

120 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38595-2021 (O&M)

Date of Decision:11.12.2023

Rajesh Puri

...Petitioner

Vs.

State of Punjab and Anr.

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Mohinder Singh Joshi, AAG, Punjab.

Mr. S.P.S Sidhu, Advocate
for respondent No.2- complainant.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the FIR No.105 dated 18.04.2019 under Section 420,120-B of IPC, registered at Police Station City Kharar, District SAS Nagar, Mohali (Annexure P-1) and all subsequent proceedings emanating therefrom.

2. The FIR in the present case was registered on the basis of the complaint filed by Behal Singh, respondent No.2 and the same has been reproduced below:-

“Copy of complaint, complaint No.590/IGP/SSP Dated 22.10.2018 submitted by Behal Singh son of Beant Singh R/o Flat No.303-C, Regency Heights Square 90-91, Mohali, District S.A.S Nagar, whose contents are as follows:- To, D.G.P. Sahib, Chandigarh Punjab, Subject: Complaint with regard of committing fraud & cheating against Rajesh Puri son of K.K. Puri R/o H. No.2816, Phase 7, Mohali (98885-15297) and Tek Chand Son of Ram Krishan R/o House No.1078, Phase-2, Ram Darbar, Chandigarh

(98766- 14382) and regard of conducting fair thorough investigation against them. To, The D.S.P., it is submitted that I. Behal Singh son of Beant Singh R/o H.No.303-C. Regency Heights, Sector-90-91, Mohali, Tehsil and District S.A.S. Nagar and I am peace loving and law abiding citizen of Punjab. I want to inform you that I was having one Booth 1-B in Market of Sunny Enclave, Sector-125, Mohali under a preplanned conspiracy and said Rajesh Puri got the said booth No.18 transferred in his name. This whole conspiracy was planned with an intention to grab my booth. In regard of giving effect to this conspiracy, said Rajesh Puri was being accompanied by Tek Nand @ Tinku (Accountant Bajwa Developers, Kharar) and his other companions. When I tried to sort out this matter in peaceful manner then on 17.01.2001, I submitted complaint regarding this matter to I.G., Zone-1, Patiala. In this whole conspiracy, many high profile people of District Mohali are involved. Thereafter, I.G. Patiala further marked my complaint to S.S.P. Ropar for conducting investigation (Vide No.2/42- 1478, person, Dated 17.01.2018). Instead of above joining in said the investigation, submitted applications to Ropar Police for transferring the complaint to Mohali. At first instance, I.G. Patiala dismissed the first application of said people but in the second instance, above said person were successful in transferring the complaint. On 19.02.2018, I submitted an application before you to transfer this complaint from Mohali. Your good-self further transferred this complaint to I.G. Zone-1, Patiala, with the direction that this complaint be investigated by Patiala Police only No.617/SO/DGP/Dt.21.02.2018). (Vide per As your directions, my complaint was marked by I.G. Patiala to S.P. Traffic Patiala. During the course of investigation, S.P. Traffic, Patiala on the basis of facts which comes into light, submitted his report in which he recommended to register a case against the said person (vide No.74/C/S.P./Traffic/Pat.) Dated 24.04.2018. I.G. Zone-1, Patiala

(while agreeing with report of S.P. Traffic Patiala) further recommended to register case against said person No.2/42-12547/C/C Your office raised Dated three (Vide 25.04.2018). objections regarding investigation report of IG. Zone-1, Patiala. In this regard, I.G. Ropar was objections written for removing vide Letter 1603/S.O./D.G.P. Dated 03.05.2018. these NO 451/RPC/RR-6 dated 04.05.2018. In this regard I.G. Ropar through I.G. Zone-1 Patiala writes to S.P. Traffic Patiala, through No.451/RPC/RR-6 Dated 14.05.2018. While complying with your objections, S.P. (Traffic) Patiala, asked me and above said person to give our reply regarding said objections. I got my reply submitted in the form of my statement to S.P. (Traffic) Patiala and along with a CD with recording of four employees of Bajwa Developers regarding necessary documents for transferring the property. In the said record, 4 different employees said that for transferring the property it is very necessary to have the affidavit of owner, even if the owner himself is present even then the affidavit is required and without this affidavit property cannot be transferred. S.P. Traffic, Patiala with regard to removing the said objections writes in his second investigation report said that even the said persons while recording their statement again have changed their statements regarding requirement of affidavit of owner for transferring the property but as per the CD produced by Behal Singh. These employees of Bajwa Developers have specifically stated that affidavit is very much necessary and apart from this, said person could not produce any evidence regarding consent of Behal Singh therefore, after obtaining the Legal opinion, case be registered against the said person (vide letter No.74/C/S.P./Traffic,Patiala Dated 29.05.2018). But due to involvement of high profile persons in my case, concerned police officials did not take any action, rather for protecting themselves, they consign my complaint to office record for protecting the said

from legal proceedings, whereas as per both the investigation reports of investigation officer, they were supposed take actions against the said person. It is pertinent to mention here that all the documents and evidences produced by them proves that above mentioned person in connivance with each other committed fraud with me. Earlier also said Rajesh Puri have encroached upon a showroom in Sector-44-D of some other person and owner of this showroom is still involved in litigation for his rights. This case is still pending in Sessions Court of Chandigarh, therefore it is requested before you that impartial investigation of my complaint be got conducted from some other range apart from Ropar and Patiala Range so that legal actions can be taken against the above mentioned accused and justice be done with me. I will be thankful to you. Thanking you. Yours Faithfully Sd/- Behal Singh son of Beant Singn R/o Flat No.303-C, Regency Heights Square 90-91, Mohali, District S.A.S Nagar.)

3. Learned counsel for the petitioner contends that admittedly the petitioner and the respondent No.2 were having cordial relations and were conducting their property business together. The petitioner and respondent No.2 had obtained No Dues Certificate with regard to the booths No.1A and 1B from M/s Bajwa Developers. Later on, respondent No.2 appeared in the office of M/s Bajwa Developers and on 17.12.2014, a No Dues Certificate (Annexure P-2) was issued in favour of the petitioner with respect to booth No.1B situated at Sunny Commercial Complex, Sunny Enclave. The No Dues Certificate was issued after the petitioner deposited the requisite fee with the developers and the certificate was issued by the developers at the instance of respondent No.2 himself. Vide the Rent Agreement dated 19.12.2014 (Annexure P-4), the respondent No.2 and the petitioner rented out their booths

No.1A and 1B to a tenant namely Pawandeep Singh son of Simarjit Singh vide the Rent Agreement dated 19.12.2014 (Annexure P-4). From a bare perusal of the Rent Agreement dated 19.12.2014 (Annexure P-4), it was clear that respondent No.2 had executed the same and it was admitted that the petitioner was the valid allottee of the said booth No.1B, which was subject matter of the present FIR. The Rent Agreement (Annexure P-4) was duly notarized on 28.12.2014 and even in the register on the Notary, the factum of ownership of petitioner and respondent No.2 was depicted. Learned counsel further contends that after a period of about 04 years, the respondent No.2 concocted a story and moved a false complaint on 17.01.2018 against the petitioner by alleging that he had come to know that No Dues Certificate pertaining to booth No.1B was issued in favour of the petitioner wrongly and this fact came to his knowledge only in the year 2017. Initially, the enquiry was conducted by Deputy Superintendent of Police, who prepared a report dated 26.02.2018 (Annexure P-6) and held that no offence was committed by the petitioner. Even it was clearly held that the dispute if any, was of purely civil nature and had been given the texture of criminal offence wrongly.

4. Learned counsel for the petitioner further submits that the allegations levelled by the petitioner in the FIR Annexure P-1, do not make out any offence under Section 420 of IPC. In fact, no sale deed was ever executed in favour of respondent No.2, pertaining to booth No.1B and the No Dues Certificate itself did not create any right, title or interest in favour of the respondent No.2. At the most, it could be termed as an agreement to sell. Moreover, even if a No Dues Certificate was executed by Bajwa Developers in

favour of the petitioner, without the consent of respondent No.2, the alleged title of respondent No.2 would remain unaffected with the execution of No Dues Certificate in favour of the petitioner. Learned counsel further contends that even the respondent No.2 had admitted in his reply that in the year 2017, when respondent No.2 visited M/s Bajwa Developers for execution of sale deed, he came to know from the records of Bajwa Developers that booth No.1B stood in the name of the petitioner. Thus, even till the registration of the FIR, the respondent No.2 was not recorded as owner of the property in question nor had any vaild title to the property and no offence was made out. Apart from that, the respondent No.2 had clearly failed to show that the petitioner had ever induced to deliver any property and the offence under Section 420 IPC is not made out.

5. Learned counsel for the petitioner further submitted that the respondent No.2 had not denied his signatures on the Rent Agreement deed (AnnexureP-4) and this admission on his part, clearly showed that he had duly acknowledged the ownership of the booth No.1B in favour of the present petitioner. Moreover, the respondent No.2 had himself come to the office of Bajwa Developers and the said fact stood proved from the statement of the Managing Director of Bajwa Developers, during the course of investigation, who clearly stated that No Dues Certificate had been transferred in favour of the petitioner on the instructions of respondent No.2. Even after the registration of the FIR, the police conducted several enquiries and every time it was conclusively held that the dispute between the parties was purely civil in nature and the respondent No.2 had misused the process of law.

6. On the other hand learned State counsel assisted by learned counsel for the respondent No.2 had vehemently opposed the submissions made by petitioner by submitting that the petitioner was the main accused, who had cheated the respondent No.2. Even serious allegations had been levelled against him and he had raised several disputed questions of fact, which could be adjudicated only during the trial. Apart from that, it was stated that respondent No.2 had initially purchased two booths I.e. 1A and 1B from M/s Bajwa Developers in the year 2011-12 and the consideration amount was paid by the respondent No.2. Consequently, No Dues Certificates were issued by Bajwa Developers in the name of respondent No.2. Since they were having good relations with each other, the respondent No.2 had handed over the No Dues Certificate of both the booths to the petitioner. Later on, the petitioner rented out the booths to Pawandeep Singh and on the asking of the petitioner, the respondent No.2 without reading the papers, had signed the Rent Agreement (Annexure P-4). It was further submitted that in the year 2017, the respondent No.2 visited the Bajwa Developers to get the papers prepared for execution of the sale deed and he came to know that booth No.1B was transferred in favour of the petitioner by M/s Bajwa Developers. Thus, the FIR was rightly registered against the petitioner.

7. I have heard the rival submissions made by both the parties and perused the record carefully.

8. In the present case, admittedly, the petitioner as well as respondent No.2 were having friendly relations and were acting as a property dealer. In the year 2011-12, the No Dues Certificate with regard to two booths i.e.1A and 1B

were initially issued in favour of the respondent No.2. However, it has been alleged that in the year 2014, the No Dues Certificate (Annexure P-2) was issued in favour of the present petitioner. On the strength of the said No Dues Certificate, the booths No.1A and 1B were jointly rented out by petitioner as well as respondent No.2 to a tenant namely Pawandeep Singh. The rent deed (Annexure P-4) was admittedly signed by the respondent No.2 and he signed in the register of the notary public (Annexure P-5) also. Still further, the No Dues Certificate was issued in favour of the petitioner on 17.12.2014 (Annexure P-4), whereas the complaint for the first time has been made by respondent No.2 on 17.01.2018. Still apparently, proves that after about 02 years, certain differences might have arisen between the parties and due to this, the FIR has been got registered by him by lodging a complaint after more than 02 years.

9. Still further, I find sufficient force in the submissions made by learned counsel for the petitioner that no sale deed was executed by Bajwa Developers in favour of respondent No.2 with respect to booth No.1-B and the No Dues Certificate did not create any right, title or interest in favour of the respondent No.2. Moreover, the respondent No.2 also admitted that in the year 2017, when he visited M/s Bajwa Developers for getting the documents prepared for execution of sale deed, he got to know from the records that the name of the petitioner was recorded in the column of booth No.1B. Consequently, the respondent no.2 was not even owner of the property in question on the date of registration of the FIR and was never induced by the petitioner to deliver any property to him. Still further, this Court has examined the ingredients of an offence of cheating and the essential ingredients of offence

of “cheating” are as follows:-

(deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security).

10. In the present case, as per the case set up by respondent No.2, he was the alleged owner of booth No.1B, in view of the No Dues Certificate issued by Bajwa Developers in his favour and later on, Bajwa Developers had issued No Dues Certificate wrongly in favour of the present petitioner. Thus, it has been alleged that M/s Bajwa Developers had wrongly conveyed the property i.e booth No.1B in favour of the present petitioner fraudulently. Thus, when a No Dues Certificate is executed, in favour of the petitioner, the respondent No.2 should have no grouse with regard to the same. Further, it is not a case of respondent No.2/complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induced him to do or omit to do

anything which he would not do or omit if he were not so deceived. In the instant case, this Court is of the considered opinion that the ingredients of the cheating are not found and it can never be held that the offence under Section 420 of IPC is made out against the petitioner. That the Hon'ble Supreme Court has held in the matter of "M/s Indian Oil Corporation Vs. M/s NEPC India Ltd.& Others 2006 (3) RCR (Criminal) 740 as follows:-

9.The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandojirao Angre, 1988(1) RCR (Criminal) 565 : [1988(1) SCC 692], State of Haryana v. Bhajanlal, 1991(1) RCR (Criminal) 383 : [1992 Supp (1) SCC 335], Rupan Deol Bajaj v. Kanwar Pal Singh Gill, 1995(3) RCR (Criminal) 700 : [1995(6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., 1996(3) RCR (Criminal) 60 : [1996(5) SCC 591], State of Bihar v. Rajendra Agrawalla, 1996(1) RCR (Criminal) 530 : [1996(8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, 1999(2) RCR (Criminal) 160 : [1999(3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., 2000(2) RCR (Criminal) 122 : [2000(3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar, 2000(2) RCR (Criminal) 484 : [2000(4) SCC 168], M. Krishnan v. Vijay Kumar, 2001(4) RCR (Criminal) 405 : [2001(8) SCC 645], and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque, 2004(4) RCR (Criminal) 937 : 2005(1) Apex Criminal 75 : [2005(1) SCC 122]. The principles, relevant to our purpose are :

- (i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a

ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

*“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 through criminal prosecution should be deprecated and discouraged. In **G.Sagar Suri vs. State of U.P 2000 (1) RCR (Criminal) 707:[2000(2) SCC 636]**, this Court observed;*

"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."

“While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable,

at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Criminal Procedure Code more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

11. In view of the above discussion and the law laid down by the Hon’ble Supreme Court, this Court has come to a firm conclusion that the ingredients of the offence under Section 420,120-B of IPC are completely missing in the instant case and the respondent No.2 has wrongly lodged a FIR by filing a vexatious criminal complaint, by camouflaging allegations, which are purely civil claims. In fact, such attempts are not to be entertained and should be dismissed at the very threshold. Apparently, the dispute between the parties only constitutes a civil wrong, as the ingredients of the criminal offence are completely missing.

12. As a consequence, the present petition is allowed and the FIR No.105 dated 18.04.2019 under Section 420,120-B of IPC, registered at Police Station City Kharar, District SAS Nagar, Mohali (Annexure P-1) and all subsequent proceedings emanating therefrom are hereby ordered to be quashed.

13. Pending application(s) if any, stand(s), disposed off, accordingly.

11.12.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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