2024:PHHC:168433

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM M-41142 of 2014 (O&M)
Date of Decision: 29.07.2024

Naresh Kumar Jain and another ...Petitioners

Versus

State of Punjab and others ... Respondents

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

Present : Mr. R.S. Rai, Sr. Advocate with
Mr. Karan Pathak, Advocate, for the petitioners.

Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. Hemant Bassi, Advocate
for respondents No. 2 to 4.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 27 dated 19.03.2013 (Annexure P-4) registered under Sections 406, 420 and 120-B IPC at Police Station Nayagaon, District SAS Nagar, Mohali and all consequential proceedings arising therefrom.

2. The FIR in the present case has been got registered by Rewa Bagri and the same has been reproduced below:-

> *“Copy of Complaint "To Senior Superintendent of Police, SAS Nagar, Subject: Complaint against Smt. Santosh Jain, wife of Late Shri Sita Ram Jain, Mobile No. 8054229860, Vikram Jain, Mobile*

No. 9779055657, Sunny Jain, Mobile No. 8699300591, sons of Late Shri Sita Rarn Jain, resident of House No. 1825, 1st Floor, Sector 22-B, Chandigarh. Sir, It is submitted that I, Rewa Bagri, wife of Balwinder Singh and Harpreet Kamal Singh son of Late Shri Sardool Singh are residents of 279, Aekam Farm, Nada Road, Nayagaon, District S.A.S. Nagar. On 10th May 2009, Smt. Santosh Jain, wife of Late Shri Sita Ram Jain, Vikram Jain and Sunny Jain, sons of Late Shri Sita Ram Jain, came to my house at Farm, who struck deal of Ist Floor of House No. 1171, Sector 22-B, for Rs. 35 lacs, the earnest money of which was settled for Rs. 22,00,000/-. Rupees Eight lacs vide draft No. 244898 dated 5.5.2009 and Rupees Two lacs in cash were paid to them at my house at Aekam Farm, Nada Road, Nayagaon, District S.A.S. Nagar. The time for execution of sale deed was fixed within three months but these persons, Smt. Santosh Jain, Vikram Jain and Sunny Jain, kept on making excuses in relation to sale deed. We have requested these people to execute the sale deed on various occasion. These people have defrauded us for Rs. 22 lacs. The copies of the drafts are enclosed, while registering the case against them legal action be taken. Yours faithfully Sd/- Rewa Bagri w/o Sh. Balwinder Singh, R/o 275, Aekam Farm, Nada Road Nayagaon, District SAS Nagar. Mobile No. 981507861. Sd/- Harpreet Kamal Singh, s/o Late Shri Sardool Singh, Mobile No. 9872333999, Dated 17.9.2012".

3. Learned senior counsel appearing on behalf of the petitioners submits that the petitioners belong to a well reputed

business family and are having their business of wool and garments at various places at Chandigarh. The petitioners in the present case have been falsely implicated at the instance of respondent No. 4, who is a senior police officer of Punjab Police and entire controversy revolves around him, his family members and close friends. Learned senior counsel further submits that the petitioners alongwith their three other brothers were owners in possession of House No. 1825, Sector 22-B, Chandigarh whereas the mother of the petitioners was also having 50% share in House No. 1171, Sector 22-B, Chandigarh. Mother of the petitioners Smt. Swarn Lata Jain wife of Rattan Lal Jain (now deceased) and real uncle of the petitioners namely late Shri Sita Ram Jain (now deceased) were the joint owners of House No. 1171, Sector 22-B, Chandigarh to the extent of 50% each. The ground floor of the said house was in possession of the mother of the petitioners, whereas first floor was occupied by family of late Shri Sita Ram Jain and top floor was in possession of both the families to the extent of ½ share.

4. Since, the brothers wanted to live in the same house, a family settlement was arrived at between the two family members, i.e., the petitioners and their brothers on the one hand and legal heirs of late Sita Ram Jain on the other hand, vide which, 30% share of Santosh Jain widow of Sita Ram Jain in House No. 1171 Sector 22-B, Chandigarh was exchanged in lieu of 50% share of House No. 1825, Sector 22-B Chandigarh and the said settlement deed dated

02.06.2010 (Annexure P-1) was a registered document. The balance 20% share of House No. 1171 Sector 22-B, Chandigarh was sold by Sunny Jain son of late Shri Sita Ram Jain in favour of Sarit Kumar, which was also taken by the petitioners and their brothers from Sarit Kumar by way of an agreement dated 12.08.2010 (Annexure P-2). Thus, the petitioners` became owners in possession to the extent of 100% share in House No. 1171 Sector 22-B, Chandigarh.

5. At this stage, it came to the notice of the petitioners that regarding 30% share of House No. 1171 Sector 22-B, Chandigarh, an agreement to sell was allegedly produced by respondents No. 2 and 3 before the Estate Officer, Chandigarh. On the strength of this agreement to sell (Annexure P-3), which was allegedly executed on 10.05.2009, the respondents No. 2 and 3 lodged the FIR (Annexure P-4) by alleging that in spite of agreement to sell, Smt. Santosh Jain had backed out of the bargaining and had defrauded respondents No. 2 and 3 for a sum of Rs. 22 lacs. Learned senior counsel further submits that from the perusal of annexure P-4, it becomes clear that the allegations were levelled only against Santosh Jain, Vikram Jain and Sunny Jain and there is not even a whisper in the FIR as regards to any transaction with the petitioners or they had any knowledge of the agreement to sell. Learned senior counsel further submits that even an proper and actual remedy, which could be available to the respondents No. 2 and 3 was under the provisions of the Specific

Relief Act and the same was not availed by them. Even at the stage of registration of the FIR, limitation period provided under the provisions of the Limitation Act had itself expired and this clearly suggests that the FIR was lodged only to pressurize the legal heirs of late Sita Ram Jain. Not only this, the property in question is situated in Chandigarh but the FIR was registered at SAS Nagar, Mohali as respondent No. 4 was at the relevant time posted as Superintendent of Police (Detective), SAS Nagar, Mohali. Learned senior counsel further submits that a civil dispute had been wrongly converted into a criminal offence by the police at the behest of respondent No. 4. Not only this, the FIR has been lodged at such a belated stage, when a remedy under civil law was barred by limitation and the FIR was registered at SAS Nagar, Mohali, illegally. Still further, the petitioners were wrongly involved at a later stage by the police without any evidence against them.

6. On the other hand, learned State counsel assisted by learned counsel for the respondents have vehemently opposed the submissions made by the petitioners on the ground that the petitioners and the other accused had cheated the complainant to the tune of Rs. 22 lacs. The legal heirs of Sita Ram Jain had entered into an agreement to sell with the complainant side and now the petitioners in collusion with them had grabbed the entire property illegally.

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

8. The Hon'ble Supreme Court has held in the matter of ***Mohd. Ibrahim Vs. State of Bihar (2009) 8 SCC 751*** as under:-

> *"19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived*
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> *(i) to deliver any property to any person, or*
>
> *(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).*
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> *20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.*
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> *21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first*

appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

A clarification

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

24. The term "fraud" is not defined in the Code. The dictionary definition of "fraud" is "deliberate deception, treachery or cheating intended to gain advantage". section 17 of the Contract Act, 1872 defines "fraud" with reference to a party to a contract.

27. The term "fraudulently" is mostly used with the term "dishonestly" which is defined in Section 24 as follows: "24. `Dishonestly'.-Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing `dishonestly'."

28 [Ed.: Para 28 corrected vide Official Corrigendum No. F.3/Ed.B.J./149/2009 dated 6-10-2009.]. To "defraud" or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

(i) Fraudulent removal or concealment of property (Sections 206, 421 and 424).

(ii) Fraudulent claim to property to prevent seizure (Section 207).

(iii) Fraudulent suffering or obtaining a decree (Sections 208 and 210).

(iv) Fraudulent possession/delivery of counterfeit coin (Sections 239, 240, 242 and 243).

(v) Fraudulent alteration/diminishing weight of coin (Sections 246 to 253).

(vi) Fraudulent acts relating to stamps (Sections 255 to 261).

(vii) Fraudulent use of false instrument/weight/measure (Sections 264 to 266).

(viii) Cheating (Sections 415 to 420).

(ix) Fraudulent prevention of debt being available to creditors (Section 422).

(x) Fraudulent execution of deed of transfer containing false statement of consideration (Section 423).

(xi) Forgery making or executing a false document (Sections 463 to 471 and 474).

(xii) Fraudulent cancellation/destruction of valuable security, etc. (Section 477).

(xiii) Fraudulently going through marriage ceremony (Section 496).

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

Section 504 of the Penal Code

29. The allegations in the complaint do not also make out the ingredients of an offence under Section 504 of the Penal Code. Section 504 refers to intentional insult with intent to provoke breach of peace.

The allegation of the complainant is that when he enquired with Accused 1 and 2 about the sale deeds, they asserted that they will obtain possession of land under the sale deeds and he can do whatever he wants. The statement attributed to Appellants 1 and 2, it cannot be said to amount to an "insult with intent to provoke breach of peace". The statement attributed to the accused, even if it was true, was merely a statement referring to the consequence of execution of the sale deeds by the first appellant in favour of the second appellant.

Conclusion

30. The averments in the complaint if assumed to be true, do not make out any offence under Sections 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under Section 341 and causing hurt under Section 323 IPC."

9. In the matter of ***Paramjeet Batra Vs. State of Uttrakhand (2013) 11 SCC 673,*** the Hon'ble Supreme Court of India has held as under:-

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

10. In the matter of ***Inder Mohan Goswami Vs. State of Uttranchal (2007) 12 SCC 1: (2008) 1 SCC (Crl.) 259,*** the Hon'ble Supreme Court has held as follows:-

"25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In ***Connelly v. Director of Public Prosecutions [1964 AC 1254 : (1964) 2 WLR 1145 : (1964) 2 All ER 401 (HL)]*** *Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in* ***Director of Public Prosecutions v. Humphrys [1977 AC 1 : (1976) 2 WLR 857 : (1976) 2 All ER 497 (HL)]*** *stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the Judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.*

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46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under section 482 CrPC, 1973 though wide has to be exercised sparingly, *carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained."*

16. In view of the above discussion and the facts and circumstances of the case, we are of the view that none of the offences for which the appellants are summoned, is made out from the complaint and material on record. We further find that it is nothing but abuse of process of law on the part of the complainant to implicate the appellants in a criminal case after a period of twelve years of execution of registered sale deeds in question, who is neither party to the sale deeds nor a member of the Society. Therefore, we allow the appeal and set aside the orders passed by the High Court and that of the courts below. Accordingly, the order passed by the Magistrate summoning the appellants in the criminal complaint filed by Respondent 1, in respect of the offences punishable under Sections 406, 409 and 420 IPC, also stands quashed."

11. In the present case also, it is apparent that an agreement to sell was executed by the legal heirs of late Shri Sita Ram Jain in favour of the complainants. However, no civil proceedings were initiated by the complainants and after the expiry period for filing civil remedy, the complainant side got the present FIR registered. Still further, the property in the present case was situated at Chandigarh and police at SAS Nagar Mohali had no territorial jurisdiction over the matter. However, for the reasons best known to the complainants,

they chose to initiate the criminal prosecution at SAS Nagar, Mohali, where the respondent No. 4 was posted as Superintendent of Police (Detective) SAS Nagar. Rewa Devi, complainant, is wife of respondent No. 4 and it seems that the criminal prosecution was launched only to victimize and pressurize the petitioners and their co-accused and the entire idea seems to convert the civil dispute into a criminal offence.

12. The law is well settled that the criminal Courts are not meant to be used for settling the scores or pressurize the parties to settle the disputes. The complaint in question on the basis of which, the FIR (Annexure P-4) was filed after the expiry of the period of limitation for filing a civil suit. Thus, allowing the proceeding to continue at this stage, would be an abuse of the process of the Court.

13. Consequently, the petition is allowed and the FIR No. 27 dated 19.03.2013 (Annexure P-4) registered under Sections 406, 420 and 120-B IPC at Police Station Nayagaon, District SAS Nagar, Mohali (Annexure P-1) and all other consequential proceedings arising therefrom are ordered to be quashed against the petitioners.

14. Pending applications, if any, also stand disposed off, accordingly.

29.07.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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