118+204 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M-15237-2019 (O&M)
Date of Reserve:19.10.2024
Date of Decision: 02.12.2024

Sharda Devi …Petitioner

vs.

Rakesh Aggarwal …Respondent

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

Present : Mr. Narender Kaajla, Advocate for
the non-applicant/petitioner.

Mr. A.S Lamba, Advocate (through V.C) along with
Mr. Yashdeep Nain, Advocate
for the applicant/respondent.

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N.S.Shekhawat J.

CRM-31902-2024

Application is allowed as prayer for, subject to just all exceptions. Annexure R-1 is taken on record.

Main case

1. The petitioner has filed the present petition under Section 482 of Cr.P.C., with a prayer to quash the impugned order dated 11.02.2019 (Annexure P-6) passed by the Court of Additional Sessions Judge, Hisar in Criminal Revision No.35 of 2018, titled as "Rakesh Aggarwal Vs. Sharda Devi", whereby the summoning order passed by the Trial Court against the respondent was set aside and the respondent was ordered to be discharged.

2. The petitioner/complainant had filed a complaint in the present case under Sections 420,406,467,468,471 and 120-B of IPC by alleging that the

present respondent/accused No.3 had started construction of a commercial complex in March 2012 in the name of Metropolis through his company Simplex Alloy Private Limited. The petitioner also booked one office No.11, 5th floor in March 2012 and on 29.03.2012, she paid a sum of Rs.5,22,500/- through cheque to the respondent. In May 2012, Gaurav Kukreja, co-accused came to the petitioner and requested her to make his wife Shalu Kukreja, co-accused, as a shareholder in the said office. Gaurav Kukreja was known to the son of the petitioner and the petitioner had agreed for the said proposal. Gaurav Kukreja obtained signatures of the petitioner on some papers for partnership in the office. On 04.12.2012, again a sum of Rs.5,22,500/- was paid by the petitioner through cheque to the company of the respondent. Even some amount was paid to the company in cash and the respondent had assured the petitioner that after completion of the construction, correspondence will be done and sale deed will be executed in favour of the petitioner. In 2015, the petitioner did not get any letter from Metropolis, after completion of the project and when she approached the office of respondent, she was informed that office No.11 had been registered in the name of Gaurav Kukreja. On this, the petitioner demanded her money back, but the respondent flatly refused to return the same and threatened to kill her. The petitioner along with her son met Gaurav Kukreja and his wife Shalu Kukreja, co-accused, but they requested her not to initiate any legal proceedings as they would make her partner in the office. However, later on, Gaurav Kukreja and his wife Shalu Kukreja also refused for the same. She further alleged that the petitioner had booked office No.11 in her name by depositing a sum of Rs.10,45,000/- in the account of the company of the respondent, but the intention of the respondent and other accused was to defraud the petitioner and the complaint was instituted before the Court.

3. During the course of trial, a report under Section 202 Cr.P.C., was sought from the police. Even the petitioner examined seven witnesses in preliminary evidence and vide order dated 06.11.2017, the respondent and his co-accused namely Gaurav Kukreja and Shalu Kukreja were ordered to be summoned under Section 420 read with Section 120-B of IPC. The respondent challenged the summoning order passed by the trial Court before the Court of Additional Sessions Judge, Hisar and vide the impugned order dated 11.02.2019 (Annexure P-6), passed by the Court of Additional Sessions Judge, Hisar, the summoning order passed by the Trial Court was set aside and the respondent was ordered to be discharged.

4. Challenging the order passed by the Court of Additional Sessions Judge, Hisar, the present petition has been filed by the petitioner before this Court.

5. Learned counsel for the petitioner vehemently argued that the complainant had made the payments for office No.11 through cheque and the amount was duly deposited by way of cheques in the account of the company of the respondent. He further contends that after receipt of the consideration amount from the petitioner, the property was illegally transferred in favour of Gaurav Kukreja and Shalu Kukreja. Still further, the accused No.1 and 2 had prepared the papers of sale deed on 02.06.2014 for transfer of office No.11,

but the transfer letter was signed by the petitioner on 03.06.2014. This clearly shows that the transfer permission letter was prepared by the accused in collusion with each other. Still further, the Revisional Court failed to appreciate that the respondent had transferred the share of the petitioner without consideration and without the consent of the complainant and the summoning order was rightly passed by the Trial Court.

6. On the other hand learned counsel for the respondent vehemently argued that in the present case, co-accused Gaurav Kukreja and Shalu Kukreja were tried by the Court of Judicial Magistrate Ist Class and vide the judgment dated 07.03.2024, the co-accused have already been acquitted by the Trial Court and it is found to be a case of civil nature. Learned counsel further submitted that during the course of trial, it was found that the petitioner was an unreliable witness and had taken contradictory stands before the Trial Court. Moreover, the document Ex.DW2/2 dated 03.06.2014 was proved during the trial, which is an application submitted by the petitioner to the Manager, Simplex Alloy Private Limited regarding the transfer of disputed shop to the co-accused. She clearly mentioned in the application that she had sold the aforesaid property to Gaurav Kukreja and had received all the payments from him and she would not claim any right on the aforesaid unit/shop in future. Even this document was part of the report under Section 202 Cr.P.C. Still further, even if the allegations levlled by the petitioner are admitted to be correct for the sake of the arguments, still, no offence is made out against the respondent and the impugned order is legally sustainable.

7. I have heard the learned counsel for the parties and with their able assistance, I have gone through the record carefully.

8. In the present case, the main allegations levelled by the present petitioner/complainant is that on 29.03.2012, she had paid a sum of Rs.5,22,500/- through cheque to the respondent for allotment of a office bearing No.11 on 5th floor in the project namely Metropolis. Again on 04.12.2012, a payment of Rs.5,22,500/- was made to the respondent through cheque. However, in the year 2015, after completion of the project, the property was not transferred in the name of the present petitioner and rather the sale deed was executed in favour of Gaurav Kukreja, co-accused. However, from the allegations levelled by the complainant against respondent, it is apparent that it is a dispute of civil nature between the parties. The Hon'ble Supreme Court as well as this Court have held in number of judgments that every breach of contract may not give rise to a criminal offence. Many times, certain civil transactions may not contain ingredients of the criminal offence and in such cases, the Court must come forward to quash the criminal prosecution.

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.

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.

9. 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.

10. 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."*

11. 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:*
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> *"(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 though 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".*

12. Still further, adverting to the facts of the present case, in the present case, Gaurav Kukreja and Shalu Kukreja were also acquitted by the Trial Court. While acquitting the co-accused, the trial Court has recorded the following findings:-

"The main basis of the defence of accused is the document Ex.DW2/2 which has been proved by the summoned witness from Symplex Alloys Pvt. Ltd. The said document has come from proper custody which is duly signed by the Director Symplex Alloys Pvt. Ltd so it bears presumption of truth. The said document is dated 03.06.2014 which is an application given by complainant Sharda Devi to the Manager Symplex Alloys Pvt. Limited regarding transfer of the disputed shop. She has mentioned in the said application that she sold the aforesaid plot to Gaurav Kukreja and received all the payment from him. She further stated that she will not claim any right on the aforesaid unit/shop in future. In the report under Section 202 Cr.P.C, this document was also annexed which was Mark-A and said document was put to the complainant in her cross-examination upon which she denied her signatures. At another place, it is a suggestion of complainant to this witness DW2 that the said document was forged and manipulated. The complainant has put up a contrary stand regarding the said document as at one place, she stated that her signatures were taken on blank papers and same were misused and at another place, she stated that the said document does not bear her signature. Had it been so, it was duty of complainant to prove that

the said document does not bear her signature. The witness summoned form Company i.e. DW2 was also asked a question that a blank signed paper can be manipulated by adjusting the same on computer but complainant has failed to prove the said version on record. Moreover, no complaint or any application has been given by complainant to any authority or police etc. qua the aforesaid fact that her signatures were taken on blank papers. However, it is also important to mention here that as per documents/complaint, complainant stated that the blank signed papers were used by Rakesh Aggarwal i.e. Director of the Company and not the present accused persons."

13. From the above referred discussion, it is apparent that the dispute in question is purely of civil nature and the petitioner/complainant has already instituted a civil suit 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 petitioner/complainant against the respondent was 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.

14. As a sequal to the above discussion, the present petition is ordered to be dismissed.

(N.S.SHEKHAWAT)
JUDGE

02.12.2024
hitesh

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