

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

113+201

CRM-M-45227-2017 (O&M)
Date of decision: 26.05.2023

Suresh Kumar and others

.... Petitioners

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Gourav Chopra, Senior Advocate with
Mr. Anurag Chopra, Advocate and
Mr. Mohit Giri, Advocate for the petitioners.

Mr. Jasdev Singh Mehndiratta, Addl. A.G., Punjab with
Mr. Jaspal Singh Guru, AAG, Punjab
for respondent No.1-State.

Mr. Lalit Singla, Advocate with
Ms. Varsha Sharma, Advocate
for respondent No. 2.

ASHOK KUMAR VERMA, J. (ORAL)

CRM-24053-2023

For the reasons mentioned in the application, the same is
allowed and the documents filed by the petitioners are taken on record
as Annexures P-21 to P-26 subject to all just exceptions.

CRM-M-45227-2017 (O&M)

1. Prayer in the instant petition filed under Section 482 Code
of Criminal Procedure, 1973 (for short 'the Cr.P.C.') is for quashing of
FIR No.01 dated 04.01.2017 registered under Section 420 read with
Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') at Police
Station Nehianwala, District Bathinda (**Annexure P-1**) and all
consequential proceedings arising therefrom.

2. Brief facts of the case are that respondent No.2-Ram Kumar (complainant), In-charge, Padam Motors Pvt. Ltd., Ludhiana (Head Office of which was situated at Guniyana Road, Gill Patti, Bathinda) had filed a complaint against the petitioners stating therein that the petitioners were the owner of one property measuring 884 Sq. Yards situated at village Thairke, Freozepur Road, Ludhiana. The company wanted some property on rent and the petitioners were contacted in this regard. Talks were carried out at Head Office, Bathinda, for taking their property on rent. The petitioners have said that their property is commercial and completes all the Government requirements, upon which on 01.11.2013, rent of the said property was assessed at Rs.6,18,920/- per month at Head Office, Bathinda. An amount of Rs.25,00,000/- was given to petitioners No.1 and 2, namely, Suresh Kumar and Santosh Kumari and the company started using the property and also started paying rent from the said date. During the year 2015, a notice was received by the company from Greater Ludhiana Area Development Authority (for short 'GLADA') and Pollution Control Board that the property which was used by the company was not commercial. When the matter was brought to the notice of the petitioners, they assured respondent No.2-complainant that they will bring 'no objection certificate' from the concerned department for carrying out business activities. In the year 2016, GLADA and Pollution Control Board again gave a notice for confiscating the land being in green belt of residential area and not to carry out any commercial activity. The matter was again brought to the notice of the petitioners and

they again assured the company that they will complete all the formalities. Later on, when the matter was enquired from GLADA, the complainant shocked to know that duplicate printed letter pads of the company were used by the petitioners and applications with wrong information were submitted by them in which the construction was shown as of the year 1997, mentioning therein that since in 1997 there was no need to take 'no objection certificate' from GLADA, whereas the petitioners rented the premises to the company in the year 2013. The petitioners have used the letter pads of the company by tracing/copying the same. When the complainant asked the petitioners regarding this, then they pounced upon the complainant and attacked him. The complainant told the petitioners that he is a poor and *Dalit* worker of the company, then they misbehaved with the complainant in the name of his caste and said that they have seen lot of people like you. They intentionally used foul language regarding caste and religion and also threatened to throw the articles of the company outside. The petitioners in connivance with each other had cheated the company and have committed forgery by using its duplicate letter pad to obtain 'no objection certificate' from the Government and also hurt the complainant by using filthy language against his caste and religion. With these broad allegations, impugned FIR (Annexure P-1) was registered against the petitioners.

3. Learned Senior counsel, *inter alia*, contends that the petitioners have been falsely implicated in the instant case being landlord of the property which was given on rent @ Rs.6,18,925/- per month to

M/s Padam Motors Pvt. Ltd., vide lease deed dated 06.11.2013 duly registered with Sub Registrar, Ludhiana, Vasika No.7475 dated 07.11.2013. There is only rent dispute between the landlord and tenant which is purely of civil nature and the same has been given colour of criminality by twisting the real facts. The complainant in order to pressurize the petitioners and avoid payment of rent, filed a civil suit for grant of permanent injunction alleging therein that the petitioners are forcibly and illegally tried to dispossess them from the property in question. He also submits that before execution of the lease deed on 06.11.2013, the petitioners had already obtained various 'No Objection Certificates' dated 25.10.2013 and 24.10.2013 in respect of the land in question which clearly shows that the property in question is commercial. Moreso, there is an arbitral award in favour of the petitioners holding them to be entitled for rent of the property in question.

4. It was further argued by learned Senior counsel that the petitioners are living in Ludhiana, the property in question situated at Ludhiana, lease deed executed in Ludhiana and all transactions were made in Ludhiana, therefore, cognizance of it cannot be taken by the police at Bathinda. Hence, FIR registered at Bathinda is not sustainable qua the petitioners. In support of his arguments, learned Senior counsel has relied upon the judgments in **(i) Balram Garg Vs. State of Haryana : 2022(3) RCR (Criminal) 35; (ii) Dalip Kaur Vs. Jagnar Singh : 2009(14) SCC 696; (iii) V.Y. Jose Vs. State of Gujarat : 2011 AIR SC (Cri.) 1887; (iv) Syed Yaseer Ibrahim Vs. State of Uttar Pradesh :**

2022(1) Law Summary 45; (v) Pardeep Kumar Dhingra Vs. State of Punjab : 2022 (1) Law Herald 693 and (vi) Ashish Jain Vs. State of Haryana : 2020(2) RCR (Criminal) 240.

5. On the other hand, learned counsel for the State assisted by learned counsel for respondent No.2-complainant, vehemently opposed the present petition on the ground that there are disputed questions of facts qua territorial jurisdiction and as to whether the property in dispute is commercial or residential which are to be ascertained during the course of trial by leading cogent and convincing evidence by either of the parties. It is further contended that right from the beginning, the intention of the petitioners is to cheat the company. The lease deed was executed on 06.11.2013 and at that time no CLU was obtained by the petitioners qua property in dispute. The petitioners have used the printed letter pads of the company in order to obtain 'no objection certificate' from the Government by mentioning wrong year of construction i.e. 1997, whereas the company had taken the premises in question on rent in the year 2013. The petitioners with *mala fide* intention misled the GLADA and Pollution Control Board by supplying them wrong information which clearly proves that it is a case of cheating not case of civil nature. The present petition has been filed with ulterior motive to delay the trial which has been held up due to filing of the present petition. Thus, it is prayed that the instant petition may be dismissed being completely devoid of any merit. In support of their arguments learned State counsel and learned counsel for respondents No.2 have relied upon the judgments in ***(i)***

Central Bureau of Investigation Vs. Aryan Singh Etc. : 2023 LiveLaw (SC) 292; (ii) State of Karnataka Vs. M. Devendrappa : 2002(1) RCR (Criminal) 480; (iii) State of Punjab Vs. Pritam Chand and others : 2014 (5) RCR (Criminal) 792 and (iv) Crl. M.C.736/2021 titled as 'M/s Hero Fincorp Ltd. Vs. The State (NCT of Delhi) and another' decided on 04.1.2022 by the Delhi High Court.

6. I have heard learned counsel for the parties at length and carefully gone through the material available on record.

7. Admittedly, petitioners No.1 and 2, namely; Suresh Kumar and Santosh Kumari, being owners of the property measuring 884 Sq. Yards situated at village Thairke, Freozepur Road, Ludhiana have entered into an agreement with M/s Padam Motors Pvt. Ltd. on 23.04.2013 (Annexure P-2) and it was agreed that the petitioners shall raise construction as per plan provided by the company. After completion of the construction the said property was given on lease to the company and the rent was assessed @ Rs.6,18,925/- per month. While leasing out the property in question, the petitioners have assured the company that their property is commercial and completes all the Government norms. On their assurance, the company started using the property. During the year 2015, a notice was received by the company from GLADA and Pollution Control Board that the property which was used by it as commercial was in fact not commercial. When the matter was brought to the notice of the petitioners, they assured respondent No.2-complainant that they shall bring 'no objection certificate' from the concerned department for

carrying out business activities. In the year 2016, GLADA and Pollution Control Board again gave a notice for confiscating the land being in ‘**green belt**’ of residential area and not to carry out any commercial activity. Thereafter, the matter was again brought to the notice of the petitioners and they assured the company that they will complete all the formalities. Later on, respondent No.2-complainant shocked to know that duplicate printed letter pads of the company were used by the petitioners and applications with wrong information were submitted by them in which the construction was shown as of the year 1997, mentioning therein that since in 1997, there was no need to take ‘no objection certificate’ from GLADA, whereas the Company has taken the premises in question on rent in the year 2013.

8. From the facts narrated above, it seems that there are specific allegations against the petitioners that they mis-represented/induced the complainant right from the beginning that property in question was fit to be used for commercial purposes knowingly well that it stands erected in the ‘**green belt**’ of the residential area. The only question that requires to be determined at this stage is whether the registration of the FIR is an abuse of process of law. However, on the basis of facts on record, this Court does not find the proceedings to be an abuse of process of law.

9. So far as the contention raised by learned senior counsel for the petitioners qua passing of award in their favour by the Arbitrator is concerned suffice it to say that there is no bar of pursuing criminal proceedings once arbitration has commenced. Hon’ble Supreme Court in

its judgment passed in *Trisuns Chemical Industry Vs. Rajesh Aggarwal (1999) 8 SCC 686* held that invoking an arbitration clause does not preclude filing of criminal proceedings and these two proceedings can be pursued parallelly and independently, without affecting each other.

10. In the judgment of *State of Haryana Vs. Bhajan Lal : 1992 Supp (1) SCC 335* Hon'ble Apex Court, while observing that when a criminal proceeding is instituted with *mala-fide* intention to harass the person, the Court can quash the entire proceeding for the ends of justice, has held as under:-

“(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.”

11. The instant case does not fall under any of the above parameters laid down by Hon’ble the Supreme Court.

12. Moreover, the disputed questions of facts involved in the present petition, can only be determined on the basis of evidence to be led by the parties. In exercise of the powers under Section 482 Cr.P.C., this Court cannot conduct a mini trial so as to go into said questions. As noticed above, such inherent powers are to be exercised by this Court only under exceptional circumstances and when the proceedings, on the face of record, appear to be an abuse of process of law. While deciding similar issue, Hon’ble Supreme Court in its judgment in ***Central Bureau of Investigation’s case (supra)*** observed as under:-

“4.1As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court

has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not.”

13. The facts and circumstances of the judgments relied upon by learned senior counsel for the petitioners are quite distinguishable from the facts of the present case because every case has its own peculiar facts and circumstances. Therefore, no benefit of the same, whatsoever, can be given to the petitioners.

14. In view of the above, finding no merit in the present petition, the same is hereby dismissed.

15. Since, the main petition stands disposed of, therefore, all the criminal miscellaneous applications pending, if any, shall also stand disposed of.

16. Nothing said here-in-above shall be construed as an expression of opinion on the merits of the case.

26.05.2023

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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes