HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-25437-2022 (O&M)
Reserved On 11.01.2023
Pronounced on 31.01.2023

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Kuldeep Singh ... Petitioner

VS.

State of Punjab & Anr. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Lakshay Bector, Advocate for the petitioner

Mr. Mohit Chaudhary, AAG Punjab

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Sandeep Moudgil, J.

The petitioner seeks quashing of the FIR No.04 dated 16.05.2018 (Annexure P1), under Section 420 IPC registered at Police Station NRI, District Moga, as well as the subsequent proceedings arising therefrom including final report under Section 173 CrPC (Annexure P2).

Learned counsel for the petitioner submits that in his complaint, the complainant – Gurcharan Singh stated that he is permanent resident of America since 1976. And owned a building 8 marla-8sarsai vide registered deed dated 27.01.1988 from his mother. In the year 2013, when respondent No.2 returned to India, he came in contact with petitioner Kuldeep Singh and Karanvir Singh and became fast friends. They got his some other property sold and as such, respondent No.2 desired to sell his aforesaid property bearing Khasra No.6999/1780 comprising 3 shops at front and residential portion in back but mutation was not entered in favour of the respondent No.2. The petitioner was interested in purchasing the property and as such a deal was struck for a total consideration of Rs.3.60 crore and at the instance of the petitioner, an agreement to sell was got executed allegedly in favour of a fictitious person Manjit Singh and his signatures were also affixed and no payment was made to respondent No.2. On 30.05.2014, the petitioner and Karanvir Singh took respondent No.2 to Sub Registrar and by misrepresenting him of executing a power of attorney of his earlier property sold, got registered sale deed in their favour of the disputed property in a fraudulent manner. He was jut paid by the petitioner an amount by way of two cheques of Rs.5 lakhs and 3 lakhs, each and Rs.18 lakhs were transferred in account of the respondent No.2 and when respondent No.2 asked the petitioner to pay the entire sale consideration, they flatly refused and resultantly, FIR was got registered.

Learned counsel for the petitioner contended that no agreement to sell was ever executed between the petitioner and the complainant were earlier known to each other as a deal was struck between them for Rs.70,00,000/- for the sale of the above mentioned property and in those times the collector rate of the plot was Rs.11 lakh. He further submits that out of Rs.70 lakhs, 8 lakhs were paid through cheques, Rs.18 lakhs were transferred by the petitioner in the bank account of the complainant and Rs.44 lakhs were paid in cash and thereafter the respondent-2/complainant himself executed the sale deed of the property in favour of the petitioner after personally appearing before the Sub Registrar. It is only the tactics adopted by the respondent No.2 to extract more money from the petitioner.

It is further averred that the respondent No.2 did not take any action against the petitioner for almost 6 months after executing the sale deed in favour of the petitioner and only when the complainant came to know that the petitioner has further sold the property at a higher price to another person on 29.09.2014, the respondent No.2, out of greed, started demanding more money from the petitioner, which was refused by the petitioner. Further, there is inordinate delay in the filing of the complainant as well as the FIR which was registered after 4 years of execution of the sale deed executed on 30.05.2014 and thereafter complaint was filed on 10.11.2014 i.e. after 6 months and FIR stood registered on 16.05.2018.

Learned counsel for the petitioner vehemently argued that the ingredient of Section 420 IPC is missing as there is no positive act of inducement on the part of the petitioner, at any stage. It is evident that admittedly, at the time of execution of sale deed, the respondent No.2 received two cheques and further Rs.18 lakhs in his bank account. At best, the dispute, if any, would be purely settlement of accounts and the same essentially being of civil nature, the present FIR is liable to be quashed. Reliance is placed on **Rummy Chhabra vs. Suman Deep Aggarwal 2004(4) RCR (Crl.) 507**, and **Akash Verma vs. State of Haryana 2016 (4) Law Herald 2903**.

Learned counsel for the petitioner has emphatically relied upon the concurrent enquiry reports (Annexures P3, P4 & P5) conducted by DSP, SSP, Moga and DIG (Crime), wherein it has been found that the respondent No.2 after receiving the entire sale consideration from the petitioner, has executed the sale deed in favour of the petitioner in his full conscious and that nothing is due against the petitioner. It is further contended that the subsequently another complaint was filed, however, the respondent No.2 exercising his political influence, got registered the present FIR against the petitioner. He submitted that there are material contradictions in the complaint vis-à-vis the FIR.

Notice of motion in this case was issued on 16.08.2022 and thereafter, reply/affidavit has been filed by Gurpreet Singh, PPS, DSP, NRI, Moga on behalf of respondent No.1.

It is averred in the reply/affidavit that the matter was entrusted to Vigilance Department, Punjab to hold a deep enquiry into the allegations on 29.12.2014 and SSP (VB) Ferozepur undertook a detailed enquiry and recorded statement of complainant amongst Surjit Singh and Nachhattar Singh the marginal witness of the agreement to sell dated 19.05.2014. It was revealed that only a sum of Rs.5 lakhs were transferred in the bank account of the complainant-respondent No.2. Further $28000/- was transferred in the bank account of the respondent No.2 by the petitioner during the period from 19.05.2014 till 30.05.2014. The enquiry officer concluded that the respondent No.2 agreed to sell his property to the petitioner for Rs.3.6 crores but he was not paid the full consideration and got registered the sale deed in his favour from the respondent No.2, deceitfully and that the allegations seemed to be genuine and real which invites criminal prosecution of the petitioner for offence of cheating.

It is further averred that the enquiry report was submitted to Secretary, VB Department on 14.09.2016, however, eventually, the Joint Director, Prosecution opined that prima facie offence under Section 420 IPC was made out against the petitioner as the case of forgery is also proved and further enhancement of the offence can also be made against the petitioner. It has also been brought to the notice of this Court that the petitioner alienated the subject property in favour of Veena Rani, Monika Rani, Neelam Rani w/o Ravinder Kumar and Neelam Rani w/o Avinash Kumar, Usha Kumari dividing the property into small parts by virtue of sale deeds No.3887, 3888, 3889, 3890 dated 26.09.2014, respectively.

It has also come on record from the statements of Surjit Singh, Nachhattar Singh, Ramandeep Singh who proved that the deal of property by complainant with the petitioner was for Rs.3.6 crores and only Rs.26 lakhs were paid to the complainant and as such, the complainant has been defrauded of a huge amount of Rs.3.34 crores.

The petitioner having denied of any execution of agreement to sell or putting signatures as Manjeet Singh, the disputed signatures were forwarded to FSL, SAS Nagar for comparison with standard/admitted signatures of the petitioner on 22.04.2019, however, no definite opinion was given about the disputed signatures Q3.

The respondent No.1 further highlighted the fact that the petitioner, after having obtained permission to travel abroad vide order dated 19.01.2019, has not turned up before the trial court despite repeated notices for framing charges and thus is deliberately hampering the criminal judicial system.

Having heard learned counsel for the parties, this Court is of the considered view that the petitioner has not made out any case for quashing of the FIR and the prayer so made by him in this regard, needs to be outrightly rejected.

It is well settled that the High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence. For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence. Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any *mens rea* or *actus reus.* If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

It is trite that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

In the instant case, it has come on record that only a sum of Rs.5 lakhs were transferred in the bank account of the respondent No.2 besides $28000/- was transferred in the bank account of the respondent No.2 by the petitioner during the period from 19.05.2014 till 30.05.2014. However, respondent No.2 agreed to sell his property to the petitioner for Rs.3.6 crores but he was not paid the full consideration and the petitioner got registered the sale deed in his favour from the respondent No.2. As such the allegations seemed to be genuine and real.

Secondly, the Joint Director, Prosecution also opined that case of forgery is also proved under Section 420 IPC against the petitioner. Thirdly, from the statements of Surjit Singh, Nachhattar Singh, Ramandeep Singh, it is established that the deal of property by respondent No.2 with the petitioner was for Rs.3.6 crores and only Rs.26 lakhs were paid to the complainant and as such, the respondent No.2 has been defrauded of a huge amount of Rs.3.34 crores. The conduct of the petitioner is writ large as after having obtained permission to travel abroad vide order dated 19.01.2019, he has intentionally not turned up before the trial court despite repeated notices for framing charges.

The Hon'ble Supreme Court in ***Archana Rana v. State of Uttar Pradesh and Anr. (2021) 3 SCC 751*** has held that to attract the offence under Section 420 of IPC, three basic elements have to be fulfilled. The first one is deception played by the accused and not-stopping with that. The second one is the person so deceived should have been induced, either fraudulently or dishonestly to act, on such deception. And third one is the person should have parted away his property or should have done anything which he would not have done otherwise.

In the case in hand, the role of petitioner deceiving the respondent No.2 is writ large as from the reply, it is proved that respondent No.2 agreed to sell his property to the petitioner for Rs.3.6 crores but he was not paid the full consideration and got registered the sale deed in his favour from the respondent No.2, deceitfully. The petitioner after having induced the respondent No.2 for selling the property, got registered the sale deed in his favour by affixing the signatures of Manjeet Singh by playing deception upon respondent No.2 and as such, the petitioner cheated the respondent No.2. The conduct of the petitioner, who is an NRI in not appearing before the trial court also speaks volume as despite having obtained permission from the trial court to travel abroad, the petitioner is deliberately not entering into appearance. Had the petitioner been actually innocent person, he would have never avoided or hampered the process of law. Be that as it may, that is a matter of trial and this court refrains to express any opinion, at this stage, on merits.

In view of the above discussion, this Court does not find any ground to quash the instant FIR (Annexure P1).

Dismissed.

31.01.2023
V.Vishal

(Sandeep Moudgil)
Judge

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