

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-628-2015

Reserved on: 04.12.2023

Pronounced on: 22.12.2023

ARUN NANDA AND ANR.

-Petitioners

Versus

STATE OF PUNJAB AND ANR.

-Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. S.S. Swaich, Advocate
for the petitioners.

Mr. P.S. Grewal, D.A.G., Punjab.

Mr. B.S. Baath, Advocate
for the respondent No.2.

KULDEEP TIWARI, J.

1. Through the instant petition, as cast under Section 482 of the Cr.P.C., the petitioners crave for the hereinafter extracted reliefs:-

(a) Quashing of the impugned order dated 20.11.2014 (Annexure P-3), whereby, the learned Sessions Judge concerned dismissed the revision petition, as preferred by the petitioners against the summoning order dated 16.04.2014;

(b) Quashing of the summoning order dated 16.04.2014 (Annexure P-2), whereby, the learned Magistrate concerned has summoned the petitioners, under Sections 420, 465, 468, 471, 120-B of the IPC;

(c) Quashing of the Criminal Complaint No.879/13/15.6.2011 (23T/15.6.11/13) (Annexure P-1), titled

as “Gurdeep Singh V/s Arun Nanda and others”, along with all subsequent proceedings.

FACTUAL MATRIX

2. The genesis of the present petition can be traced to a complaint (Annexure P-1), as made by complainant/respondent No.2, wherein, besides leveling allegations against the petitioners, allegations have also been levelled against one Rakesh Kumar son of Wazir Chand. Therefore, the contents of the complaint (Annexure P-1), are extracted hereinafter:-

“2- That the accused No.1 is working as Travel agent, accused No.2 is her husband and accused No. 3 working as Commission Agent at Khamano and his firm name is M/S Rakesh Kumar and Company Commission Agent, having license No.FGL-99 and the accused No. 3 is real brother of the accused No. 2 and the complainant sold his wheat and paddy crops to the accused No.3.

3- That the accused No. 3 told the complainant that his brother and wife of his brother (Bhabi) i.e. accused No.1 and 2, have doing the business of registered travel agency and sent so many persons abroad, if the complainant wants to go abroad then they sent him abroad. Regarding this, the complainant talk about his father Netar Singh and the father of the complainant is ready to send his son abroad because there are friendly/business relation between the father of the complainant and accused No.3.

4- That thereafter, the complainant gave his passport as well as passport of his wife to accused No. 2 in the presence of his father Netar Singh at the shop of accused No. 3 and after getting passport, said accused No.2 and 3 got signatures of the complainant as well as his wife on some blank papers and told the complainant that they sent them abroad after 3/4 months.

5- That amount: of Rs. 20 Lac was settled between the complainant and accused regarding the above said purpose and the complainant paid an amount of Rs. 2 Lac to the accused No.1 and 2 after getting the same from accused No. 3, which was due against him and at that time, the father of the complainant is also presence. Thereafter the complainant paid an amount of Rs.3 Lac to the accused No.1 and 2 after getting the same from M/S Shahi Trading Company, which is due against him and the complainant also paid Rs.3,50,000/- to the accused in various installments.

6- That regarding the remaining amount, the accused persons told the complainant that 'you sold your crops in our shop and we adjust the amount of crop in the amount remaining amount of Rs.20 Lakh'. Thereafter the accused told the complainant that 'you got blank stamp papers for surety'. Thereafter the complainant gave the blank stamp papers to the accused.

7- That the accused persons failed to sent the complainant as well as his wife abroad and the complainant alongwith some respectable persons requested the accused persons that sent him abroad otherwise if they are incapable of sending the complainant as well as his wife abroad then return back the amount of Rs. 8,50,000/- paid by the complainant to the complainant alongwith interest then the accused persons threatened to

the complainant that if they dared to ask again for return back of money then the accused persons will prepare and create a forged agreement to sell on blank stamp paper, which the father of the complainant got signed regarding their property under the pretext of document require to be signed for sending the complainant and his wife abroad and will file a suit regarding their property and get decree from the same.

8- That thereafter the accused No.1 and 2 filed civil suit bearing No.16 of 19-1-2007 against the father of the complainant on the basis of false and forged agreement to sell dated 19-07-2005 and the father of the complainant appeared in the said case and filed the written statement and contest with said case.

9- That the above said agreement to sell is wrong forged and fabricated document. It was scribed to grab the valuable property of the father of the complainant and to grab money from the complainant. Copy of agreement to sell is attached herewith as Annexure C-1.

10- That regarding the above said occurrence, the complainant moved an application before Senior Superintendent of Police, Fatehgarh Sahib and stated the entire incident, which is marked to SHO, Khamano but the police of P.S. Khamano did not give any positive response and put off the matter on the one pretext or the other and did not take any action against the accused. Copy of the application is attached herewith is Annexure C-2.

11- That the complainant filed petition under section 482 Cr. P.C., for issuance of directions vide Criminal Misc. No.M-35724 of 2010 before the Hon'ble High Court of Punjab and Haryana at Chandigarh and vide order dated 06-12-2010, said petition is disposed off with the direction, within a period of two months from the date of receipt of the certified copy of the order but the concerned police did not take any action against the accused persons as per the instruction of the Hon'ble High Court. Copy of said order is attached herewith as Annexure C-3.

12- That the police of P.S. Fatehgarh Sahib totally refused to take any action against the accused and they said that you can go to the court, due to which the present complaint is being filed in the Hon'ble Court within limitation. Hence this complaint.

13- That the accused while committing above said crimes, have committed offences U/S 406/420/465/467/468/471/120-B IPC.

14- That the incident has taken place at Khamano, P.S. Khamano, District Fatehgarh Sahib within the jurisdiction of this Hon'ble Court. Thus the Hon'ble Court has got jurisdiction to try and decide the present complaint.

It is therefore respectfully prayed that this Hon'ble court may kindly summon the accused to face their trial and punish them for the offences committed by them and the amount of Rs. 8,50,000/- paid by the complainant may kindly be returned from the accused persons, in the interest of justice."

3. Consequent to the filing of the complaint (supra), the complainant/respondent No.2 examined three witnesses in his pre-summoning evidence, inasmuch as, he examined himself as CW1, Netar Singh as CW2 and HC Ranjit Singh as CW3. Apart from this, he also placed on record documents exhibited as Ex.C1 to Ex.C7.

4. The learned trial Court, after considering the preliminary evidence led by the complainant/respondent No.2, drew the impugned order

dated 16.04.2014, thereby summoning the petitioners.

5. Since the summoning order dated 16.04.2014 caused grievance to the petitioners, therefore, they were constrained to institute a criminal revision petition thereagainst, before the learned Sessions Judge concerned. However, the learned Sessions Judge concerned, through drawing an order on 20.11.2014, dismissed the statutory revision petition, as preferred by the petitioners.

6. The dis-affirmative orders (supra), as rendered by both the courts below, caused grievance to the petitioners and propelled them to access this Court, thereby assailing the said orders.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

7. The principal argument of the learned counsel representing the petitioners is rested upon a purely civil dispute being disguised as a criminal offence. To substantiate this argument, he contends that despite the material facts evidently being in knowledge of the complainant/respondent No.2, inasmuch as, the civil court concerned decreeing the suit for specific performance in favour of the petitioners vide judgment and decree dated 13.06.2011, based upon the allegedly forged agreement to sell dated 29.07.2005, yet the complainant/respondent No.2 chose to conceal these facts from the summoning court concerned. Moreover, the complainant's witnesses did not make any whisper, in their statements recorded before the summoning court, about the judgment and decree of the civil court, as made adversarial to the complainant/respondent No.2.

8. The learned counsel for the petitioners further submits that since the judgment and decree dated 13.06.2011, as rendered upon the civil suit (supra), wherein also, the complainant/respondent No.2 had assailed the

validity of the agreement to sell dated 29.07.2005, however, did not succeed in his endeavour, has been upheld by the learned appellate court concerned through its drawing the judgment and decree dated 28.09.2012, and, importantly when no further challenge has been made to these judgments and decrees, therefore, these judgments and decrees, besides the agreement to sell dated 29.07.2005, have attained a binding and conclusive effect. Consequently, when the agreement to sell dated 29.07.2005, which forms the bedrock of the present complaint, has acquired validity and finality, renders the present complaint to be instituted in sheer abuse of the process of law, rather with *malafide* intent to exert pressure upon the petitioners and to nullify the effect of the binding and conclusive judgments and decrees of the courts below.

9. Furthermore, he submits that since the pleas and claims, as agitated by the complainant/respondent No.2 in the present complaint, have already been agitated before the civil court concerned and have been negated, therefore, the complainant/respondent No.2 is estopped to re-agitate any controversy, which was earlier adjudicated.

10. Concluding his arguments, he submits that even the order dated 20.11.2014, as drawn by the revisional court concerned, wherethrough, the revision petition preferred by the petitioners against the summoning order dated 16.04.2014, has been dismissed, is a totally non-speaking order, which has been passed in a most slipshod manner, without even considering the arguments of the petitioners.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS

11. Per contra, the learned counsel for the complainant/respondent No.2 though does not dispute the factum qua the judgments and decrees of the courts below acquiring a conclusive and binding effect, besides also

does not dispute the factum qua the courts below holding the agreement to sell dated 29.07.2005, which he alleges to be a forged and fabricated document, to be validly executed, however, he submits that the allegations qua receipt of Rs.8,50,000/- by the petitioners, in lieu of sending the complainant and his wife abroad, are yet to be adjudicated.

12. The learned counsel for the complainant/respondent No.2 submits that neither the complainant and his wife were sent abroad, nor the amount of Rs.8,50,000/- was returned by the petitioner, therefore, the petitioners have been rightly summoned in the present complaint. Notably, these allegations have neither been considered, nor been rejected by the courts below, therefore, the veracity of these allegations can only be ascertained through appreciation of the evidence, so adduced by both the parties, before the learned trial Court.

ANALYSIS

13. Be that as it may, this Court finds force in the argument raised by the learned counsel for the petitioners, inasmuch as, the order dated 20.11.2014, as drawn by the revisional court concerned, being a totally non-speaking order.

14. A bare glance at the order dated 20.11.2014, as drawn by the revisional court concerned, reveals that though the revision petition preferred by the petitioners against the summoning order dated 16.04.2014, has been dismissed, however, the revisional court concerned has not assigned any reasons, much less concrete, to justify the decision. The order dated 20.11.2014 makes it apparent that, apart from reproduction therein being made of the allegations, as levelled by the complainant/respondent No.2 in his complaint, neither any discussion has been made either of the

arguments/pleas raised by the learned counsel for the petitioners or by the learned counsel for the respondents, nor any reasons have been assigned, which constrained the revisional court concerned to form a negative opinion upon the revision petition.

15. In **UPSRTC vs. Jagdish Prasad Gupta** (SLP(C) No.4465/06), the Hon'ble Supreme Court has emphasised on recording reasons, as the reasons reveal "the inscrutable face of sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision.

The relevant paragraph 9 of the said judgment is reproduced hereinbelow:-

"9. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

16. Further, the Hon'ble Supreme Court in **M/s Kranti Associates Pvt. Ltd.& Anr. vs. Sh.Masood Ahmed Khan & others**" (Law Finder Doc Id #217995), explained the necessity of giving the reasons and the same was summarised after taking into consideration number of judgments, which reads as follows:-

51. Summarising the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- j. Insistence on reason is a requirement for both judicial accountability and transparency.
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- m. It cannot be doubted that transparency is the *sine qua non* of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).
- n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and **Anyia v. University of Oxford, 2001 EWCA Civ 405**, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development

of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

17. In the touchstone of the above, the principle laid down by the Hon'ble Supreme Court, this Court has no hesitation to held that the revisional Court failed to perform its duty by not assigning any reasons in dismissing the revision preferred by the present petitioners.

FINAL ORDER

18. For all the reason(s) (supra), the order dated 20.11.2014, as passed by the learned revisional court, is hereby **set aside**, being a totally non-speaking order, drawn in a most slipshod manner. The matter is remanded to the learned revisional court concerned for passing a well reasoned order, upon the revision petition filed by the petitioners, but, after hearing all the parties and taking into consideration the pleas/claims, as raised by the petitioners before this Court.

19. The petition is disposed of accordingly.

(KULDEEP TIWARI)
JUDGE

22.12.2023
devinder

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No