

**CRM-M-2822-2015 & CRM-M-11409-2019****IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****Date of decision : August 20, 2024****1. CRM-M-2822-2015**

Pawan Gulati

....Petitioner

Versus

Central Bureau of Investigation, Sector 30, ChandigarhRespondent

2. CRM-M-11409-2019

Jaswinder Mann

....Petitioner

Versus

Central Bureau of Investigation, ChandigarhRespondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Gursher Singh Dhillon, Advocate, for the petitioner
in CRM-M-11409-2019

Mr. S.S.Narula, Advocate, for the petitioner
in CRM-M-2822-2015

Mr. Prateek Gupta, Standing Counsel for CBI

KULDEEP TIWARI,J.

1. Both these petitions are amenable to be decided together as common relief has been sought i.e. seeking of quashing of order dated 31.7.2014 passed by the learned Special Judge, CBI Court, Chandigarh, in case FIR No. RCCHG1990A0015 dated 06.08.1990, U/s 7, 13(2) R/W Section 13(1)(d) of PC Act, registered at Police Station CBI/ACB/Chandigarh, whereby, a direction has been passed to lodge a

**CRM-M-2822-2015 & CRM-M-11409-2019**

complaint against the petitioners for committing an offence punishable under Section 206 IPC, as per the provisions of Section 195(1) read with Section 340 Cr.P.C.

2. Before embarking upon the submissions made by the learned counsel for the petitioners, it is apt to deal with necessary facts of the instant cases.

3. A case bearing RC-15(A)/1990 dated 06.08.1990 was registered against Col. B.S. Goraya, Col. General Staff (Engg.), Head Quarters, W. Command, C/056 APO, R/o 208, Sec-9C, Chandigarh, U/s 13 (2) r/w 13(1)(e) of PC Act, 1988, on the allegations that he had amassed property by corrupt and illegal means, which was disproportionate to his known sources of income. After investigation, charge sheet in this case was filed in the court of Learned Special Judge, CBI, U.T., Chandigarh on 29.04.1993 against Col. BS Goraya, whereon, assets to the tune of approximately Rs. 72 lacs were found to be more than his known source of income. The trial court had framed charges on dated 06.02.1998 in the instant case. Further during investigation, number of immovable properties were found in the possession of Col. BS Goraya, which were acquired by him on his own name or in the name of his family members, and one of them is H.No. 323, Sector 2, Panchkula.

4. On dated 5.7.1993, the Chandigarh Administration filed an application under Section 3 of the Criminal Law Amendment Ordinance,

**CRM-M-2822-2015 & CRM-M-11409-2019**

1944 (for brevity, 'the Ordinance'), read with Section 5(b) of the P.C. Act 1988, for the attachment of immovable and movable properties, which were allegedly acquired by Col. B.S. Goraya on his own name, or in the name of his family members, by corrupt and illegal means, by misuse of his official position as a Public Servant while working in the Army, till the final decision of the case arising out of the FIR (supra). Another application under Section 4 of the Ordinance Act read with Section 5(b) of the P.C. Act 1988 for interim attachment, was also filed by the Chandigarh Administration.

5. The application filed by the Chandigarh Administration was considered, and was subsequently allowed by the learned Special Judge, vide interim orders dated 5.7.1993 and dated 16.9.1995 and directed Col. B.S.Goraya and his family members not to **sell/transfer/alienate or otherwise dispose of the movable/immovable properties till further orders**. On dated 16.9.1995, the learned Special Judge, CBI Court, Chandigarh passed the final order of attachment, (Annexure P/16).

6. Thereupon Col. B.S.Goraya (non-petitioner) filed a review application for seeking review of final order dated 16.9.1995, which was partly accepted by the learned Special Judge, CBI Court, Chandigarh and thereupon released the residential house of Col. B.S.Goraya from the said attachment.

7. Further-more, petitioner Jaswinder Mann, who is sister of the



main accused Col. B.S.Goraya, after getting the knowledge of attachment order of her property, she approached the court concerned by filing two separate applications for issuance of directions for release of House No. 323 Sector 2, Panchkula and Plot No. 984, Phase IV, Mohali from the said attachment but the applications so moved by the petitioner-Jaswinder Mann, were subsequently dismissed. Thereupon, petitioner-Jaswinder Mann approached this Court for the same relief, but she remained unsuccessful in her attempt. Despite having specific information regarding the attachment order, petitioner-Jaswinder Mann transferred House No. 323 Sector-2, Panchkula (which was already attached) to co-petitioner Pawan Gulati. Thereupon, co-accused Col. B.S.Goraya informed the learned court concerned about the said transaction as executed between both the present petitioners, which led the learned Special Judge, CBI Court, Chandigarh to verify about the said fact of transfer, and to submit a report on the record. On dated 26.3.2013, SP, CBI, ACB, Chandigarh, submitted verification report to the effect that plot (supra) was transferred by petitioner Jaswinder Mann to co-petitioner Pawan Gulati on dated 21.10.2009, by HUDA, Panchkula. Therefore, show cause notice was served to both the petitioners and to one Ashwani Sharma, Estate Officer, HUDA, Panchkula. In response to the said show cause notice, petitioner Pawan Gulati submitted that he is a bonafide purchaser as he purchased the property after taking loan from the bank and therefore, no *mens-rea* can be



CRM-M-2822-2015 & CRM-M-11409-2019

attributed to him, whereas, Jaswinder Mann petitioner opted not to answer to the show cause notice by submitting that since the record of the HUDA is not traceable, so she is unable to file response. The learned trial court concerned considering the act and conduct of the petitioner and the Estate Officer, HUDA, Panchkula to be punishable under Section 206 IPC, directed the Reader of his Court to submit a written complaint with the learned Chief Judicial Magistrate, Chandigarh as per provisions of Section 195(1) read with Section 340 Cr.P.C. vide impugned order dated 31.7.2014, which caused grievance to the petitioners and propelled them to institute the instant petitions under Section 482 Cr.P.C.

SUBMISSIONS BY LEARNED COUNSEL FOR THE PETITIONERS

8. Learned counsel for the petitioner-Pawan Gulati submits that he is a bonafide purchaser of said property in dispute, as sold by Jaswinder Mann after getting 'No Objection Certificate' (NOC) from HUDA, Panchkula, therefore, no *mens-rea* can be imputed upon him. He further submits that he has thereupon sold this house to Smt. Anu Singla and Smt. Rashim and also sold another house in Chandigarh and thereby, consolidating the proceeds, purchased H. No. 462 Sector-37, Chandigarh. He further submits that petitioner-Pawan Gulati was not a part of the criminal proceedings, as initiated against co-petitioner Jaswinder Mann.
9. Learned counsel for the petitioner-Jaswinder Mann submits that the petitioner was residing in Canada and it was very difficult for her to take care of her properties in India, and furthermore she was never

**CRM-M-2822-2015 & CRM-M-11409-2019**

served with any notice restraining her to sell any property, so the petitioner under the bonafide belief that she can sell her property, sold the same to co-petitioner Pawan Gulati, on being approached by the property dealer of the area.

10. The prayer for grant of asked for relief has been vociferously opposed by the learned counsel for the CBI and he submits that the petitioner Jaswinder Mann was very much in the knowledge of the attachment order and despite that she in connivance with the co-petitioner Pawan Gulati, entered into the transfer of the attached property and thereafter, even Pawan Gulati further sold the said property to the third party.

10. This Court has considered the rival submissions made by the learned counsel for the parties concerned and is of the view that there is no merit in the instant petitions. The above conclusion is reached upon the following reasons:-

(i) it is not under dispute that the property (supra), was ordered to be attached, by the learned Special Judge, CBI Court, Chandigarh. vide order dated 31.7.2014, further the petitioner made unsuccessful attempt by re-coursing the provisions of law to get the attachment order vacated, therefore, petitioner Jaswinder Mann cannot take the plea that she was not



aware about the import of the attachment order. She as in then cannot take the plea of ignorance about the attachment order once she herself tried to get modified the attachment order, by approaching the learned court concerned, which was dismissed upto the level of High Court.

(ii) So far as the plea raised by learned counsel for the petitioner-Pawan Gulati, that he is a bonafide purchaser is also prima facie does not seem to be plausible because of the reason that the file in the office of HUDA, Panchkula is now misplaced under mysterious circumstances, the original file would have reflected whether there was any entry of order of attachment in the record of HUDA, which is custodian of the record of right of property. Therefore, at this pre-mature stage, this Court cannot be observe in favour of the petitioner to be a bonafide purchaser, which otherwise is a disputed question of fact and can only be adjudicated by the learned court concerned, after adduction of the evidence which is yet to be adduced. Therefore, at the initial stage, where only direction has been issued for registration



of complaint, this Court cannot, in exercise of its powers under Section 482 Cr.P.C. after holding the petitioner as bonafide purchaser and seller, quash the impugned order, specifically when it does not suffer from any perversity or illegality.

11. Therefore, both the petitions are **dismissed**. However the petitioners are extended the liberty to raise all the pleas, which have been raised in these petitions, before the learned court concerned, at an appropriate stage of the trial.

August 20, 2024
'tiwana'

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ? *Yes/No*
Whether Reportable ? *Yes/No*