

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

119

CRM M-52617 of 2022

Date of Decision: 13.09.2023

Deepak Dagar and others

...Petitioners

Versus

State of Haryana and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Partap Singh, Advocate, for the petitioners.

Mr. Rajinder Kumar Banku, DAG, Haryana.

None for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present petition under Section 482 Cr.P.C., with a prayer to quash the FIR No. 430 dated 06.08.2022 under Sections 420, 467, 468, 471 and 120-B of IPC, registered at Police Station Sadar Nuh, District Nuh and all subsequent proceedings arising therefrom.

2. The FIR in the present case was registered on the basis of the complaint moved by Somesh Mittal son of Vinod Mittal. In the FIR (Annexure P-1), the complainant had levelled the following allegations separately:-

(i) Deepak Dagar, petitioner No. 1/accused was the owner in possession of 121 Kanals 14 Marlas of land at village Uzina, Tehsil and District Nuh in view of the agreement to sell in his favour. In fact, Shiv Om, Hari Om and Kapil sons of Ranbir Singh had executed an

agreement in favour of Deepak Dagar. On 26.07.2021, Deepak Dagar agreed to sell the said 121 Kanals 14 Marlas of land to the complainant for a sum of Rs. 4,18,34,375/- and executed an agreement to sell in favour of the complainant and received a sum of Rs. 75 lacs by way of cheques and the remaining amount was agreed to be paid at the time of the registration of the sale deed. The last date for execution of the sale deed was fixed to be 30.10.2021. As per the terms of the agreement, Deepak Dagar had agreed to clear the bank loan and also agreed to get the registered sale deed executed in favour of the complainant.

(ii) Deeapk Dagar and Sunil Tewatia, petitioners No. 1 and 3/accused were the owners in possession of 128 Kanals, 18 marlas, 5 Sarsai land at village Uzina, Tehsil and District Nuh in view of the registered sale deed No. 6276 dated 20.03.2020. On 26.07.2021, the petitioners No. 1 and 3 had agreed to sell the land for a sum of Rs. 5,31,81,562/- and out of the said amount, the complainant had paid a sum of Rs. 80 lacs to the petitioners No. 1 and 3 and remaining amount was to be paid at the time of execution of the registered sale deed and the last date for registration of the sale deed was fixed on 30.10.2021.

(iii) Geeta Devi and Neelam Tewatia, petitioners No. 2 and 4/accused were the owners in possession of 93 Kanals 07 Marlas and 7 Sarsai of land at village Uzina, Tehsil and District Nuh in view of registered sale deed No. 6277 dated 20.03.2020. Both the petitioners No. 2 and 4 had agreed to sell the said land for a sum of Rs. 3,85,21,312/- in favour of the complainant vide

agreement to sell dated 26.07.2021 and the complainant had paid a sum of Rs. 60 lacs to the petitioners No. 2 and 4 on the said day and the last date for execution of the sale deed was fixed on 30.10.2021. Even, the remaining amount of sale consideration was to be paid by the complainant to the petitioners No. 2 and 4.

(iv) As per the complainant, there was holiday on 30.10.2021, 31.10.2021 and 01.11.2021. However, the accused/petitioners No. 1 to 4 did not execute the registered sale deeds in favour of the complainant even after receiving such a huge amount. Later on, the accused started issuing legal notices to the complainant with a view to misappropriate the amount handed over by the complainant to the petitioners/accused. Even, the accused had not cleared the bank loan nor they made any payments to their respective sellers. Apart from that, Shiv Om, Hari Om and Kapil sellers of the petitioners had colluded with the petitioners and wrongly sold the land measuring 121 Kanals, 14 Marlas and 4 Sarsai in favour of M/s Ellixir Infra A 261 Defence Colony, New Delhi and the complainant side had cheated the complainant.

3. Learned counsel for the petitioners contends that in the present case, it has been alleged that the petitioners had allegedly executed three agreements to sell in favour of the complainant and the last date for execution of the sale deed was fixed to be 30.10.2021 and the petitioners did not turn for execution of the sale deeds in favour of the complainant. Later on, there was exchange of legal notices between the parties relating to the agreements to sell, which are

subject matters of the present FIR. Learned counsel further contends that the ingredients of offences under Sections 420, 467, 468 and 471 IPC are clearly missing in the instant case. In fact, the dispute between the parties was purely civil in nature and for the readdressal of his grievances, the complainant had already instituted civil suits. Thus, the civil suits as well as applications for interim relief were pending before the Civil Court and the FIR was got registered by the complainant to arm twist and pressurize the petitioners illegally.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioners. Learned State counsel submits that the investigation has been conducted by the local police and the relevant record had been obtained from the concerned Collectors and the statements of the various witnesses have also been recorded under Section 161 Cr.P.C. Learned State counsel further submits that the petitioners had violated the terms and conditions of the agreements executed between the parties and the petitioners had further sold the land to M/s Ellixir Infra A 261 Defence Colony, New Delhi. Even, the complainant had paid huge amounts to the accused and even after receiving the huge amounts they had failed to execute the sale deeds in favour of the present complainant.

5. I have heard the learned counsel for the parties and perused the record.

6. In fact, this Court as well as the Hon'ble Supreme Court have held in number of judgments that every breach of contract may not give rise to a criminal offence. Many a times, certain civil transactions or criminal transactions may not contain ingredients of criminal offence and in such cases the Court must come forward to quash the criminal prosecution. The Hon'ble Supreme Court in the matter of **Gian Singh Vs. State of Punjab and another, [2012(4) RCR, (Criminal) 543** observed as under:-

55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection."

7. Still further, in the present case, the petitioners are sought to be prosecuted for the offence under Sections 420, 467, 468, 471 and 120-B IPC. Firstly, I shall deal with Section 420 of Indian Penal

Code. The offence of cheating has been defined under Section 415 IPC and made punishable under Section 420 IPC.

8. **Section 415 of IPC** is reproduced as under-

"415. Cheating. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'. Explanation. A dishonest concealment of facts is a deception within the meaning of this section."

Section 415 Indian Penal Code thus requires -

- 1. deception of any person.*
- 2. (a) fraudulently or dishonestly inducing that person -*
 - (i) to deliver any property to any person; or*
 - (ii) to consent that any person shall retain any property;**or*
 - (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property.*

9. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any

person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.

10. The police has also charged the petitioners with the offences under Sections 467, 468 and 471 of IPC, which are set out below:-

“467. Forgery of valuable security, will, etc. -

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [imprisonment for life], or with imprisonment of either description for

a term which may extend to ten years, and shall also be liable to fine.

468. Forgery for purpose of cheating-

Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description a term which may extend to seven years, and shall also be liable to fine.

471. Using as genuine a forged [document or electronic record].- *Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record]”.*

11. In the present case, the basic ingredients of the offences under Sections 420, 467, 468 and 471 of IPC are altogether missing and by no stretch of imagination, the petitioners could be legally prosecuted for the offences under the aforesaid provisions of IPC.

12. The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a *prima facie* decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and

produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

13. The Hon'ble Supreme Court in the matter of **State of Karnataka v. L. Muniswamy & Others, (1977)2 SCC 699** observed that the wholesome power under section 482 Criminal Procedure Code entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

14. In **Chandrapal Singh & Others v. Maharaj Singh & Another, (1982)1 SCC 466**, in a landlord and tenant matter where criminal proceedings had been initiated, the Hon'ble Supreme Court observed in para 1 at page 467 as under :-

"A frustrated landlord after having met his waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous."

15. Still further, the Hon'ble Supreme Court in the matter of **M/s Indian Oil Corporation Vs. M/s NEPC India Limited and others, 2006(3) RCR (Criminal) 740** again cautioned about a growing tendency in business circles to convert the purely civil dispute into a criminal case. The Hon'ble Supreme Court noticing the prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lenders/creditors and, consequently, criminal prosecutions are launched. However, any effort to settle the civil disputes and claims, which do not involve any criminal offence, by applying pressure through that criminal prosecution should be deprecated and discouraged. The Hon'ble Supreme Court has held 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 Chandrojirao Angre, 1988(1) RCR(Crl.) 565: [1988(1) SCC 692], State of Haryana v. Bhajanlal, 1991(1) RCR(Crl.) 383: [1992 Supp (1) SCC 335], Rupan Deol Bajaj v. Kanwar Pal Singh Gill,***

1995(3) RCR(Crl.) 700: (1995(6) SCC 194), Central Bureau of Investigation v. Duncans Agro Industries Ltd., 1996(3) RCR(Crl) 60: [1996(5) SCC 591), State of Bihar v. Rajendra Agrawalla, 1996(1) RCR(Crl.) 530: [1996(8) SCC 164) Rajesh Bajaj Vs. State of NCT of Delhi, 1999(2) RCR(CrL.) 160: [1999(3) SCC 259) Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., 2000(2) RCR (Crl. 122: [2000(3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar, 2000(2) RCR (Crl.) 484: {2000(4) SCC 168], M. Krishnan Vs. Vijay Kumar, 2001(4) RCR(Crl.) 405: (2001(8) SCC 645), and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque, 2004(4) RCR(Crl.) 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.

(m) 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 v. State of U.P., 2000(1) RCR(Crl.) 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 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 Cr.P.C., more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may”.

16. In view of the above discussion, it can be safely observed that the dispute in question is purely of civil nature and the complainant already instituted civil suits before the Court of competent jurisdiction. Consequently, in the facts and circumstances of the present case and also in view of the law laid down by the Hon'ble Supreme Court, the initiation of criminal proceedings by the respondent/complainant against the petitioners is clearly an abuse of the process of the Court. Consequently, this Court would be justified in protecting the ends of justice by invoking the inherent powers under Section 482 Cr.P.C. As a consequence, FIR No. 430 dated 06.08.2022 under Sections 420, 467, 468, 471 and 120-B of IPC, registered at Police Station Sadar Nuh, District Nuh and all proceedings emanating therefrom are hereby ordered to be quashed.

13.09.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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