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111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35798-2023
Date of Decision: 02.09.2023

Sandeep Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Viren Sibal, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

1. The present petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of FIR No.4 dated 05.01.2011, registered under Sections 465, 467, 468 and 471 of the Indian Penal Code, 1860, (for short, 'IPC'), at Police Station Navi Bardari, District Jalandhar; order dated 07.12.2010 passed by the Civil Judge (Senior Division), Jalandhar, pursuant to which the aforesaid FIR was registered; order dated 19.04.2018 passed by the Judicial Magistrate Ist Class, Jalandhar, vide which the cancellation report filed by the police qua the above-said FIR was not accepted by the Court; and also the order dated 06.06.2023 passed by the Judicial Magistrate Ist Class, Jalandhar, vide which the application filed by the petitioner for discharge in the case has been dismissed by the Court below.

2. The facts, in brief, as involved in the present case are that one

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Prem Kumar Sabbarwal and others had filed a civil suit seeking declaration as owner in possession of the property comprised in Khasra Nos.1991/12813 and 12815 situated in Jalandhar. The said suit was decreed by the Civil Court, vide judgment and decree dated 22.10.2005. The present petitioner was not the party to the said suit. Thereafter, the above-said Prem Kumar Sabbarwal filed an execution petition. In the said execution proceedings, the petitioner had preferred objection petition asserting therein that the petitioner was tenant on the land involved in the decree. It was further asserted by the petitioner that the mother of the petitioner was the owner of the land adjoining the land involved in the decree. To assert the claim qua tenancy; the petitioner had placed on record of the Executing Court a rent note dated 29.08.2000 showing the petitioner to be a tenant on the land involved in the decree. However, the decree holder produced before the Executing Court another copy of the same alleged rent note, which he claimed to have obtained under the Right to Information Act from the Electricity Board, wherein the brother of the petitioner was shown to be the tenant on the land; and not the petitioner himself. When the said copy of the rent note was presented before the Executing Court, that Court ordered registration of FIR against the petitioner, vide impugned order dated 07.12.2010. Accordingly the FIR was registered by the police in the year 2011. However, as the facts would show, during the pendency of the execution petition itself, the decree holder had settled the dispute with the present petitioner; under which; he had sold the land involved in the decree to the wife of the petitioner. This

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situation is also reflected in the subsequent orders dated 05.03.2013 and the order dated 12.01.2015 passed by the Executing Court. Accordingly, the dispute regarding the property in question; as such, was finally settled before the Executing Court itself; and as a result, the execution proceedings were disposed of in view of the aforesaid settlement between the parties. However, before that, FIR was already ordered to be registered by the Executing Court.

3. After investigation of the matter, the police had filed a cancellation report before the Magistrate, in which, inter alia, it was stated by the police that the matter had already been settled between the parties. However, the Magistrate had rejected that cancellation report, vide order dated 19.04.2018 stating therein that since, the FIR was got registered on the order of the Court, therefore, mere settlement between the parties could not having been a ground for the police to file a cancellation report. Accordingly, the police was directed to further investigate the case. As a result, the police filed challan against the petitioner, in which the police only placed on record the two copies of the rent note referred to in the Court order; without there being any other supporting evidence. Since, the petitioner was made to face proceedings in the FIR, and according to the petitioner there was no substance left in the matter, therefore, he had filed an application before the Criminal Court for his discharge in the case. However, even the said application has been dismissed by the Court below, vide order dated 06.06.2023. It is challenging the all above-said orders and

the FIR that the present petition has been filed.

4. Arguing the case, counsel for the petitioner has submitted that the very initiation of the case against the petitioner was based on the facts which were not even verified at that stage in any manner. No doubt that there was a copy of the rent note shown to the Court in the execution proceedings wherein the brother of the petitioner was shown as a tenant of the land in question and he had applied for electricity connection as such, however, subsequently the petitioner himself was introduced as a tenant on the property in question with the consent of the family and of the then landlord. Therefore, only change of name of the tenant was required to be done; and that was exactly done. Therefore, there was no criminal aspect involved in the matter. The brother of the petitioner had never raised any dispute that his name had wrongly been replaced in the said rent note. Therefore, the Executing Court should not have rushed in the matter to get the FIR registered against the petitioner without first verifying the said facts. In any case, the decree holder himself had settled the dispute with the petitioner and accordingly, he had sold the property to the wife of the petitioner. As a result, even the execution proceedings, during pendency of the above-said FIR registered against the petitioner, ended in disposal based on the compromise between the parties. Therefore, even the decree holder of the said case, who statedly, presented the different copy of the same rent note before the Court was not left with any grievance against the petitioner. Hence, the entire case against the petitioner has resulted in miscarriage of

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justice. It is further submitted by the counsel for the petitioner that even with the challan, there is no material supplied to the petitioner in support of the allegations that it was the petitioner who had forged and fabricated the alleged rent note by substituting himself in place of his brother. Therefore, otherwise also, there is no material to support the case against the petitioner. Hence, the present petition deserves to be allowed and the aforesaid FIR and all the proceedings consequent thereon deserve to be set aside.

5. Notice of motion.

6. On the asking of the Court, Mr. Jaspal Singh Guru, AAG, Punjab, accepts notice on behalf of the respondent-State.

7. It is submitted by the counsel for the State, being instructions by HC Saranjit Singh, that the case was registered against the petitioner on the order of the Court only. Therefore, the petitioner cannot be granted any concession by quashing of the FIR. After investigation, the police have even filed challan against the petitioner. Therefore, whatever assertion the petitioner is making, that is only the defence, if any, which the petitioner can take during the trial.

8. Having heard counsel for the parties and having perused the case file, this Court finds substance in the arguments raised by the counsel for the petitioner. In the first instance, the very aspect of ordering registration of the aforesaid FIR only on production of two copies of the same document containing the name of two different persons as a tenant; may not be justified; because the other person also happens to be none other

than the real brother of the petitioner. Real brother of the petitioner had never raised any complaint or any issue that his name had wrongly been substituted with the name of the petitioner and that he was still the tenant on the land. There is nothing on record to show any grievance of the brother of the petitioner, who is stated to be the other person named in the second copy of the rent note. Hence, even before the Executing Court, there was nothing to suggest the *mens rea* on the part of the petitioner. Therefore, in the considered opinion of this Court, the Executing Court itself should not have been over-enthusiased to rush in ordering the registration of the FIR. Rather, the said Court should have refrained from entering into this aspect, which was beyond the scope of the executing proceedings, per se.

9. Otherwise also, the challan filed by the police also does not contain any material through which the element of *mens rea* is sought to be proved against the petitioner. It is not even in dispute that earlier the police themselves had filed the cancellation report, though, the same was not accepted by the Magistrate. The police had rightly relied upon the fact that the executing proceedings itself had ended in disposal on the basis of settlement between the petitioner and the decree holder. Under the said settlement, the decree holder has already sold the property in question to the wife of the petitioner through a registered sale deed. Therefore, even if the proceedings are permitted to continue before the Trial Court, that would be only a futile exercise, which would not result anything except the wastage of the precious time of the Trial Court. Moreover, since the parties had already

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settled their dispute, therefore, it would not be inappropriate to lend a quietus to the proceedings, which were initiated against the petitioner regarding the property qua which there is no more any dispute. Therefore, this Court finds substance in the arguments of the counsel for the petitioner that the aforesaid FIR and the consequent proceeding against the petitioner deserves to be quashed.

10. In view of the above, the present petition is allowed. FIR No.4 dated 05.01.2011, registered under Sections 465, 467, 468 and 471 of the IPC, at Police Station Navi Bardari, District Jalandhar; order dated 07.12.2010 passed by the Civil Judge (Senior Division), Jalandhar; order dated 19.04.2018 passed by the Judicial Magistrate Ist Class, Jalandhar; and the order dated 06.06.2023 passed by the Judicial Magistrate Ist Class, Jalandhar, along with all the proceedings consequent thereon; against the petitioner, are quashed.

(RAJBIR SEHRAWAT)
JUDGE

02.09.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No