

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2023:PHHC:043275

CRM-M-34035-2022 (O&M)

Date of decision:17.03.2023

Sadajit Kaur & others

... Petitioners

Vs.

Shamsher Singh Bedi & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

Present: Mr. Bhriugu Dutt Sharma, Advocate for the petitioners.

Mr. Akshay Chadha, Advocate for the respondents.

Mr. Amit Rana, Sr. DAG, Punjab.

...

MANJARI NEHRU KAUL, J.

Petitioners are seeking quashing of criminal Complaint No.COMI 838 of 2019 titled as Shamsher Singh Bedi Vs. Parminder Singh Bedi & others (Annexure P-1) vide which they had been summoned to face trial under Sections 420, 463, 467, 468, 471, 474, 120-B IPC vide summoning order dated 13.08.2021 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ludhiana.

Allegations levelled in the complaint in question (Annexure P-1) may be noticed as thus: One Manohar Singh along with his four sons (including the complainant), purchased Plots No. 301, 302 and 303 in Industrial Area-A, Cheema Chowk, Ludhiana in the name of Manohar Singh. Plots No.302 and 303 were purchased in the name of the family firm, namely, Mahindra Ice & Cold Storage, which were duly incorporated in the name of Manohar Singh in the Municipal Corporation's record till the year

2016. The property was under the co-ownership of Manohar Singh and his four sons to the extent of 1/5th share each and was considered to be in joint ownership for all intents, though it continued to be in the name of Manohar Singh. Manohar Singh died on 05.10.1977 and thereafter his share i.e. 1/5th share in the property devolved upon his L.Rs., however the ownership in the Municipal Corporation records continued in the name of Manohar Singh. On 06.04.2017, accused No.9 to 14 (daughters of late Surjit Singh S/o Manohar Singh) filed a civil suit titled as 'Sadajit Kaur Bedi & others Vs. Shamsheer Singh Bedi & others' qua the above said properties in which the complainant was arrayed as defendant No.1. Besides this, accused No.1 to 4 (L.Rs. of Mohinder Singh S/o Manohar Singh) were also arrayed as defendants in the above suit. In their written statement, accused No.1 and 2 claimed themselves to be the exclusive owners of Property No.301, 302 and 303 by claiming that the property was recorded in the names of accused No.1 and 2 in the Municipal Corporation record. Immediately thereafter on 13.03.2019, the complainant applied to Municipal Corporation, for obtaining copies of the entire record. On a perusal of the said record, it came to his knowledge that accused No.1 to 4 had got forged and fabricated documents prepared so as to usurp the rights of the complainant. The false and fabricated documents including ante dated partnership deed dated 03.04.1968, produced for the first time in the Municipal Corporation records on 20.05.2016 reflected the partners and their respective shares in Mahindra Ice & Cold Storage as follows:

1. Manohar Singh 10%
2. Mohinder Singh 45%

3. Kusum Bedi 45%

The property stood in the name of Manohar Singh in the Municipal Corporation records uninterruptedly from the year 1969 to 2016. It was only in the year 2016, the Municipal Corporation record was changed on the basis of a forged and fabricated partnership deed. As a part of the conspiracy, during this period, property tax was deposited by accused No.1 to 4 in the name of Mohinder Singh Bedi and thereafter an application for change of ownership was filed in July, 2016 claiming that the ownership of 2740 square yards be transferred in the name of Kusum Lata @ Kusum Bedi and children of Mohinder Singh, namely, Parminder Singh, Raghbir Singh and Parveen on the basis of partnership deed dated 03.04.1968 to the extent of 90%. A forged and fabricated ante dated dissolution deed dated 18.02.1974 and forged/fabricated dissolution deeds dated 22.11.2017 and 16.01.2018 were also prepared and filed in the Municipal Corporation records to claim ownership. Along with the same, forged and fabricated affidavits, self declaration forms and indemnity bonds were also submitted.

While the complainant was gathering and collecting information and documents, during the pendency of the civil suit, accused Nos.9 to 14 (L.Rs. of Surjit Singh S/o Manohar Singh, who were plaintiffs in the said case) colluded with accused Nos.1 to 4 (L.Rs. of Mohinder Singh S/o Manohar Singh) and got the case preponed in the absence of the complainant, by moving an application. They arrived at a fake compromise, and got recorded their statements in the absence of the complainant, and also admitted to the ownership of accused Nos.1 and 2 with respect to the Property Nos.301, 302 and 303. This was done at the back of the

complainant. The accused in conspiracy with each other, committed forgery with the intention to cheat the complainant and his family, so as to usurp their rights.

Learned counsel appearing for the petitioners has vehemently argued that on a perusal of the allegations levelled in the complaint in question, prima facie, no case is even made out against the petitioners as there were no allegations much less by way of a whisper against the petitioners of having either any knowledge or having fabricated any documents much less the partnership deeds in question. While inviting the attention of this Court to the allegations levelled in the complaint, learned counsel asserted that all the allegations qua preparation of a forged and fabricated deed and other documents had been specifically levelled against accused No.1 to 4. He still further submitted that even as per the complaint, neither any role had been allegedly played by the petitioners in the transfer of the property in question nor any benefit had allegedly been derived by the petitioners due to the alleged forgery committed by accused Nos.1 to 4. Learned counsel asserted with vehemence that the petitioners were *dominus litis* in the civil suit instituted by them and others, and it was for them and them alone to decide whether or not to withdraw the suit in question. The complainant being a defendant in the suit, thus, had no right to object qua the withdrawal of the same. He further urged that withdrawal of the civil suit on account of a compromise having been effected between the petitioners and accused No.1 to 4 would not in any manner affect the rights of the complainant. The factum of accused No.1 to 4 having paid share to the petitioners rather showed that they had admitted to the joint ownership of the

properties. To substantiate his submissions, learned counsel placed reliance upon the decision of the Apex Court in **Prabhu Chawla Vs. State of Rajasthan & another, 2016 (4) RCR (Criminal) 270.**

Per contra, learned counsel appearing for the respondents while controverting the prayer and submissions made by counsel opposite, vehemently argued that there were specific allegations levelled against the petitioners and a prima facie case could be easily culled out against them. On a bare reading of the complaint, he submitted that it was evident that the petitioners had colluded with accused No.1 to 4 and fraudulently effected a compromise behind the back of the complainant in a civil suit, whose outcome would have undoubtedly affected the rights of the complainant. Learned counsel further submitted that the forgery of documents pertained to the year 2016, whereas the civil suit had been filed in the year 2017. The petitioners were, thus, well aware and had knowledge about the forgery which is why they readily compromised the matter behind the back of the complainant. Thus, the malafides on the part of the petitioners could be clearly inferred from their conduct in the civil suit where they first got the date of hearing in the civil suit advanced without as much as giving notice to the complainant, and thereafter hurriedly and in a clandestine manner, compromised with accused No.1 to 4, just to defeat the rights of the complainant. Learned counsel, thus, argued that the petitioners had played an active role in the crime in question as a result of which a huge fraud had been played upon the complainant. He further argued that the powers of this Court under Section 482 Cr.P.C. ought to be exercised with a great deal of circumspection. Learned counsel argued that since summoning order dated

13.08.2021 (Annexure P-2) was an intermediary order itself, reversal of the same would lead to the culmination of the criminal proceedings, therefore, remedy, if any, against such order would have been under Section 397 Cr.P.C. in a revision and not under Section 482 Cr.P.C. Learned counsel in support of his contention places reliance upon **Rathish Babu Unnikrishnan Vs. The State (Govt. of NCT of Delhi) & another, 2022 SCC Online SC 513; Girish Kumar Suneja Vs. CBI, (2017) 14 SCC 809.**

I have heard learned counsel for the parties and perused the relevant material on record.

No doubt, the inherent jurisdiction of this Court under Section 482 Cr.P.C. has to be exercised with a great deal of circumspection and caution, however, while exercising its jurisdiction, nothing stops this Court from examining, whether on a bare reading of the allegations levelled in the complaint, a prima facie offence is even made out or not, against the accused. It goes without saying if on a perusal of the allegations levelled in the complaint/FIR, the ingredients to attract the mischief of the alleged offence are not made out, continuation of criminal proceedings would be nothing but an abuse of process of law and Court and the Court should not hesitate to quash an FIR and all other proceedings emanating therefrom.

Adverting to the case in hand, there is not even a shred of whisper in the FIR in question, qua the petitioners having committed the alleged offence i.e. forgery. The allegations of forgery have been specifically levelled by respondent No.2/complainant only against

accused Nos.1 to 4. The only reference to and allegation, if any, qua the petitioners is that they had withdrawn the civil suit instituted by them and thereafter compromised the matter with accused Nos.1 to 4. It needs to be reiterated that in a civil suit, the plaintiff is the master of the suit i.e. *dominus litis* and the discretion thus rests upon him and him alone as to whether he wishes to pursue some litigation or not. Hence, merely because the petitioners entered into a compromise with accused Nos.1 to 4 in the civil suit, would not be a cogent enough reason to impute any malafide intent qua them. It also needs to be observed here that mere withdrawal of a suit on the basis of compromise wherein the ownership of a person, is admitted qua a property would neither in any manner effect or confer the ownership of a property upon such person. The whole thrust of the allegations in the complaint (Annexure P-1), rests upon the forgery of the documents committed by accused No.1 to 4 and admittedly, no role much less specific has been alleged qua the petitioners in the crime in question.

The case laws relied upon by learned counsel for the respondents would not come to his rescue as they are clearly distinguishable on the facts, and further the Hon'ble Apex Court in **Prabhu Chawla's case (supra)**, has held that availability of a remedy under Section 397 Cr.P.C. would not render a petition under Section 482 Cr.P.C. not maintainable.

As a sequel to the above, prima facie no offence being made out against the petitioners in the criminal Complaint (Annexure

P-1) the instant petition is allowed and criminal Complaint No.COMI 838 of 2019 (Annexure P-1) and all subsequent proceedings arising therefrom including the summoning order dated 13.08.2021 (Annexure P-2) stand quashed qua the petitioners.

(MANJARI NEHRU KAUL)
JUDGE

17.03.2023
harjeet

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