, Tehsil Phillaur, District Jalandhar, to him. After the death of Harbans Singh, the petitioner came to know about a Will executed by said Harbans Singh and some documents in the shape of passbook, cheque books, diaries and the same were shown to the respondents. On 04.02.2012, the respondents came to Jalandhar to attend marriage of Mandeep Kaur daughter of Sarabjit Singh Dhesi (cousin of the petitioner). After attending the marriage and while leaving from Jalandhar, the respondents had allegedly taken away the Will executed by said Harbans Singh, passbook, cheque books and diaries. The said incident was alleged to have been witnessed by Prabhjot Singh and Ravinder Pal Singh, who were present in the marriage and were sitting in the room. Accordingly, the petitioner filed a complaint dated 28.07.2012 under Sections 379, 380 read with Section 34 IPC against the respondents, which was dismissed vide order dated 11.03.2013 passed by the learned Judicial Magistrate, 1st Class, Jalandhar.
4. Aggrieved against the said order, the petitioner preferred a revision before the learned Additional Sessions Judge, Jalandhar, which was dismissed vide impugned order dated 16.11.2015.
5. Still aggrieved, the present petition has been filed.
6. Learned counsel for the petitioner submits that the Courts below have not appreciated the entire material on record in the right perspective and rather passed the same in a wholly untenable manner; that at the stage of summoning of an accused, a prima facie case has to be

seen against the accused person, but the learned trial Court in its wisdom had passed the final order, ignoring the entire factual position and merits of the case; that the petitioner in his complaint had specifically levelled allegations against the respondents and also corroborated the same while appearing as PW-1 and that eye-witness, namely, Prabhjot Singh, while appearing as PW-1, had also deposed on the same lines. Thus, keeping in view the specific stand taken by the complainant and the eye-witness, the trial Court ought to have summoned the respondents. He further submits that, being brother, the petitioner did not report the matter to the police; that the petitioner had served a legal notice dated 19.06.2012 upon the respondents through his counsel, calling upon them to return the documents stolen by them, but to no avail.

7. On the other hand, learned Senior counsel for the respondents submits that the present complaint, which was filed on 28.07.2012, is not maintainable as the dispute between the parties is with regard to a Will and some documents; that the dispute was/is civil in nature; that on the similar facts, the petitioner had filed a Civil Suit bearing No.54921/2013 dated 31.07.2012 seeking mandatory injunction against the respondents and one Balwinder Kaur; that the said civil suit was filed just two days after the filing of the complaint in question, which was dismissed by the learned Civil Judge (Junior Division), Jalandhar, vide judgment and decree dated 29.03.2017 and that the appeal preferred against the said judgment and decree was also dismissed by the learned Additional District Judge, Jalandhar, vide judgment dated 15.11.2018.

He, thus, argues that filing of a criminal complaint in respect of a civil dispute, is nothing but an abuse of process of law. He further submits that the alleged occurrence had been witnessed by Prabhjot Singh and Ravinder Pal Singh, but only Prabhjot Singh had appeared as PW-1 before the Court below and non-examination of Ravinder Pal Singh, is beyond common understanding. Still further, it is submitted that, though, the petitioner has alleged that the respondents had stolen the passbook and cheque book, yet the alleged cheques were neither presented before any Bank, nor any proceedings under Section 138 of the Negotiable Instruments Act, 1881, were initiated by any one.

8. Learned Senior counsel for the respondents has drawn the attention of this Court to the order dated 29.01.2016 passed by a Coordinate Bench of this Court, wherein a specific stand had been taken by the petitioner that on account of close relations, the matter was not reported to the Police. He argues that this statement of the petitioner is self-contradictory and belies by the fact that he, in this petition, has himself stated that though he kept on approaching the Police of Station Division No.7, Jalandhar, for registration of a case against the respondents, yet the said police officials refused to register a case.

9. In support of his contentions, learned Senior counsel for the respondents relies upon the judgments passed by the Hon'ble Supreme Court in M/s Indian Oil Corporation vs M/s NEPC India Ltd and others, 2006 (3) RCR (Criminal) 740; Inder Mohan Goswami and another vs State of Uttaranchal and others, 2007 (4) RCR (Criminal) 548 and Pepsi Foods Ltd. Vs Special Judicial Magistrate, (1998) 5 SCC 749.

10. In order to controvert the submissions made on behalf of learned Senior counsel for the respondents, learned counsel for the petitioner submits that it is a settled law that criminal and civil litigation can proceed on parallel basis. It is further submitted that whereas in the civil cases, the lis is to be decided on the basis of preponderance of evidence, in the criminal case, the guilt of an accused is to be proved beyond the shadow of reasonable doubt.

11. In support of his contentions, learned counsel for the petitioner further relies upon the judgments dated 03.03.2009 and 13.04.2015 passed by the Hon'ble Supreme Court in Syed Askari Hadi Ali Augustine Imam and another vs State (Delhi Admin.) and another, 2009 (2) RCR (Criminal) 520 and Ganga Dhar Kalita vs State of Assam and others, Law Finder Doc Id #665455, respectively

12. I have heard the learned counsel for the parties.

13. As noticed above, the dispute is between the brothers, which has started after the sad demise of their father, namely, Harbans Singh. It is now well settled that the tendency of converting civil dispute into criminal one should be deprecated. The Hon'ble Supreme Court in M/s Indian Oil Corporation's case (supra) has held as under:-

'.....10. 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. Such a tendency is seen in several family disputes

also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. 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'.

14. Further, the Hon'ble Supreme Court in Inder Mohan Goswami's case (supra) has held as under:-

'42.....The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under [Section 482](#) Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained'.

15. Further the Hon'ble Supreme Court in Pepsi Foods Ltd.'s case (supra) has held as under:-

'.....Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law

set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused'.

16. Admittedly, the dispute is between two brothers regarding the alleged theft of a Will left by their father. There is no debate over the issue that both, civil and criminal proceedings can go on simultaneously. However, the only exclusion is that where a civil dispute has been given a cloak of criminal proceedings, such proceedings cannot be maintained. Admittedly, in this case, the civil suit filed by the petitioner, stands dismissed. The issue in the said civil suit is with regard to certain set of documents, including the documents, part of the present proceedings.

17. A perusal of the Civil Suit filed by the petitioner would show that the petitioner had sought mandatory injunction directing defendant Nos. 1 and 2 therein (respondents herein) to return the documents of the father of the petitioner and the respondents, stolen by the respondents

from the house of the plaintiff. The learned Civil Judge (Junior Division), Jalandhar, vide judgment and decree dated 29.03.2017, observed that the petitioner had failed to prove the execution of the Will allegedly executed by his father and that the petitioner had further failed to prove as to why he had not got registered any case regarding theft of the Will by the respondents. It was, thus, found that once, the execution of the Will was not proved, there did not arise any question of theft of the said document. In appeal, the said findings were upheld by the learned Additional District Judge, Jalandhar.

18. The learned trial Magistrate, while dismissing the complaint filed by the petitioner, had found that a reasonable person could not believe the version put forth by the complainant that he had not approached the police as the respondents had assured him to return the documents; that it is not acceptable that the respondents would commit theft in the presence of an eye witness and that the complainant had failed to prove that he was having possession of the alleged stolen articles. It was further found that the complaint was a pressure tactic from the complainant so as to coerce the respondents as regards the settlement of the property disputes arisen between the brothers after the demise of their father. It was further found that the ingredients of Sections 379 and 34 IPC were totally missing. The said findings were upheld in revision by the learned Additional Sessions Judge, Jalandhar.

19. Be that as it may. The fact now remains that the civil court judgment came at a later point of time i.e. 29.03.2017. As noticed above,

the dispute in the Civil Suit was also with regard to the documents allegedly stolen by the respondents from the house of the petitioner. Once, the findings in the civil suit have come and the civil suit has been dismissed and appeal against the judgment and decree of the trial Court, has also been dismissed, it can safely be said that the criminal proceedings are nothing but an abuse of process of law. The judgments relied upon by the learned counsel for the petitioner, are not applicable to the facts of the present case.

20. In view of the above, I do not find any merit in the present petition.

Dismissed.

04.08.2023

Aman Jain

Whether reasoned/speaking?
Whether reportable?

(HARNARESH SINGH GILL)

JUDGE

Yes/No
Yes/No