IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

114 CRM-M-27307-2023

Date of decision: 23.08.2023

Ravinder Kumar

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Abhinav Gupta, Advocate, for the petitioner

Mr. Manipal Singh Atwal, DAG, Punjab

Mr.Sandeep Arora, Advocate for the complainant

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AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.07, dated 18.01.2023, registered under Sections 406, 420 and 120-B IPC, at Police Station Kartarpur, District Jalandhar.

2. Briefly the facts are that Amit Kumar and Manoj Kumar, accused in the above FIR took a loan amounting to Rs.33 lakh from the complainant-Mandeep Singh, which on his asking to return, they both made an agreement to sell, regarding a shop owned by them in Gangsar Bazar, stating that they will execute a sale deed if the amount is not returned by them. The complainant, on their failure to fulfil the promise, asked them to execute the sale deed in his favour, but in order to frustrate the same, they both fraudulently transferred the property in question, in the favour of their relative-the petitioner. They also threatened to kill the complainant. Resultantly, FIR in question was

registered, for they in conspiracy with each other and with dishonest intention from the very inception defrauded and cheated the complainant.

3. Learned counsel submits that no role has been attributed to the petitioner. The main allegations of cheating and committing fraud are against the accused Amit Kumar and Manoj Kumar. It is a case of civil nature given a criminal texture. No agreement was executed between the petitioner and the complainant. He is the bona fide purchaser of the shop in question from the co-accused and not the beneficiary of the amount given by the complainant. Therefore, no case of cheating or breach of trust is made out against him. The complainant has already filed a civil suit, which is pending adjudication.

4. On advance notice received, Mr.Manipal Singh Advocate, DAG, Punjab has put in appearance on behalf of the respondent, whereas, Mr.Sandeep Arora, has appeared for the complainant. They state that the complainant was cheated of a huge amount by the accused persons in a planned manner. Neither was the money returned nor the sale deed executed in his favour, rather fraudulently, the shop given as security for the loan amount was transferred in the name of the petitioner to defeat the rights of the complainant. After investigation, all the three accused have been challaned. Thus, they pray for the dismissal of the present petition.

5. Heard learned counsel on either side.

6. It would be apposite to refer to the relevant portion of the final report under Section 173 CrPC dated 02.03.2023, which reads thus:

> "Accused Amit Kumar and Manoj Kumar above said have admitted during inquiry conducted by ASI Iqbal Singh No. 346 vide Zimni No. 02 dated 19.01.2023 that earlier they borrowed the amount of Rs. 33.00 lacs from complainant Mandeep Singh and in lieu of same, <u>on asking of our relative Sh. Ravinder</u>

Kumar son of Lakhpat Rai son of Ayudhia Parshad (Aadhar Card No. 3500 3712 4121) resident of Mohalla Bhallian Katarpur District Jalandhar at present resident of house No. 328, Greater Kailash near Maqsoodna, Police Station Division No. 01, Jalandhar City, we had executed the registry of their shop measuring 1 Marlas, the price of which Rs. 30-35 lacs, in his favour on 28.03.2018. Ravinder Singh said that when the case with Mandeep Singh and arrested accused will be finished, then he will again execute the registry in our name so that Mandeep Singh could not get shop in this court case. Therefore inspector/Station House Officer has nominated Ravinder Kumar above said as accused in this case vide Rapat No. 21 dated 26.01.2023.Therefore ASI Iqbal Singh has issued three notices under section 41(1) of Cr. PC to above said accused Ravinder Kumar to join the investigation, which were got received to him therefore on 10.03.2023, accused of the case namely Ravinder Kumar son of Lakhpat Rai son of Ayudhia Parshad (Aadhar Card No. 3500 3712 4121) resident of Mohalla Bhallian Katarpur District Jalandhar at present resident of house No. 328, Greater Kailash near Maqsoodan, Police Station Division No. 01, Jalandhar City has been arrested in this case as per procedure and as per the order of Hon'ble Judge, he has been confined in the judicial custody of Central Jail, Kapurthala. The record of the amount transferred by accused Mandeep Singh into the bank account of accused, has been received from the Axis Bank, Kartarpur. The agreement regarding shop was executed between complainant Mandeep Singh and accused Amit Kumar at stamp paper No. E635315/F635316 dated 04.10.2019, the same has been got verified. Apart from it, the record of registry executed by accused Amit Kumar on 28.03.2018 in favour of accused Ravinder Kumar has been received from the office of Naib Tehsildar, Kartarpur and the statements of concerned persons under section 161 Cr. PC have been recorded, which are enclosed with challan. No investigation is pending in this case. As per the investigation conducted so far, statements of witnesses, evidences found on case file there are sufficient evidences on case file to present challan under section 406, 420, 120-B of IPC against accused Amit Kumar son of Mohinder Pal resident of Gangsar Bazar Kartarpur, at present resident of house No.349, Rassi Watt Mohalla, near Water Tank, Kartarpur, Police Station Kartarpu District Jalandhar, Manoj Kumar son of Mohinder Pal resident of Gaushala road near Appy Charitable Hospital, Kartarpur, at present resident of Toor Enclave, Phase-I, Jalandhar, District Commissionerate, Jalandhar and Ravinder Kumar son of Lakhpat Rai son of Ayudhya Parshad, resident of Mohalla Bhallian Kartarpur, Police Station Kartarpur District Jalandhar at present resident of house No. 328, Greater Kailash near Maqsoodan, Police

> Station Division No. 01 Jalandhar City, therefore after preparing challan under section 173 cr. PC against the accused placed in column No. 6, the same is being present on the trust of witnesses.”

7. In the instant case, allegations levelled against the petitioner are of firstly suggesting to his relative-the co-accused to transfer the plot in dispute to his name, so that complainant-Mandeep is not able to get the same and that he would thereafter transfer it back to them once the matter comes to an end. Fact of the matter is that the final report under Section 173 CrPC stands presented. In this regard, it would be gainful to refer the judgment in **Supriya Jain vs. State of Haryana**, (2023) 7 SCC 711, wherein the FIR was registered under Sections 406, 420, 506 and 120-B IPC, with the allegations of cheating and fraud and the petitioner, against whom charge sheet was filed and charges were framed, who had approached the High Court for quashing of FIR, was a member of the gang which cheated and defrauded the complainant, but the High Court spurned the challenge and declined interference by dismissing the petition, which was upheld by Hon’ble The Supreme Court observing that, in a case where charges have been framed and accused are awaiting trial, it is not the appropriate stage to delve deep into the records. It is no part of the business of any of the Courts to ascertain what the outcome of the trial could be, ~ conviction or acquittal of the accused. The small window that the law, through judicial precedents, provides is to look at the allegations in the FIR and the materials collected in course of investigation, without a rebuttal thereof by the accused, and to form an opinion upon consideration thereof that an offence is indeed not disclosed from it. Unless the prosecution is shown to be illegitimate so as to result in an abuse of the process of law, it would not be proper to scuttle it. It was held that, “Applying the broad

principles as enunciated by this Court, we hold that it is not one of those rare cases where the uncontroverted allegations appearing from the materials on record notwithstanding, it can successfully be contended that even no prima facie opinion can be formed pointing to commission of any offence by the petitioner. It is trite that the conspiracy to commit an offence is by itself distinct from the offence to do which the conspiracy is entered into and that such an offence, if actually committed, would be the subject-matter of a separate charge. The allegations that the petitioner was found counting the cash received by the principal accused from the second respondent in the presence of a listed witness and that she conspired with her sister, the principal accused, to cheat and defraud the second respondent, persuade us to record that involvement of the petitioner, howsoever limited, cannot be ruled out at this stage and, therefore, the trial ought to be permitted to proceed and she obliged to stand trial"

8. Insofar as allegations of criminal conspiracy, is concerned, it was held in **Devender Pal Singh vs. State (NCT of Delhi)** (2002) 5 SCC 234, by Hon'ble The Supreme Court that, "…Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence…" Its existence is a matter of inference, normally deduced from acts of parties in pursuance of purpose in common between the conspirators was the observation by Hon'ble The Supreme Court in **State of Kerala vs. P. Suhagathan & Another**, (2000) 8 SCC 203.

9. In **Amit Kapoor vs. Ramesh Chandra** (2012) 9 SCC 460, Hon'ble The Supreme Court having surveyed the precedents regarding the principles to be borne in mind with regard to quashing of a charge / proceedings either in exercise of jurisdiction under Sections 397 or 482 CrPC laid down the following guidelines

thereto:

> "27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
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> 27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.
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> 27.3. <u>The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.</u>
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> 27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.
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> 27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.
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> 27.6. <u>The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.</u>
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> 27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.
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> 27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong'

with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a fullfledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of 8 justice favours, otherwise it may quash the charge. The power is to be

> exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.
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> 27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

10. Reference can also be profitably made to **CBI vs. Aryan Singh**, 2023 SCC OnLine SC 379, wherein Hon'ble The Supreme Court, while setting aside the order of High Court quashing the criminal proceedings had observed that, "From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As 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"."

11. The present criminal proceedings cannot be quashed solely on the ground that the civil suit is pending, in the wake of the fact that it is not a case of mere specific performance of an agreement to sell, but the allegation being of fraudulent transfer of plot in question to deprive the complainant of his due. It is well settled that a civil suit and criminal proceedings may proceed simultaneously, since there is no embargo to it. The specific allegations levelled against the petitioner are of being in cahoots with the co-accused. The complainant, who was initially made to part with his money on pretext of it being a loan that would be returned and thereafter, was promised a shop, brought in by way of an assurance of the repayment thereof, which as per allegations was dishonestly transferred in favour of the petitioner, so as to cheat the complainant, who in the process not only lost his money but also the plot, as the same no longer remained in the ownership and possession of the co-accused, to whom the money was given as loan. Even a strong suspicion in a case of such nature would suffice, especially, when undoubtedly, there is material collected by the prosecution in the shape of final report in terms of Section 173 of CrPC, which being a matter of evidence, cannot be gone into at this stage, as is abundantly clear from the judgment of Hon'ble The Supreme Court in the case of **State of U.P. vs. Akhil Sharda,** 2022 SCC OnLine SC 820, wherein it has been held that, "Having gone through the impugned judgment and order passed by the High Court by which the High Court

has set aside the criminal proceedings in exercise of powers under Section 482 Cr.P.C., it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr.P.C. As observed and held by this Court in a catena of decisions, no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., the High Court cannot get into appreciation of evidence of the particular case being considered."

12. It is worthwhile to also refer to the judgment of Hon'ble The Supreme Court in the case of **Rathish Babu Unnikrishnan vs. State (NCT of Delhi),** 2022 SCC OnLine SC 513, wherein it was held that, "The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption."

13. After a careful consideration of the matter, there is no cogent reason on account of which the criminal proceedings being taken out against the petitioner should be halted or interfered with and if, on the peculiar facts of this case, this Court were to intervene, it would run foul of plethora of judgments expounding the law for exercising the jurisdiction under Section 482 of CrPC.

14. Sequentially, there is no merit or substance in the present petition. Hence, the same is hereby dismissed.

15. Pending application, if any, stand disposed of.

(AMAN CHAUDHARY)
JUDGE

23.08.2023
Ankur

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