

203

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

CRM-M-47809-2018 (O&M)

Date of decision: 15.11.2023

Charanjit Sharma and Another

...Petitioners

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashok Bhardwaj, Advocate for the petitioners.

Mr. IPS Sabharwal, DAG Punjab.

Mr. Gulzar Mohd., Advocate for respondents No.4 & 5.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioners have approached this Court by way of filing the present petition under Section 482 Code of Criminal Procedure, 1973 (hereinafter CrPC) for quashing of FIR No. 250 dated 30.11.2016 under Sections 420/120-B of IPC registered at Police Station Sadar Dhuri, District Sangrur (Annexure P-1).

FACTUAL BACKGROUND

2. The brief facts of the present case are that the petitioner had entered into an agreement to sell dated 04.12.2015 with the complainant-respondent No.5 for sale of land measuring 56 kanal 10 marlas situated at village Ali Sher for a consideration of Rs.15,25,000/- per acre (8 kanals). The petitioners namely Jiwan Kumar and Charanjit sons of Ram Pal had received Rs.10 lacs as earnest money on 04.12.2015, thereafter Rs.15 lacs more as earnest money were received by them on 06.04.2016. As such, they

had received a total amount of Rs.25 lacs was received by the petitioners from the complainant-Respondent No. 5 and it was settled to get the sale deed executed. On 20.05.2016, the complainant went to the office of Sub Registrar, Lehra to get the sale deed executed along with the remaining expenses of sale deed, stamp papers and witnesses but the petitioners did not turn up. The petitioners, in connivance with each other, intended to usurp the earnest money of Rs.25 lacs by not executing the sale deed.

CONTENTIONS

3. Learned counsel for the petitioners *inter alia* contends that the present FIR is lodged on the basis of non-compliance of the condition incorporated in the agreement to sell dated 04.12.2015 in which the allegations are that the petitioners have received a sum of Rs.25 lacs and the target date for the execution of the sale deed was fixed as 20.05.2016. The private respondents kept on requesting the petitioners to execute the sale deed in terms of the agreement to sell, however, they did not come forward for the same and as such, on the basis of complaint filed by respondent No.5, the present FIR was registered on 30.11.2016.

4. Learned counsel for the petitioners contends that no offence under Sections 420/120-B of IPC is made out and it is purely a civil dispute and the same has been given a criminal colour which has been converted into the present FIR. Respondent No.5 has already filed a civil suit for possession by way of specific performance for agreement to sell dated 04.12.2015 on 07.10.2017(Annexure P-6) in the Court of Addl. Civil Judge (Sr. Div.), District Sangrur. Respondent No.4 is the husband of respondent No.5 and is working as a Head Contable in the police force and their son respondent

No.6 also works in the police department, as such, the present FIR was registered due to their undue influence.

5. Per contra, learned counsel for the private respondents has submitted that once the petitioners denied the execution of agreement to sell after accepting the amount of sale consideration, they are liable for criminal action as their intention was to cheat from the very inception. Further, a part of the sale consideration was paid through cheque and as such the petitioners cannot deny the execution of the agreement to sell.

6. Learned State counsel contends that the registration of FIR is justified since petitioners had moved a representation dated 12.07.2016 but did not appear before the jurisdictional police officers in order to pursue the same and as such, this Court cannot look into the probable defence in the present petition.

7. In rebuttal, the learned counsel for the petitioners contends that the petitioners are entitled to plead every plausible defence before the Civil Court including the denial of execution of the agreement to sell. There is nothing on record to even remotely suggest that the petitioners had dishonest intentions right from the beginning. Admittedly, respondent No.5 did not appear before the Sub-Registrar, Lehra for the execution of the sale deed on the target date i.e. 20.05.2016. The issue with regard to the performance of the agreement to sell dated 04.12.2015 is already pending consideration before the Civil Court.

ANALYSIS AND OBSERVATION

8. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the genesis of the dispute is the

agreement to sell dated 04.12.2015 and the case set up by respondent No.5- complainant for setting the criminal law machinery into motion revolves around the allegation that the petitioner took Rs.25 lacs as earnest money in pursuance of aforementioned agreement to sell. The target date for the execution of the sale deed was fixed as 20.05.2016. There is no material on record to indicate on which date the petitioners were approached by respondent No.5 after the target date for execution of the sale deed. Only bald assertions are made against the petitioners that they did not show up for execution of the sale deed in spite of payment of earnest money. The failure of which party had resulted into the breach of the conditions of the agreement to sell dated 04.12.2015 would be adjudicated by the Civil Court. The sole reason to lodge FIR No.250 dated 20.11.2016 under Sections 420, 120-B IPC appears to entangle the petitioners in the present FIR by converting the civil dispute into a criminal offence.

9. The civil remedy as available to respondent no. 5 has already been initiated by her by filing a civil suit on 07.10.2017 for specific performance of agreement to sell dated 04.12.2015. A perusal of the plaint (Annexure P-6) indicates that there was a specific recital in the agreement to sell that on failure of the petitioners to execute the sale deed on the date fixed, respondent No.5 would have the right to get the sale deed executed and registered before the Court of law and in the alternative, seek the relief of recovery of double the amount of earnest money. Further perusal of the plaint reveals no specific date or time when the petitioners were requested to execute the sale deed.

10. Further, respondent No.5 had appeared on 23.05.2016 for execution and registration of the sale deed and also got her affidavit (entered at serial No.2961 dated 23.05.2016) marking her presence in the office of the Sub-Registrar, Lehra. Thereafter, on 03.06.2016, respondent No.5 moved an application to the police for registration of a case against the petitioners for cheating her with regard to grabbing of earnest money of Rs.25 lacs in lieu of agreement to sell dated 04.12.2015 and not executing the same. However, there is nothing on record to prove that there was an intention to cheat on behalf of the petitioners since the inception, which is a condition precedent to make out an offence under Section 420 IPC.

11. It is settled law that the recourse to inherent power of under Section 482 CrPC can be taken to ensure that criminal proceedings are not allowed to be used as weapons of harassment. Undoubtedly, the existence of pending civil suit between the petitioners and respondent No.5 before a competent Civil Court makes it clear that the current dispute is essentially of civil nature and respondent No.5 has already taken recourse to the available civil remedy. In the considered opinion of this Court, the criminal proceedings launched by respondent No.5 cannot be sustained in the facts and circumstances of the present case.

12. A two Judge bench of the Hon'ble Supreme Court in **Paramjeet Batra v. State of Uttarakhand & ors (2013) 11 SCC 673** has held as under:

“7. While exercising its jurisdiction under section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged

therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.”

13. A similar view was taken by a two Judge bench of the Hon’ble Supreme Court in **Vesa Holdings P. Ltd. v. State of Kerala (2015) 8 SCC**

293. Speaking through Justice C. Nagappa, it was observed as follows:

“9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 I.P.C. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.”

14. A two Judge bench of the Hon’ble Supreme Court in **State of Haryana v. Ch. Bhajan Law AIR 1992 SC 604**, speaking through Justice Ratnavel Pandian, held as follows:

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 guidelines or rigid

formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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 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.

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 F.I.R. 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 F.I.R. 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.” (emphasis supplied)

15. A two Judge bench of the Hon’ble Supreme Court in **Gulam Mustafa v. State of Karnataka and Another 2023(3) RCR(Criminal) 182**, speaking through Justice Ahsanuddin Amanullah, held as follows:

“27. This Court, in S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 24, held:

"... whereas while exercising power under section 482 CrPC, 1973 the High Court has to look at the object and purpose for which such power is conferred on it under the said provision.

Exercise of inherent power is available to the High Court to give effect to any order under CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under section 482 CrPC, 1973 should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under section 482 CrPC, 1973 to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred."(emphasis supplied)

28. *In State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89, it was decided:*

"6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in

the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto." (emphasis supplied)

29. *In Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336, at Para 7 thereof, it was held that when the complaint fails to disclose any criminal offence, the proceeding is liable to be quashed under Section 482 of the Code:*

"In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 Code which it has erroneously refused."(emphasis supplied)

30. *The law on the subject was also examined in Parbatbhai Aahir v. State of Gujarat, (2017) 9 SCC 641. In Habib Abdullah Jeelani, (2017) 2 SCC 779, it was opined:*

"inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself There is no denial of the fact that the power under section 482 CrPC, 1973 is very wide but it needs no special emphasis to state that conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court." (emphasis supplied)

31. In *Vinod Natesan v. State of Kerala*, (2019) 2 SCC 401, this Court took the position outlined hereunder:

"11. ... Even otherwise, as observed hereinabove, we are more than satisfied that there was no criminality on part of the accused and a civil dispute is tried to be converted into a criminal dispute. Thus to continue the criminal proceedings against the accused would be an abuse of the process of law. Therefore, the High Court has rightly exercised the powers under section 482 CrPC, 1973 and has rightly quashed the criminal proceedings. In view of the aforesaid and for the reasons stated above, the present appeal fails and deserves to be dismissed and is accordingly dismissed."

16. Recently, a two Judge bench of the Hon'ble Supreme Court in ***Kunti and Another v. State of U.P. Criminal Appeal No. 1380 of 2023*** decided on 03.05.2023, speaking through Justice Sanjay Karol, observed as follows:

"9. However, we do not find the need to engage with the grounds as urged, because a perusal of the record in no uncertain terms reflects the dispute as being of a civil nature. This court recently, in Sarabjit Kaur v. State of Punjab and Anr., observed that "A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings."

10. A two judge bench of this Court in ARCI v. Nimra Cerglass Technics (P) Ltd., while deliberating upon the difference between mere breach of contract and the offence of cheating, observed that the distinction depends upon the intention of the accused at the time of the alleged incident. If dishonest intention on part of the accused can be established at the time of entering into the transaction with the complainant, then criminal liability would be attached.

11. In Vijay Kumar Ghai v. State of W.B (2022) 7 SCC 124, one of us, (Krishna Murari J.,) observed in reference to earlier decisions as under:

"24. This Court in G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri) 513] observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corpn. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] noticed the prevalent impression that civil law remedies are time consuming and do

not adequately protect the interests of lenders/creditors. The Court further observed that : (Indian Oil Corpn. Case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , SCC p. 749, para 13)

"13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

12. Having regard to the above well established principles and also noting that the present dispute is entirely with respect to property and more particularly buying and selling thereof, it cannot be doubted that a criminal hue has been unjustifiably lent to a civil natured issue.

DIRE NEED TO CURB THE CRIMINALIZATION OF CIVIL DISPUTES

17. The misuse of criminal law machinery for settling civil disputes has become menacingly prevalent. The investigating agency often succumbs to various pressures and motives to launch prosecution at the behest of disgruntled litigants and mechanically registers FIRs and the concerned District Attorney often provide incorrect legal opinion. The predominantly civil dispute is given criminal contours to provide expeditious mechanism to pressurize the other party into a settlement. The misuse of legal machinery to launch malicious and oppressive prosecution by converting a purely civil dispute into a criminal offence has been deprecated by the Courts and the constitutional Courts have come to the rescue of the victimized and harassed citizens entangled in vexatious unwanted criminal prosecution in purely civil disputes.

18. The sole test to ascertain whether the initiation of criminal proceedings in a cheating case is merited is to see whether a culpable intention can be attributed to the accused since the very beginning. The dishonest and fraudulent intention at the inception is an essential ingredient of the offence. A mere breach of contract or agreement, in absence of a

dishonest intention from the beginning of the transaction, cannot give rise to criminal proceedings. Unless and until the dishonest intention right at the beginning for the performance or the entrustment in terms of any transaction of civil nature is present, the criminal proceedings are totally unwarranted and the remedy lies in civil law.

19. A two Judge bench of the Hon'ble Supreme Court in ***G. Sagar Suri v. State of U.P. (2000) 2 SCC 636***, speaking through Justice D.P. Wadhwa, has made the following observation:

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

20. Similarly, a two Judge bench of the Hon'ble Supreme Court in ***M/s Indian Oil Corporation v. M/s NEPC India (2006) 6 SCC 736***, speaking through Justice R.V. Raveendran, observed as follows:

“10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.”

CONCLUSION

21. For the aforesaid reasons, this Court finds that the issue involved between the parties is purely of civil nature. Respondent No.5 has already

approached the jurisdictional civil Court by instituting the civil suit in this regard which is still pending. It is a fit case to invoke the wholesome power of this Court under Section 482 of CrPC to prevent the respondents from abusing the process of law and use criminal proceedings as a weapon of harassment against the petitioners.

22. Consequently, the present petition is allowed and FIR No. 250 dated 30.11.2016 under Sections 420, 120-B of IPC registered at Police Station Dhuri, District Sangrur along with all subsequent proceedings arising therefrom are quashed qua the petitioners.

23. In view of the rampant misuse of process of law by unjustly converting civil disputes into criminal cases by disgruntled litigants and at times, even after availing civil remedies, this Court would like to issue necessary instructions to protect the citizens from vexatious and unwanted criminal prosecution. The following directions are issued:

In case the trial Court after conclusion of trial finds:

- (i) the dispute involved between the parties is purely civil in nature and the remedy lies in civil law; or
- (ii) the basic ingredients of fraudulent intention of cheating from the very beginning is missing and the FIR in question is lodged in a mechanical manner;

the trial Court should take appropriate steps to initiate proceedings by invoking any of the provisions contained in Chapter XI of the IPC which contains the provisions for offenses of adducing false evidence and offences against public justice, like the provisions under Section 211 IPC, which provides for punishment for instituting a false charge of offence with

intention to cause injury against the concerned persons.

24. Disposed of, in the aforesaid terms.

25. Registry is directed to circulate a copy of this judgment to all the subordinate courts within the jurisdiction of this Court for information and compliance.

15.11.2023
Pankaj*

(HARPREET SINGH BRAR)
JUDGE

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