

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-27193-2015

Reserved on: 11.01.2024

Pronounced on: 18.01.2024

2024: PHHC: 006410

MAHA SINGH AND ANOTHER

. . . . Petitioners

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ravi Dangi, Advocate, for
Mr. Gitish Bhardwaj, Advocate, for petitioner No.1.

Mr. Manish Kumar Singla, Advocate, with
Ms. Sonika, Advocate, for petitioner No.2.

Mr. Mohit Thakur, AAG, Punjab.

None for respondent No.3.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioners pray for quashing of FIR No.128 dated 15.12.2014 registered under Section 406, 420, 120B IPC at Police Station Mulepur, District Fatehgarh Sahib and all the consequential proceedings arising therefrom.

2.1 As the paper-book reveals, petitioner No.1-Maha Singh had executed an agreement to sell dated 12.11.2013 (Annexure P2) regarding 21 bigha of land in favour of respondent No.3-Satish Kumar @ ₹49 lakh per acre. He received an amount of ₹55 lakh as earnest money. ₹10 lakh was agreed to be paid on 10.01.2014. Target date for execution of the sale deed was fixed to be 03.03.2014. Default clauses were also incorporated in the agreement to the effect that in case petitioner No.1

failed to execute the sale deed by the target date, respondent No.3 will be entitled to get the sale deed executed through Court or to get double the earnest money; and in case respondent No.3 failed to get the sale deed executed, then the earnest money shall stand forfeited.

2.2 Respondent No.3 got lodged the present FIR alleging that despite receipt of earnest money of ₹55 lakh, petitioner No.1 failed to receive ₹10 lakh on 10.01.2014 nor he executed the sale deed by the target dated on 03.03.2014. It was further alleged that petitioner No.1 had failed to clear the loan obtained on the land. When respondent No.3 asked for refund of the earnest money, two petitioners i.e., petitioner No.1 vendor and his son-petitioner No.2 threatened him.

3.1 Seeking quashing of the aforesaid FIR, it is contended by Id. counsel for the petitioners that bare perusal of the entire FIR would reveal that it is a civil dispute, which has been given the criminal colour. It is respondent No.3, who failed to get the sale deed executed or to pay ₹10 lakh on 10.01.2014 as was agreed by him. It is further submitted that on 03.03.2014, the date fixed for execution and registration of the sale deed, petitioner No.1, after personally informing the complainant, went to the office of Sub-Registrar, Fatehgarh Sahib for execution of the sale deed and remained present there from 9.00 AM to 05.00 PM, but complainant-respondent No.3 did not turn up. Petitioner then got an affidavit (Annexure P3) attested from the Executive Magistrate, Fatehgarh Sahib in this regard. Not only this, petitioner No.1 then got issued a legal notice dated 07.03.2014 through his counsel to respondent No.3 for getting the sale deed registered in his favour on 15.03.2014 as per the terms of the agreement, but still respondent No.3 failed to do so

and that in these circumstances, the earnest money stood forfeited in terms of the agreement and the agreement stood cancelled/rescinded.

3.2 Ld. counsel further contends that for the sake of arguments even if it be assumed that there was any criminal liability, petitioner No.1-Maha Singh, who executed the agreement in favour of respondent No.3, has since expired and so, proceedings qua him are liable to be abated. As far as petitioner No.2 is concerned, he has been roped in only because he is the son of petitioner No.1. Ld. counsel also contends that at no point of time, respondent No.3 filed any suit for specific performance in respect of the agreement to sell. Rather, said respondent No.3 filed a suit for recovery of ₹55 lakh along with interest on 20.02.2017, but that suit was dismissed by the Court of Id. Civil Judge, Sr. Division, Fatehgarh Sahib on 16.03.2021. Copy of that judgment has been placed on record.

4. Refuting the aforesaid contention, Id. State counsel submits that petitioners cheated respondent No.3 and so, there is no reason for quashing the FIR.

5. Respondent No.3 initially appeared and even filed reply to the petition opposing the same, but on the date of hearing the arguments, despite last opportunity, nobody put in appearance on his behalf.

6. I have considered submission of both the sides and have appraised the record.

7. It is not in dispute that agreement in question was executed by petitioner No.1-Maha Singh only in favour of respondent No.3. Petitioner No.2-Armrinder Singh @ Romi is not even a witness to the agreement (Annexure P2). As such, no liability, whatsoever, can be

fastened against petitioner No.2 in case the terms of the agreement have been breached.

8. Petitioner No.1-Maha Singh has already expired and so, proceedings against him stand abated.

9. The only other allegation against petitioner No.2-Amrinder Singh @ Romi is to have given threat along with petitioner No.1. However, the said allegation is quite vague with no date, time or place, when the alleged threat was given. Said allegation appears to have been made just to rope in petitioner No.2 in this case.

10. Apart from above, the mere perusal of the FIR would reveal that it has arisen out of the alleged breach of terms and conditions of the agreement to sell. Mere breach of terms and conditions of the agreement to sell does not invoke criminal liability unless the complainant is able to show wrong representation since very beginning. There is no such allegation. Apart from this, petitioner has placed on record copy of his affidavit, which he had furnished before the Sub Registrar to show his *bona fide* that he wanted to execute and get registered the sale deed in terms of agreement. Not only this, even after expiry of the target date, petitioner No.1 sent a legal notice to the complainant-respondent No.3 for getting the sale deed executed, but still he failed to do so. As it appears that on account of his own failure to pay the balance sale consideration and to get the sale deed executed, respondent No.3 just wanted to get his earnest money back and so as to put pressure upon the petitioners, he lodged the present FIR. There is nothing on record to suggest that any suit for specific performance was ever filed by respondent No.3. As

pointed out by counsel for petitioner No.2 that a suit for recovery was filed by respondent No.3, but the same has already been dismissed by the Court of Ld. Civil Judge, Sr. Division, Fatehgarh Sahib vide judgment dated 16.03.2021, copy of which has been placed on record.

11. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*” 1992 AIR 604, Hon’ble Supreme Court has laid down the guidelines as to the cases in which High Court can exercise its extraordinary power to quash the FIR under Section 482 Cr.PC. It was held as under: -

“8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide of myriad kinds of cases wherein such power should be exercised:

“(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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(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;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted

by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(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;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(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.”

12. In the present case, having regard to the parameters laid down by Hon’ble Supreme Court, the present case falls in parameter No.(a) of the aforesaid directions. No criminal case is made out against any of the petitioners. As such, present petition is allowed. FIR No.128 dated 15.12.2014 registered under Sections 406, 420, 120B IPC at Police Station Mulepur, District Fatehgarh Sahib and all the consequential proceedings and all subsequent proceedings arising therefrom, are hereby quashed.

(DEEPAK GUPTA)
JUDGE

18.01.2024
Vivek

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |