IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-32551-2017
Reserved on: 25.08.2023
Pronounced on: 05.09.2023

Surinder Pal Singh and another

. . . . Petitioners

Vs.

State of Punjab and others

. . . . Respondents

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. S.S. Behl, Mr. Gaurav Vir Singh Behl, and
Mr. Akaymeet Singh, Advocates, for the petitioners.

Mr.R.S. Khaira, DAG, Punjab.

None for respondent No.3.

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DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.PC is to quash FIR No.75 dated 17.07.2017 registered at Police Station Mehna, District Moga, Punjab under Sections 406, 420 & 120B IPC.

2. FIR in question (Annexure P4) was lodged on the complaint of Gurpreet Singh (respondent No.3), as per which Nihal Singh (petitioner No.2), the Special Power of Attorney holder of Sarwan Singh, Baldev Singh and Niranjan Singh sons of Sarain Singh, had agreed to sell their land situated in village Talwandi Malian vide an agreement dated 29.04.2013. The said agreement was executed through petitioner No.1 Surinder Pal Singh, who also attested the same. Amount of ₹10 lakh was transferred in the account of Nihal Singh. It is alleged that later on, another amount of ₹8 lakh was paid by the complainant from time to

time, but despite taking total amount of ₹18 lakh, neither the sale deed was executed nor the amount was refunded. FIR further reveals that complaint, initially made on 07.06.2016, was sent to Economic Offences Wing, Moga, which recommended the registration of the FIR under Section 420 and 120B IPC. However, opinion of the District Attorney was sought, who opined that no criminal action was made out, as per his report dated 16.01.2017. However, on the recommendation of the Senior Superintendent of Police, Moga, the FIR was registered.

3. (i) It is contended by ld. counsel that petitioner No.1-Surinder Pal Singh had only facilitated petitioner No.2 to arrive at agreement to sell the land measuring 33 kanal 9 marla approximately, situated at village Talwandi Malian to respondent No.3 at the rate of ₹25 lakh per acre, vide agreement dated 29.04.2013. Petitioner No.2 received ₹10 lakh as earnest money. Balance sale consideration was to be paid on 28.06.2013 on the date of execution of the sale deed. As respondent No.3 could not arrange the funds, so as per his request, the date for execution of the sale deed was extended to 25.07.2013. However, respondent No.3 did not come forward to make balance payment on 25.07.2013 or to get the sale deed executed. Petitioners reminded him several times but respondent No.3 failed to arrange the funds.

(ii) Ld. counsel for the petitioner further submits that respondent No.3 never filed any suit for specific performance in respect of the agreement to sell dated 29.04.2013 up to June, 2016 and therefore, petitioner No.2 forfeited the earnest money of respondent No.3 after expiry of the limitation period for registration of the sale deed. After remaining silent for a period of more than 3 years, respondent No.3 made a frivolous complaint on 07.06.2016 to SSP, Moga in which District Attorney gave clear opinion that no criminal case was made out.

(iii) Ld. counsel contends further that as petitioner No.2 had applied for a migration to Canada, and his permanent residency to Canada had been approved, respondent No.3 sensed trouble due to the report of the District Attorney and so, he approached the respectable members of the village to get the matter compromised. Since petitioner No.2 was not in India in the month of 2017, therefore, in order to avoid any kind of legal complications, he agreed to the proposal of the respectables and in order to buy peace, settled to pay an amount of ₹5,70,000/- to respondent No.3, which was paid through his son. An agreement to that effect was entered into between petitioner No.2 through his son Sukhdeep Singh and respondent No.3. Respondent No.3 accepted amount of ₹5,70,000/- through cheques dated 09.02.2017. Copy of that compromise is Annexure P3 and thereafter, all the differences between the parties stood settled. However, respondent No.3 did not disclose about the aforesaid settlement to the police and in a *mala fide* manner, got the present FIR registered, alleging cheating with him.

(iv) Ld. counsel contends that none of ingredients of offence of cheating are made out in this case. Matter is purely of civil nature. Respondent No.3-complainant never filed suit for specific performance. He rather accepted the settlement money vide settlement deed Annexure P3 and therefore, the FIR in question deserve to be quashed.

4. Respondent/State in its reply did not dispute the factual position regarding the execution of the agreement amongst the parties and the fact that no civil suit was filed by respondent No.3. However, it

is alleged that fraud was played by the petitioners with the complainant as per the enquiry. Prayer is made for dismissal of the petition.

5. Upon notice sent to respondent No.3, initially representation was made on his behalf on 14.11.2017, but later on, nobody put in appearance for him.

6. I have considered submissions of both the sides and have appraised the record.

7. It is a well settled legal proposition that when an FIR is sought to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations made in the complaint/FIR establish the offence. In a catena of authorities, Hon'ble Supreme Court has reiterated the powers of High Court to be exercised for quashing the criminal proceedings and that said powers should be exercised very sparingly and that quashing of the complaint would depend upon facts and circumstances of each case.

8. In ***State of Haryana and others Vs. Ch. Bhajan Lal and others"*** *1992 AIR 604*, Hon'ble Supreme Court has laid down the guidelines as to the cases in which High Court can exercise its extraordinary power to quash the FIR under Section 482 Cr.PC. It was held as under: -

> "*8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given 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*

guide of myriad kinds of cases wherein such power should be exercised:

"(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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."*

9. In the light of aforesaid well settled principles, it is required to be seen that whether in the facts and circumstances of the present case, the FIR in question deserve to be quashed.

10. In ***International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others Vs. Nimra Cerglass Technics (P) Ltd. and another,*** *2015(4) RCR (Criminal) 883*, the important ingredients to constitute the offence of cheating under Section 420 IPC have been held to be as under: -

> *"The essential ingredients to attract Section 420 IPC are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement."*

11. Hon'ble Supreme Court has further elaborated the distinction between mere breach of contract and cheating. It was held as under: -

> *"Distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In* ***S.W. Palanitkar & Ors. vs. State of Bihar & Anr. (2002) 1 SCC 241,*** *this Court held as under:*

> *"21 ……In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."*

The above view in Palanitkar's case was referred to and followed in ***Rashmi Jain vs. State of Uttar Pradesh & Anr. (2014) 13 SCC 553."***

12. It is, thus, clear that a mere breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest contention is shown to exit right at the beginning of the transaction. Merely on the allegation of failure to keep a promise will not be enough to initiate criminal proceedings. The said legal position has been reiterated by Hon'ble Supreme Court recently in ***Sarabjit Kaur Vs. State of Punjab and another,*** *2023(2) RCR (Criminal) 52.*

13. In the present case, contentions as raised by counsel for the petitioners are duly supported by the documents available on record. It is evident that agreement to sell was executed on 29.04.2013, as per which last date for execution of the sale deed was 28.06.2013. This date was extended to 25.07.2013 as per endorsement made on the back of the agreement Annexure P2. If the period of limitation for filing a suit for specific performance is counted from 25.07.2013 i.e., the target date fixed in the agreement, the suit could have been filed up to 24.07.2016. However, respondent No.3-complainant never filed the suit for specific performance.

14. Instead of seeking his remedies through Civil Court, as matter apparently is purely of civil nature, respondent No.3 chose to made a complaint to the police on 07.06.2016 and despite a clear opinion

of the District Attorney that no criminal case was made out, the FIR was still registered. Petitioner No.2 having migrated to Canada, in order to avoid any controversy entered into the compromise-agreement (Annexure P3), which is duly signed by respondent No.3-complainant and as per which he accepted an amount of ₹5,70,000/- through cheques and so, the matter stood closed. However, respondent No.3 did not disclose about the said settlement to the police and got the FIR registered. He did not even respond to the present petition before this Court so as to deny any of the contentions as raised in the petition.

15. In view of all the aforesaid facts and circumstances, when it is apparent that the matter is purely of civil nature and *prima facie* no criminal liability is made out nor ingredients of Sections 420/406 IPC are made out, the case is covered under the guidelines (a), [c) & (g) of ***Bhajan Lal's*** case (Supra).

16. Consequently, present petition is disposed of and FIR No.75 dated 17.07.2017 registered at Police Station Mehna, District Moga, Punjab under Sections 406, 420 & 120B IPC and all subsequent proceedings arising therefrom, are hereby quashed.

(DEEPAK GUPTA)
JUDGE

05.09.2023
Vivek

1. Whether speaking/reasoned? ***Yes****/No*
2. Whether reportable? *Yes/No*