

2024:PHHC:106863



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

250

**CRM-M-5646-2020 (O&M)
Date of decision: 14.08.2024**

Nishan Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. B. K. Mehta, Advocate
for the petitioner. (Through VC)

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Vikas Mehra, Advocate
for respondent No. 2/complainant.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 of Cr.P.C. seeking quashing of FIR No. 393 dated 05.11.2018 (*Annexure P-1*), registered under Sections 406, 420 and 506 of IPC at Police Station Civil Lines, Jind, District Jind as well as chargesheet filed under Section 173 of Cr.P.C. and the order of the trial Court framing charge along with all the subsequent proceedings having emanated therefrom.

2. Brief facts relevant for the purpose of disposal of the present petition are that in pursuance of a complaint, filed by the complainant under Section 156(3) of Cr.P.C., having been allowed, vide order dated 30.05.2018, passed by the Judicial Magistrate First Class, Jind, the present FIR was registered on 05.11.2018, wherein it was alleged by the respondent

2024:PHHC:106863



No. 2/complainant Ramphal that on 08.12.2012, the petitioner had entered into an agreement to sell a house measuring 200 sq. yards to him for a sale consideration of Rs. 16,50,000/- in the presence of witnesses Vinod and Mukesh. It was settled between the parties that an amount of Rs. 8,00,000/- would be paid to the petitioner in cash and for rest of the amount i.e. Rs. 8,50,000/-, the petitioner would get sanctioned a loan from any bank as he was having good contacts in several banks. In pursuance of the said agreement, on the same day, the complainant paid an amount of Rs.1,50,000/- to the petitioner through cheque No. 304896 drawn on his account in State Bank of Patiala (now State Bank of India) and the remaining amount was agreed to be paid by 31.03.2013. On the same evening, the petitioner handed over the possession of the aforesaid house to the complainant. The complainant also got deposited an amount of Rs. 1,27,000/- into the account of the petitioner by borrowing the same from one Ranbir Singh. The complainant spent an amount of Rs.1,30,000/- for renovation of the house. He also paid an amount of Rs. 1,00,000/- in parts to the petitioner from 30.01.2013 to 06.02.2013. However, since the agreement was oral one, no receipt was given by the petitioner to the complainant regarding payments made to him. Further, on 04.03.2013, the complainant transferred an amount of Rs. 2,90,000/- to the petitioner through RTGS. However, after some time, the petitioner informed the complainant that he was not able to get sanctioned the loan in favour of the complainant and took back the keys of the aforesaid house to sell the same to some other person and assured the complainant that he would return his money but he never paid back the amount received from the complainant. When the complainant insisted to return his money, the

2024:PHHC:106863



petitioner extended him threats to get him killed. The complainant prayed for taking legal action against the petitioner. After registration of FIR, investigation proceedings were initiated. The petitioner was extended benefit of bail. After completion of necessary and usual formalities, *challan* under Section 173 of Cr.P.C. was presented in the Court and presently, the trial is going on.

3. The instant petition has been filed on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in this case. The dispute between the parties, if any, is purely of civil nature. The last date for execution of the sale deed was 31.03.2013 and the period of limitation for enforcement of agreement to sell or for recovery of earnest money had elapsed on 31.03.2016 and having lost his right of recovery of earnest money or to enforce specific performance of agreement to sell, the complainant had resorted to filing of the present FIR to arm twist the petitioner through criminal prosecution. The Magistrate concerned had erred in issuing direction for registration of the present FIR. There is an inordinate delay of more than 3 ½ years in filing the complaint before the Magistrate. The petitioner had earlier filed a petition bearing number CRM-M-17425-2019, which was dismissed as withdrawn on 17.01.2019 as the charges were not framed by then. However, the petitioner has since been charged only under Section 420 of IPC by the trial Court. With these broad submissions, it is urged that the present petition deserves to be allowed and the FIR in question along with all the subsequent proceedings deserves to be quashed.

4. Learned State counsel, assisted by learned counsel for respondent No. 2/complainant, on the other hand, has argued that there are serious and

2024:PHHC:106863



specific allegations in the FIR against the petitioner of cheating the complainant on the pretext of selling a house to him. The petitioner had duped him of Rs. 7,97,000/-. During investigation, it has been found that some payments were made by the complainant through electronic mode as well as by cheque and the allegations against the petitioner have been *prima facie* established. It is further submitted that since the trial is at advance stage as out of total 10 prosecution witnesses, 06 witnesses have already been examined, therefore, the veracity of the allegations levelled against the petitioner can be assessed and evaluated by the trial Court after appraising the evidence produced before it and no case has been made out to quash the FIR. Therefore, it is argued that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also perused the material placed on record.

6. At the outset, it will be beneficial to look into the scope and ambit of the Court's power under Section 482 Cr.P.C. as spelt out in several judicial pronouncements of Hon'ble Supreme Court as well as different High Courts. The well settled proposition of law is that in exercise of inherent powers under Section 482 Cr.P.C., the High Court is not expected to analyze all the facts, which are placed before the High Court. The power conferred under this section is very specific and to secure the ends of justice or to prevent the abuse of process of Court or to make any such orders as may be necessary to give effect to any order under the Code, such power can be exercised to prevent abuse of process of Court. The Hon'ble Supreme Court has drawn up some guidelines in some categories of cases by way of illustration to circumscribe the exercise of inherent power under Section 482

2024:PHHC:106863



of Cr.P.C. to prevent abuse of process of any Court or to secure the ends of the justice or to give effect to an order of the Court. A celebrated pronouncement on this point is the case cited as ***State of Haryana vs. Bhajan Lal : 1992 SUPP (1) SCC 335***, wherein several guidelines have been laid down. Some of them, which are relevant for the purpose of disposal of the present petition, are reproduced as under:

“(a) where the allegations made in the First Information Report or 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 a case against the accused;

xxx xxx xxx xxx

(c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

xxx xxx xxx xxx

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

xxx xxx xxx xxx

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

7. Reference can further be made to ***Gian Singh vs. State of Punjab : (2012) 10 SCC 303***, wherein Hon’ble Supreme Court has observed that the power of the High Court in quashing a criminal complaint or an FIR, in exercise of its inherent jurisdiction, is distinct and different from the power

2024:PHHC:106863



given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accordance with the guidelines engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. Reference can also be made to ***Padal Venkata Rama Reddy @ Ramu vs Kovvuri Satyanarayana Reddy and others : (2011) 12 SCC 437***, wherein it was observed that the inherent power under Section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. Reliance can further be placed upon ***State of Andhra Pradesh vs. Gourishetty Mahesh and others, 2010 Criminal Law Journal 3844***, wherein the Apex Court has propounded that while exercising jurisdiction under Section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained as that is the function of the trial Court.

8. It is also well settled proposition of law that the exercise of powers under Section 482 Cr.P.C. to quash proceedings is an exception and not a rule. In ***Dr.Monica Kumar and another vs. State of U.P. and others : (2008) 8 SCC 781***, the Apex Court has propounded that the inherent jurisdiction under Section 482 Cr.P.C., though wide, is to be exercised sparingly, carefully and with caution, only when such exercise is justified by the test specifically laid down in the section itself and appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power. The inherent powers do not confer an arbitrary jurisdiction

2024:PHHC:106863



upon the High Court to act according to whims and caprice. In ***Taramani Parakh vs. State of M.P. and others : 2015 (2) RCR (Criminal) 445***, Hon'ble Supreme Court has held that 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 on an opinion formed prima facie. 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.

9. It is also well settled that if a petition under Section 482 Cr.P.C. has been filed at the stage of investigation, then it is only required to be considered whether a cognizable offence is disclosed or not. However, when the statements of the witnesses are recorded, evidence is collected and the chargesheet is filed after conclusion of investigation/enquiry, the matter stands on a different footing and the Court is required to consider the material/evidence collected through investigation. Even at that stage, the High Court is not required to go into the merits of the allegations and/or entering into the merits of the case as if it is exercising the appellate jurisdiction and/or conducting trial. If in order to examine as to whether the factual contents of the FIR disclose any cognizable offence or not, the High Court cannot act like investigating agency nor can exercise the powers like an appellate court. The said question is required to be examined keeping in view the contents of the

2024:PHHC:106863



FIR and prima facie material, if any, requiring any proof. At this stage, the High Court cannot appreciate the evidence as to whether it can draw its own inference from the contents of the FIR and the material relied on it. The appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Reference in this regard can also be made to the observations made by Hon'ble Supreme Court in *Kaptan Singh vs. State of U.P. and others, 2021 SCC Online SC 580* and *Dhruvaram Murlidhar Sonar vs. State of Maharashtra :, (2020) 3 SCC (Criminal) 672*, wherein Hon'ble Supreme Court has observed that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. Inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.

10. I have considered the contentions raised by learned counsel for the parties in the wake of above discussed position of law. In view of the arguments raised by the parties, the foremost issue, which in the opinion of this Court requires determination, is whether the allegations made against the petitioner are general and omnibus and are liable to be quashed. On applying the ratio of law as laid down in the above cited cases to the facts and circumstances of the present case, I am of the considered opinion that no case for quashing the FIR or the consequential proceedings arising therefrom has been made out. Respondent No. 2/complainant, in his complaint, had levelled specific allegations against the petitioners that the petitioner on the pretext of selling the aforesaid house to him had duped him of Rs. 7,97,000/-. This Court can also not lose sight of the fact that the present FIR was registered on the

2024:PHHC:106863



direction of the Magistrate concerned. On the basis of the allegations made in the FIR, it cannot be stated that no case for commission of offences punishable under Section 420 of IPC has been made out against the petitioner. More so, the trial is at advance stage as out of total 10 prosecution witnesses, 06 witnesses have already been examined by the trial Court. Therefore, it would be pre-mature to say that no *prima facie* case is made out against the petitioner and the FIR in question is liable to be quashed.

11. So far as the challenge to the order, whereby charge was framed against the petitioner under Section 420 of IPC is concerned, first of all, the petitioner instead of filing a revision petition has chosen to challenge the same by way of filing a petition under Section 482 of Cr.P.C., thereby not availing the proper remedy as prescribed under law. More so, even otherwise, on perusal of allegations as levelled against him, in the considered opinion of this Court, no ground for interference in the above said order has been made out. It is also mention worthy that there are certain principles which are to be considered at the stage of framing of charge. If the Court feels that the facts emerging from the record taken on their face value disclose existence of all the ingredients constituting the offence alleged, charge must be framed as a duty is cast upon the Court to frame so, if there is *prima facie* sufficient material on record making out a case for commission of an offence. There is nothing on record to show that the necessary ingredients for commission of offence punishable under Section 420 of IPC had not been made out against the petitioner. Therefore, no ground has been made out for interfering with the order passed by the trial Court framing charge.

2024:PHHC:106863



12. Keeping in view the facts and circumstances of the case, this Court finds no ground whatsoever to interfere at this stage for quashing of the FIR as well as consequent proceedings emanating therefrom. The petition is accordingly dismissed. The trial Court is, thus, directed to continue with the trial in accordance with law and on its own merits.

13. It is, however, clarified that no observations made herein above are the reflection on the merits of the case and shall have no bearing on trial. The same are confined for the decision of the present petition only.

14.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>