

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

**CRM-M No. 32262 of 2020 (O&M)
Date of Decision: 15.02.2024**

Pardeep Kumar and others

..... Petitioners

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Kamaldip Singh Sidhu, Advocate, for the petitioners.

Mr. Siddharath Sandhu, Assistant Advocate General, Punjab
for respondent No. 1.

None for respondent No. 2.

HARKESH MANUJA, J. (ORAL)

The petitioners, by way of present petition filed under Section 482 of the Code of Criminal Procedure, seek quashing of the FIR No. 85 dated 24.05.2019, under Sections 420 & 120-B of IPC and Section 82 of Registration Act, 1908, registered at Police Station Tibba, District Police Commissionerate Ludhiana, and all the consequential proceedings arising therefrom, wherein he has been implicated with the allegations of having sold the land more than his share. Relevant extract of the allegations leveled in the FIR against the petitioners are re-produced hereunder:-

“ Subject: Application against (1) Mona Aggarwal wife of Navneet Aggarwal (2) Navneet Aggarwal son of Vinod Aggarwal both residents of Village Ayoli Kalan, South City, Ludhiana (3) Pardeep Kumar son of Devi Diyal resident of H.No. 685, Gali No.3, Harcharan Nagar, Ludhiana for conniving with concerned Halqa Patwari and for manipulating the revenue records by making excess area of their ownership with an intent to usurp the property of the applicant and for causing fraud with the applicant. Sir, the applicant submits as under: (1) Amarjit Singh son of late Sh.

Gurbaksh Singh is resident of Villa No.2, Kotali Home West, Barewal, District Ludhiana. (2) That the applicant had purchased property measuring 6 Kanal 6 Marla in the name of his wife Smt Harpreet Kaur comprised Khasra in 31//11/1, 20, 32//6/2, 7/1, 15, as per Khatta No.207/212 as per jamabandi for the year 2001-2002 in the area of Village Jamalpur Awana Hadbast No. 177 Tehsil and District Ludhiana vide separate sale deeds from Kanta Rani wife of Raghunath Dass and Balram Kumar son of Sh. Chuni Lal vide sale deed bearing No.7596 dated 26.07.2007 and No.5782 dated 28.06.2007. After the purchase of the aforesaid property, the mutation was also entered in the name of Smt. Harpreet Kaur and has been approved. After the purchase of the aforesaid property, wife of the applicant namely Harpreet Kaur is owner in possession. (3) That the aforesaid accused persons in connivance with the Halqa Patwari have fraudulently got the land measuring 1346 sq. yards entered in their name in the revenue record which was belonging to the wife of the applicant namely Harpreet Kaur and vide sale deed bearing No. 19087 dated 08.02.2016 have sold the same in favour of the Alepine Garment Pvt. Ltd. through its director Pardeep Kumar accused No. 3.”

[2] During pendency of the present petition, the investigation was concluded and the final report was filed, however, the charges are yet to be framed.

[3] Impugning the registration of FIR (*supra*) as well as the filing of final report, learned counsel for the petitioners submits that in the given facts no offence was made out as complainant-Amarjit Singh himself being a power of attorney holder of the original owner of the land in question, namely, Balram Kumar, sold 4 kanal 5 marlas out of the same khasra numbers / same khatta vide two different sale deeds dated 07.10.2009 &

07.07.2011 in favour of Mona Aggarwal and Navneet Aggarwal (petitioner Nos. 2 & 3 respectively) and thus having sold 1346 square yards out of the same, in favour of Pardeep Kumar (petitioner No. 1), vide sale deed dated 08.02.2016 by petitioner Nos. 1 & 2 was not more than their share. Learned counsel further submits that no doubt, there was some mistake committed by the revenue authorities, while preparing jamabandi pertaining to the land in question, as such immediately upon coming to know about the same, the petitioners represented the revenue authorities for cancellation of the sale deed dated 08.02.2016 besides filing of a ***Civil Suit No. 1058 of 2019***, instituted on 05.02.2019, ***titled “M/s. Capricon Alloys Pvt. Ltd. and another Versus M/s. Alepine Garments Pvt. Ltd. and another”***, for the purpose of seeking declaration *qua* the sale deed dated 08.02.2016 and the same was decreed on 05.10.2019 (Annexure P-8) nullifying the sale dated 08.02.2016 and thus, there was no intention on the part of the petitioners to play any kind of fraud with the complainant, therefore, *prima facie*, no offence was made out against them.

[4] On the other hand, learned State Counsel vehemently opposes the prayer made herein, while submitting that the present is a clear-cut case of fraud wherein the petitioners initially wanted to deceive the complainant, however, once a complaint was filed, the petitioners, while intending to remit their mistake, filed the civil suit just to avoid the consequences of fraud.

[5] No one has chosen to appear on behalf of respondent No. 2-complainant (Amarjit Singh) despite service.

[6] I have heard learned counsel for the parties and gone through

the paper-book.

[7] A perusal of the FIR shows that the allegations levelled against the petitioners was of having sold 1346 square yards of land in excess to their share in the joint property. The case set up by the petitioners is that the sale deed dated 08.02.2016 was extended petitioners No.2 & 3 in favour of petitioner No.1, on account of some bonafide error made to the revenue entries and the moment this fact came to their notice, an application seeking cancellation of the said deed was presented to the Sub Registrar, besides filing of a suit for declaration qua the same and the said suit was decreed vide judgment and decree dated 05.10.2019. In fact from the contents of FIR, it could not be made out as to how the complainant- respondent No.2 was dishonestly induced in order to deceive him to sell the land in question. Relevant para-4 of the said judgment is re-produced hereunder:-

*“ 4. In view of the statements suffered by the defendants as well as the plaintiffs which are also signed by their counsel respectively, the present suit is allowed and decreed for the relief of declaration and permanent injunction against the defendants and consent decree of declaration and permanent injunction against the defendants are hereby passed in the manner that defendants are hereby **that sale deed bearing Wasika No. 19087 dated 08.02.2016 for the land measuring 1346 Sq. yards bearing Khasra No. 31//11/1, 20, 32//6/2, 7/1, 15 Khata No. 235/239 as per jamabandi for the year 2011-2012 situated at Village Jamalpur, Abadi known as Preet Nagar, Hadbast No. 177, Tehsil and District Ludhiana is illegal, null and void and has been executed excess to the share owned by the plaintiffs and is liable to be set aside. And for further declaration that the mutation no. 21698 entered and sanctioned on the basis of aforesaid sale deed is also illegal, null and is liable to be set-aside and for permanent injunction***

restraining the defendants from alienating, selling or creating any charge over the suit property on the basis of oral and documentary evidence. However, this judgment and decree is only meant to be operative against the defendant and same is not binding upon any third person who is not a party to the suit and further the same is not applicable upon any proceedings initiated by any Bank against the suit property. Parties to bear their own costs. Decree sheet be prepared accordingly. File be consigned to the record room, Ludhiana after due compliance.”

[8] Even, the Hon’ble Supreme Court in case of **“*Usha Chakraborty and another Versus State of West Bengal and another*”** reported as ***AIR 2023 SC 688***, held that criminal proceedings can be quashed in exercise of powers under Section 482 Cr.P.C. when it is found that the attempt was to give a “cloak of criminal offence” to a dispute which is essentially of civil nature. Relevant para Nos. 5.1, 5.2 & 11 of the said judgment are re-produced hereunder:-

“ 5.1 In *Paramjeet Batra v. State of Uttarakhand & Ors.*, this Court held:-

“12. While exercising its jurisdiction under Section 482 of the Code of 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 the 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.”

5.2 In Vesa Holdings Private Limited and Anr. v. State of Kerala and Ors., it was held that: -

“13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.”

11. *In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has*

filed the pending title suit in the year 2015 , he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April, 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of the school and also the trust, would only support the said conclusion. For all these reasons, we are of the considered view that this case invites invocation of the power under Section 482 Cr.P.C. to quash the FIR registered based on the direction of the Magistrate Court in the afore-stated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the appellants in the aforesaid circumstances would result in abuse of the process of Court and also in miscarriage of justice. ”

[9] Once, the grievance of respondent No. 2 –complainant stands redressed by cancellation of the sale deed dated 08.02.2016 besides he not having even chosen to appear before this Court so as to contest this petition, no useful purpose is going to be served as the continuation of proceedings, arising out of the FIR in question in the given facts would amount to total misuse of the process of law especially when no plea has been set up against the petitioner of having colluded with the revenue authorities in getting the records forged for the purpose of executing the sale deed dated 08.02.2016. Equally important, nothing has been brought on record to show that any action was initiated against the revenue officials about the mistake in the records which itself reflects that the same is a bonafide error; the parties being co-sharers and the land being joint. The dispute in hand is thus purely

of a civil nature, arising out of some sale transactions from the joint property among the co-sharers and the same already stands nullified.

[10] Resultantly, in view of the discussion made hereinabove, in order to do substantial justice, the petition is **allowed** and the FIR in question as well as all subsequent proceedings arising therefrom are hereby quashed *qua* the petitioners.

February 15, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>