

2024:PHHC:167542



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CRM M-15699 of 2023
Date of Decision: 06.11.2024

Subhash Chand		...Petitioner
	Versus	
State of Haryana and another		... Respondents

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

Present : Mr. D.S. Matya, Advocate, for the petitioner.
Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 108 dated 15.03.2022 under Section 379, 201 and 506 of IPC registered at Police Station Hathin, District Palwal (Annexure P-1) alongwith all subsequent proceedings arising therefrom.
2. The FIR in the present case was registered on the basis of the statement made by Prithvi Raj son of Ram Chand and the same has been reproduce below:-

*“To the SHO, Police Station Hathin, District Palwal,
Subject: Complaint against Sanjay, Subhash, Jayanti,
Deepak sons of Nanak, Bittu son of Sanjay, Rocky son of
Subhash and their three wives residents of Swamika*

regarding theft of crop of Sarson. Sir, I Prithvi Raj son of Shri Ram Chand caste Scheduled Caste am permanent resident of Tikri Brahman Tehsil and District Palwal. I got executed a sale deed No. 2702 regarding land measuring 05 kanal 10 marlas from Chandra wife of Nanak, Brahman resident of Swamika. But these people have become dishonest. On 09.12.2020, an affidavit was given in the Court that in lieu of the said sale deed Deepak will give land of 05 kanal to us and in complaint given by me vide No. CMOFF/N/2021/1087977, Mircha Sarpanch and other respectable persons of the village, Deepak and Subhash got their statements recorded and a writing of the decision regarding handing over of 05 kanal on 21.10.2021 in the area of Narsali Jungle. On 24.10.2021 all the accused handed over 05 kanals land of the share of Deepak. I sown the Sarson in the land 05 kanals with the tractor of Subhash. Subhash was given Rs. 500 as labour and video was prepared. On reaping the crop, I, my son Tek Chand, daughter in law Malti and Rinki cut the crop on 01.03.2022 of Sarson which was lying in the field regarding which Subhash made call from Mobile No.9817129238 on my Mobile No. 99915-16305 at 5.27 minute and 5.38, two calls that if the crop of Sarson is lifted, then they will kill me regarding which I moved a complaint in Police Station Hathin on 05.03.2022. On 06.03.2022 at about 5 evening, I went to see my crop of Sarson then the crop of Sarson was not there. I enquired form the neighbourhood, then the persons of nearby fields told me that Sanjay, Subhash, Jayanati, Deepak and his son and three women of Swamika, have taken the crop of Sarson by them today. I informed on phone to Chander Bhan, Khokiyaka and

Sunil Kumar Kalsada and both talked about the theft of Sarson with Subhash and Subhash told that he will give the price of Sarson. You are requested to take legal action against these persons and my crop of Sarson may be recovered. There was 10 quintal Sarson in my field. Up till now Deepak and Subhash kept on putting me off regarding giving money. But have not returned the Saron which was stolen. Applicant Prithvi Raj son of Ram Chand caste SC resident of Tikri Breahman District Palwal Mobile No. 9991516305 dated 15.03.2022.”

3. Learned counsel for the petitioner contends that the complainant has falsely involved the petitioner in the present case by levelling the allegations, which are contrary to the record. In fact, the mother of the petitioner had sold 05 Kanals and 10 Marlas of land to the complainant for a sale consideration of Rs. 10 lacs and the sale deed was executed in favour of Malti, daughter-in-law of the complainant vide Vasika No. 2702 dated 03.11.2017. At the time of the registration of the sale deed, the complainant paid only a sum of Rs. 1 lac and assured the mother of the petitioner that they would pay the remaining sale consideration of Rs. 9 lacs to her at her house after registration of the sale deed. However, the balance amount was never paid by the complainant.

4. On the other hand, the mother of the petitioner remained in actual physical possession of the suit land and she filed a suit for declaration to the effect that the mother of the petitioner was the sole owner of the suit land. During the pendency of the suit, the parties

entered into a compromise to the effect that both the parties did not have any objection, if the Vasika No. 2702 dated 03.11.2017 is cancelled and the mother of the petitioner is declared as owner in possession of the land. It was also agreed that Deepak Kumar, brother of the petitioner would give them land measuring 08 Kanals 02 Marlas and the affidavit of mother of the petitioner, daughter-in-law of the complainant and the complainant himself were furnished as Ex.C2, Ex.C3 and Ex.C4, respectively. Even in view of the compromise, the judgment and decree dated 12.12.2020 (Annexure P-5) were passed by the trial Court. Thereafter, the brother of the petitioner again sold 03 Kanals and 02 Marlas of land to the complainant for a sale consideration of Rs. 8,91,250/- but again the complainant issued two cheques bearing No. 81 dated 07.02.2020 for an amount of Rs. 1,50,000/- and cheque bearing No. 85 dated 09.02.2021 for an amount of Rs. 5,41,250/-. However, cheque of Rs. 5,41,250/- was dishonoured and even the cash amount of Rs. 2 lacs was not paid by him. The balance amount of Rs. 7,41,250/- was still pending against the complainant, which was to be paid to the brother of the petitioner. Ultimately, the brother of the petitioner also filed a suit for declaration and permanent injunction against the complainant and vide order dated 02.03.2022, the trial Court had directed both the parties to maintain status quo with respect to the alienation and possession over the suit property. Even, the complainant had obtained some blank signed papers bearing the

signatures of the mother and brother of the petitioners and even the petitioner had expressed an apprehension that the blank signed papers may be misused by the complainant.

5. Learned counsel further contends that the complainant was earlier posted as ASI in the same police station, i.e., ASI Hathin and few years ago, he managed to get the present FIR registered against the petitioner and others. Surprisingly, the FIR has been got registered by the complainant without mentioning any khewat or khasra number in the FIR and the allegations are vague. Even, the witnesses clearly stated during the course of investigation that the allegations were totally vague. Still, the Investigating Officer presented a report under Section 173 Cr.P.C. before the trial Court. Learned counsel further contends that from a bare perusal of the report under Section 173 Cr.P.C., it is apparent that majority of the papers in the challan had been prepared and signed by the complainant himself. Thus, it would be appropriate to exercise the inherent powers under Section 482 Cr.P.C., to undo the injustice being caused to the petitioner. It is further submitted that a civil dispute has been converted into a criminal dispute as the possession of the land is still with the petitioner side and allegations have been found to be false against all of them except the petitioner.

6. During the course of investigation, it was found that several papers in the challan had been prepared and signed by the complainant in the present case itself. Consequently, an inquiry was

marked to the senior police officers in the present case. During the inquiry, it was found that SI Mahender Singh was unable to write due to ill health and on the request made by him, the complainant had recorded the seizure memo, statements of the witnesses, namely, Udaybir, Sunil Kumar, Amit and Chander Bhan. Still further, there was no denial to the civil litigation between the parties.

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

8. 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."

9. 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”.

10. 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.

11. 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."

12. 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 Pharmaceutical 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 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".

13. In view of the above discussion, it is clear that the dispute in question is purely of civil nature and the parties have already instituted civil suits before the Courts of competent jurisdiction. Even, various orders have been passed by the Civil Courts in connection with the possession and use of the property in question. Thus, it is apparent that the FIR is an instrument of the misuse of the process of the law and is liable to be quashed by this Court.

14. As a consequence, FIR No. 108 dated 15.03.2022 under Section 379, 201 and 506 of IPC registered at Police Station Hathin, District Palwal (Annexure P-1) and all proceedings emanating therefrom are hereby ordered to be quashed.

06.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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