

2024:PHHC:093045

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

201

CRM-M-14713-2015(O&M)
DECIDED ON: 23.07.2024

VIJAY KUMAR NAYYAR AND ANR.

...PETITIONER

VERSUS

PARAMJIT VERMA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: - Mr. Manish Verma, Advocate
for the petitioner.

Mr. Manvinder Dalal, Advocate
for the respondent.

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

1. The present petition has been preferred under Section 482 CrPC seeking quashing of criminal Complaint No. 18 dated 11.06.2014 under Section 405,420 IPC,1860 alongwith summoning order dated 28.01.2025.

Facts

2. The factual matrix of the case that led to the present dispute is that the petitioner along with one Ashok Kumar Nayyar and one Smt. Phool Kumari jointly owned property bearing No. B.1.1037 out of Khasra No.

2348/1589/878-879 bearing Khata No. 1184/2317 as per Jamabandi for the year 2003-2004 as located within the revenue estate village Mahal Bagat, Rajpura Road, Dandi Swami Chowk, Ludhiana. The petitioner along with both the joint owners entered into an agreement to sell dated 2.11.2007 (Annexure P-1) in the favor of M/s EMCIPi ELECTRONICS PVT LTD, wherein the complainant/respondent was a witness to the said agreement. Subsequent to the agreement to sell a suit of specific performance was filed dated 2.11.2007 in lieu of a dispute between the parties to the aforementioned agreement, further sought permanent injunction. Thereafter the suit was compromised and the decree dated 15.03.2013 (Annexure P-2) was passed in favor of the company and the sale deed was executive. The respondent Paramjit Verma and one Vikas Kapila were both property advisers, they got the agreement to sell as mentioned above executed and for the same they received a commission, they also received a commission post-execution of the sale deed. Thereafter, respondent No 1 got registered the instant complaint against the petitioner No. 1 Vijay Kumar Nayyar and his son Vikas Nayyar (petitioner No. 2) under section 405,420 IPC, 1860, alleging that the service charge is due to the petitioners (Annexure P-3). Also, alleging that the petitioners and the respondent had executed an agreement for payment of commission @Rs 500/- per sq yards (Annexure P-4).

Contentions

On behalf of the petitioner

3. The ld. Counsel for the petitioners contends that the respondent has filed the instant complaint on the basis of a fabricated and forged

agreement (Annexure P-4) for the payment of Rs 500 per sq. yards as a commission for the sale of property bearing No.B.1.1037 Dandi Swami Chowk, Ludhiana to which he himself is not a signatory. He also contends that the stamp paper on which the said agreement is instituted, was issued in the name of the petitioner No. 1-Vijay Kumar Nayyar on 01.02.2007 i.e. prior to the date of alleged agreement dated 02.11.2007 for the sale of the property in question was instituted whereas the undated agreement for commission does not even bear the signatures of the parties to the agreement to sell i.e., the authorized signatory of M/s EMCIP ELECTRONICS PVT LTD.

The counsel further contends that the complaint filed by the respondent is frivolous and the dispute, if any is of civil nature and the respondent is giving it a criminal color to use it as an arm twist device. He lastly contends that section 420 IPC, 1860 is not made out, as there is no incriminating evidence to show that the petitioners have cheated the respondents and also, there is no mention of any commission and even the alleged agreement to sell dated 02.11.2007 (Annexure P-1), does not reflect the complainant/respondent himself as a signatory in any capacity.

On behalf of the respondent

4. The ld. Counsel for the respondent contends that the property of 3800 sq-yards situated within revenue estate of village Mahal Bhagat, Rajpura Road, Dandi Swami Chowk, Civil lines, Ludhiana for which the petitioners were un-able to get a genuine buyer, is the center of the dispute as the respondent was dishonestly induced by the petitioners to sell the property mentioned here-in-above for which the respondent was promised a

commission of Rs 500 sq-yards against the afore-mentioned deal. Thereafter the respondent found an authentic buyer i.e., M/s EMCIP ELECTRONICS PVT LTD and accordingly got instituted the agreement to sell dated 31.01.2007(Annexure R-1) to which the answering respondent himself is also a signatory, being a witness thereof. The agreement to sell was finally executed on 02.11.2007, during the intervening time payments in furtherance of the agreement were made, to which the answering respondent was also a signatory (Annexure R-3 COLLY). The counsel asserts that a perusal of clause 12 of the said agreement specifically mentions that the deal had matured through Diwan and Diwan Associates i.e., the respondent and one Vikas Kapila, making both the parties liable to pay the commission to the respondent and one Vikas Kapila. The counsel also vehemently asserts that another agreement was entered into on the very same day, wherein it was specifically agreed that the answering respondent along with one Vikas Kapila would be paid a commission of Rs 500/- per sq. yard for the said deal, with the stamp paper being purchased in the name of the petitioner along with one Ashok Kumar.

5. The respondent lastly contends that the parties to the agreement to sell dated 2.11.2007 (Annexure P-1) got into a dispute qua the same against which the FIR under section 405, 420 IPC, 1860 was registered and subsequently the FIR got quashed in the light of the compromise effected, on efforts made by the answering respondent, and in the intervening period a suit for specific performance was instituted which was also decreed vide judgment dated 15.03.2013 also on intervention of the answering respondent. Thereafter,

the agreed upon commission was paid to the answering respondent at the pre-determined/agreed rate of Rs 500/- per sq-yard vide agreement dated 1.02.2007 by all parties to the agreement including one Ashok Kumar, only the petitioners having refused to pay their due to the answering respondent, therefore making out the offence of cheating is very much *prima facie* evident.

Analysis

6. The complainant has averred to be a property adviser who was approached by accused Nos.1 & 2 along with other co-sharer showing willingness to sell the property in question measuring 3800 square yards. Thereafter, the respective buyer came forward and a deal was struck with the efforts of the complainant as is the case set up before this Court by him and for that service both the accused persons agreed to pay a commission at the rate of 500 per square yards.

7. The dispute arose once both the accused and other co-sharers refused to execute the sale deed which led to filing of a civil suit for specific performance preferred by the purchaser and finally the sale deed got executed with the intervention of the Civil Court but thereafter the commission to the complainant for rendering his services as a property adviser has not been paid so far. The complainant has relied upon an agreement dated Nil on the stamp paper of Rs.50 at **Annexure P-4** and to Clause 12 of another agreement entered into on 31.01.2007 between Sh. Vijay Kumar along with other co-sharers and Smt. Geeta Singh which reads as under:-

“That this deal has been matured through Dewan and Dewan Associates (Paramjit Kumar Verma & Vikas

Kapila). Both the parties have to pay the commission to these people.”

8. A reply filed by the respondent-complainant though disputes the aforesaid fact that deal has matured through Diwan & Diwan Associates and Vikas Kapila and, therefore, both the parties have to pay commission to these two persons. It is also the stand taken by the respondent-complainant that apart from the aforesaid agreement to sell dated 31.01.2007 another agreement was entered into on the same date specifically agreeing to the fact that respondent would pay a commission of Rs.500 per square yards along with Vikas Kapila which is on a stamp paper purchased in the name of the present petitioner and Ashok Kumar (Annexure R-2). The complainant has gone step further to dispute the facts narrated by the petitioner that it is these two documents which led to the execution of agreement to sell dated 02.11.2007 (Annexure P-1) and during this intervening time i.e. 31.01.2007 to 02.11.2007 certain payments were made to which answering respondent namely Paramjit Verma was a witness and a reliance has been made to certain receipts made to certain receipts issued in that regard (Annexure R-3) collectively. Finally it is also evident on record that the petitioner has concealed the execution of memorandum of agreement to sell dated 31.01.2007/01.02.2007 (Annexure R-1).

9. In the light of above said factual aspects which have unfolded during the course of hearing today, as culled out would show various agreements to sell along with receipts qua certain payments made against the

claim raised in the instant complaint which cannot be determined by this Court while exercising its powers under Section 482 Cr.P.C. being disputed facts and adjudication of the present petition, therefore, is beyond the powers vested with it.

10. Once such disputed facts are apparent on record it would always be in the larger interest of parties who are contesting for settling their rights over each other that sufficient and ample opportunity is made available to establish their case with cogent evidence leaving no doubt or suspicion ensuring that transparent and just adjudication has been reached at. A document which is disputed and concealed as per stand of respondent-complainant i.e. agreement dated 31.01.2007/01.02.2007 is required to be tested during the course of trial as per law i.e. by examination of not only the executant and the beneficiary but also with the aid of marginal witnesses who have put their signatures thereupon. This view is constant and being reiterated from time to time which has in fact attained the status of fundamental principle of criminal jurisprudence as has been held by the Hon'ble Apex Court in various enunciation time and again.

11. Reliance in this regard can be placed upon the judgment rendered by the Apex Court in "**Indian Oil Corporation v. NEPC India Ltd. & ors.**" (2006) 6 SCC 736, wherein it has been held as under:-

"12. 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 Jiwajirao Scindia v.

Sambhajirao Chandrojirao Angre [1988(1) RCR (Criminal) 565 : (1988) 1 SCC 692 : 1988 SCC (Cri) 234], State of Haryana v. Bhajan Lal [1991(1) RCR (Criminal) 383 : 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [1995(3) RCR (Criminal) 700 : (1995) 6 SCC 194 : 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [1996(3) RCR (Criminal) 60 : (1996) 5 SCC 591 : 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [1996(1) RCR (Criminal) 530 : (1996) 8 SCC 164 : 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [1999(2) RCR (Criminal) 160 : (1999) 3 SCC 259 : 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000(2) RCR (Criminal) 122 : (2000) 3 SCC 269 : 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State of Bihar [2000(2) RCR (Criminal) 484 : (2000) 4 SCC 168 : 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [2001(4) RCR (Criminal) 405 : (2001) 8 SCC 645 : 2002 SCC (Cri) 191 and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [2004(4) RCR (Criminal) 937 : (2005) 1 SCC 122 : 2005 SCC (Cri) 283]. 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 mala fides/malice for reaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable. (ii) 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 proceeding 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."

12. Further dependence can be made on the Apex Court judgment rendered in the case of "*Himachal Pradesh Cricket Association and another v. State of Himachal Pradesh and others*" bearing Criminal Appeal No.1258-1259 of 2018, decided on 02.11.2018, wherein it has been held that the inherent jurisdiction is to be exercised carefully and with caution and only when the exercise is justified by the tests specifically laid down in Section itself. Further inherent power under this provision is not the rule but only an exception and the exception is to be applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily.

13. Coming back to the case in hand, I am of the considered view that certain facts which have been detailed and discussed hereinabove being disputed there is no occasion for this Court to invoke its jurisdiction under Section 482 Cr.P.C. Hence, the present petition is ordered to be dismissed.

14. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition and the parties will be at liberty to take all pleas as well raised in the instant petition before the trial Court at an appropriate stage.

23.07.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

No/Yes
No/Yes