IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-42809-2016
Reserved on: 28.08.2023
Pronounced on: 06.09.2023

Roop Lal and another

. . . . Petitioners

Vs.

State of Haryana and another

. . . . Respondents

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. Ajay Singh Ghangas, Advocate, for the petitioners.

Mr. Vipul Sherwal, AAG, Haryana.

Mr. Rajat Singh, Advocate, for
Mr. Keshav Pratap Singh, Advocate, for respondent No.2.

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DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash FIR No.318 dated 11.10.2016 registered at Police Station Chand Hut, Distt. Palwal, under Sections 406, 420, 506, 34 and 120B IPC and all subsequent proceedings arising therefrom.

2. FIR was lodged on the complaint of Ram Gopal (respondent No.2), as per which the two accused Roop Lal & Bhagwat Dayal (now petitioners) entered into an agreement dated 24.02.2015 (Annexure P3) to sell the land measuring 8 kanal 10 marla at the rate of ₹1,15,00,000/- per acre and received ₹18 lakh as earnest money. Sale deed was agreed to be executed on or before 24.08.2015. Accused agreed to deliver the possession prior to execution of the sale deed. However, prior to the target date, when the complainant asked the accused to

deliver the possession, they refused to do so. Even on the target date of 24.08.2015, accused failed for perform their part of contract and did not execute the sale deed. When the complainant approached them, it was told by them that their sister-in-law had taken stay order regarding alienation of the land from the Civil Court. It was alleged by the complainant that accused in conspiracy with their sister-in-law, with an intention to cause financial loss to him (complainant), had entered into the agreement and had received the money, which they later on refused to refund. Even a legal notice was sent to the accused but in vain.

3. (i) It is contended by ld. counsel that petitioners had become owner of the land in question by dint of a transfer deed dated 28.08.2014 (Annexure P2) executed by their father Net Ram, regarding which mutation No.430 dated 29.11.2014 was sanctioned in their favor. It is further contended that execution of the agreement dated 24.02.2015 is not in dispute nor the petitioners denied to have received an amount of ₹18 lakh towards earnest money and that target date for execution of sale deed was 24.08.2015. However, it is contended that Sushant, the nephew of the petitioners, filed the Civil Suit on 16.03.2015 seeking a declaration to the effect that transfer deed dated 28.08.2014 in favour of petitioners and the consequent mutation in their favour were null and void. In that suit, *ex parte* injunction order was passed regarding alienation of the land, on 12.05.2015. The stay application was finally dismissed on 20.10.2015. Copies of the said orders are Annexures P5 and P6. Petitioners contend that they were present on 24.08.2015, the target date fixed in the agreement for execution of the sale deed, but the complainant did not appear on that date. Rather said complainant sent a legal notice

dated 01.08.2015, which was duly replied by the petitioners through their counsel on 31.08.2015. Copies of the said legal notice and reply are Annexures P8 & P9. After dismissal of the stay application on 20.10.2015, petitioners again sent a legal notice through their counsel on 13.11.2015 (Annexure P10) to the complainant/respondent No.2 to get the sale deed registered in his favour, failing which the agreement shall become infructuous and the earnest money shall stand forfeited. Complainant sent reply dated 26.11.2015 as Annexure P11.

(ii) Ld. counsel contends that thereafter present FIR has been registered without any basis. Ld. counsel contends that on bare perusal of the FIR, no offence to attract 406 and 420 IPC are made out. Matter is purely civil in nature. No fraud was ever committed with the complainant. Petitioners have always been ready and willing to execute the sale deed and even today, petitioners are ready to do so after receiving the balance sale consideration, but it is the complainant, who was unable to arrange the remaining sale consideration and refused to get the sale deed executed.

With all the above submissions, prayer is made for quashing of the FIR in question and all subsequent proceedings arising therefrom.

4. Respondent No.1/State filed reply to the petition, opposing the same.

5. No separate reply has been filed on behalf of respondent No.2, though ld. counsel representing the said respondent opposing the petition.

6. It will not be out of place to mention that during pendency of this petition, offer was made by counsel for the petitioners that petitioners were still ready and willing to execute the sale deed. Despite time taken by counsel for respondent No.2 repeatedly, said offer was not responded.

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

8. 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.

9. 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."

10. 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. The allegations, in brief, made by the complainant are that despite executing agreement dated 24.02.2015 and receiving earnest money of ₹18 lakh, accused-petitioners failed to execute the sale deed and in conspiracy with their sister-in-law obtained injunction order from the Court.

11. 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."*

12. 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:*
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> > *"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."*
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> *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****."*

13. 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 parted in ***Sarabjit Kaur Vs. State of Punjab and another,*** *2023(2) RCR (Criminal) 52.*

14. In the present case, target date for execution of sale deed was 24.08.2015 as per agreement Annexure P3. However, Sushant, the nephew of the petitioners, filed a Civil Suit on 16.03.2015 against the petitioners, copy of which is Annexure P4, seeking declaration/ possession and injunction in respect of the land in question, wherein alienation of the suit property was stayed, vide order dated 12.05.2015 (Annexure P5) i.e., prior to the target date fixed for execution of the sale deed. Obviously, because of the said restraint order issued by the competent Court, petitioners were not in a position to execute the sale deed in favour of the complainant on or before of the target date i.e., 24.08.2015, until the restrain order was vacated.

15. However, simply because the nephew of the petitioners obtained the stay order, will not indicate that petitioners were in conspiracy with their nephew so as to obtain this order. The fact that petitioners did not have any dishonest intention at any point of time will be evident from the fact that after dismissal of the application under Order 39 Rule 1 & 2 CPC vide order dated 20.10.2015 (Annexure P6), petitioners sent a legal notice dated 13.11.2015 (Annexure P-10) asking the complainant to get the sale deed executed in his favour on 30.11.2015, as the stay order had already been vacated by the Court on 20.10.2015. However, vide reply dated 26.11.2015 (Annexure P11), complainant - respondent No.2 refused to get the sale deed executed in his favour on the pretext that he was not under obligation to purchase the disputed property.

16. Not only above, during the pendency of this petition, it was informed to this Court on 27.07.2017 that petitioners had made an offer on 12.01.2017 to respondent No.2 to get the sale deed executed and registered in his favour. Counsel for respondent No.2 sought time from the court to respond to the said offer. However, no response to the said offer was ever made.

17. In view of the aforesaid facts and circumstances, it is quite apparent that there was no dishonest intention on the part of petitioners so as to attract Section 420 IPC at any stage. The amount of ₹18 lakh as earnest money had been given to the petitioners cannot be considered to be an entrustment to the petitioners and therefore, Section 406 IPC is also not attracted.

18. As is evident from the circumstances discussed above, it is respondent No.2-complainant, who failed to get the sale deed executed and registered in his favour after vacation of the stay order, despite specific notice sent to him by the petitioners-accused. The matter is purely civil in nature. There is nothing on file to suggest that respondent No.2-complainant ever filed civil suit seeking specific performance of the agreement.

19. Having regard to all the facts and circumstances, the case is squarely covered under parameters of the case of ***Bhajan Lal*****'s case** ***(Supra)***.

20. Consequently, present petition is disposed of and FIR and all subsequent proceedings arising therefrom are hereby quashed.

(DEEPAK GUPTA)
JUDGE

06.09.2023
Vivek

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