

IN THE HIGH COURT OF PUNJAB ANND HARYANA
CHANDIGARH

CRM-M-47261-2023
Date of Decision: 24.01.2024

DILBER SINGH AND ANOTHER

.....Petitioners

versus

POOJA SYAL AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Satish Kumar Saini, Special Power of Attorney
of the petitioner, in-person.

HARPREET SINGH BRAR J. (Oral)

1. The petitioners have approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of the interim order dated **09.11.2022 (Annexure P-1)** along with all consequential proceedings and directions thereof, passed by learned Judicial Magistrate Ist Class, Mohali in complaint case No. COMI/19/2019 dated 26.02.2019 filed under Section- 190 read with Section-200 of Cr.P.C disclosing criminal offences punishable under Sections 419, 420, 406, 409, 423, 465, 467, 468, 471, 120-B and other relevant sections of Indian Penal Code.

FACTUAL BACKGROUND

2. Between 22.10.2013 and 13.01.2014, GMADA issued 3 Letters of Intents (LOIs) in name of the father of the petitioners Sh. Mahinder Singh regarding 5 residential plots under Land-Pooling Scheme. On 29.09.2017, Sh. Mahinder Singh died testate and intimation regarding his death was conveyed in writing to GMADA by the petitioners. Despite the said intimation, respondent-accused officers of GMADA in connivance with the private respondent-accused persons continued to issue LOIs in the name of deceased father of the petitioners

but never dispatched the same to the petitioners or their family. Instead, respondent no.1, the then Estate Officer/In-charge Officer GMADA retained the said LOIs under mutual conspiracy with other respondents. Although the said LOIs were issued on 21.12.2017, two sale agreements were forged in back dates of 13.09.2017 and 25.09.2017 with dishonest intent to get the said property illegally transferred in name of the private respondents. Similarly, two more LOIs were issued on 02.02.2018 qua two commercial plots which were illegally handed over by the respondent officers of GMADA to respondent no.6 Binder Singh and two more back dated sale agreements of 07.07.2017 and 22.09.2017 were forged with a similar intent. Then on 07.05.2018, one plot was illegally transferred by GMADA in the name of respondent no.2 on the basis of forged documents including two notary attested affidavits/undertakings both dated 06.04.2018 of the deceased father of the petitioners, who had already expired on 29.09.2017. The said illegal transfer was carried on by the accused officers of GMADA even though Death Intimation letter was duly endorsed within records of GMADA on 05.12.2017 already.

CONTENTIONS

3. Learned SPA appearing in-person for the petitioners inter alia contends that the impugned order dated 09.11.2022 is illegal, arbitrary and unsustainable in the eyes of the law as the learned trial Court showed ignorance in following the legal provisions mandated under Section 202 Cr.P.C. It is further submitted that since the learned trial Court had already followed the option of inquiring into the case itself, it could not have, at the same time, used the second option provided under Section 202(1) Cr.P.C for directing the investigation by a police officer. It is further contended that the learned trial Court had already postponed the issuance of process on 27.02.2019 (Annexure P-2) after recording entire preliminary evidence

on behalf of the petitioners and directions to consider summoning of the respondents-accused were already issued on 02.09.2021 (Annexure P-4).

4. Learned SPA for the petitioner vociferously contends that since the correct present addresses of the concerned respondents were already placed on record before the learned trial Court where all the said accused were shown to be residing within the jurisdiction of the learned trial Court, the provisions of Section 202(1) Cr.P.C for directing investigation by the police could not have been invoked. It is further submitted that the learned trial Court ought to have decided the application filed by the petitioners for placing on record the amended title in the above-mentioned complaint before jumping to call investigation by the police as if the concerned respondents-accused were not residing within its jurisdiction. Further, to support his contentions, reliance is placed on decisions of Hon'ble Supreme Court in case of '*Vijay Dhanuka vs. Najima Mamtaj, 2014(14) SCC 638*' & "*Abhijit Pawar vs. Hemant Madhukar Nimbalkar, 2017(3) SCC 528* as well as the judgement of this Court in '*Sanjay Singh vs. Bikram Singh Majithia, 2021(1) RCR(Crl.) 271*.

OBSERVATION AND ANALYSIS

5. Sections 200 and 202 Cr.P.C. which have bearing on the question raised in the present petition read as under:

“200. Examination of complainant. – A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

202. Postponement of issue of process.—*(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*

Provided that no such direction for investigation shall be made—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer; he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

6. After a careful examination of the above-mentioned provisions as well as the cases relied upon by the petitioner, this Court finds that the impugned order passed by the learned Magistrate is well within the parameters of law. In the present case, there appears to be no contradiction in recording preliminary evidence of the complainant by the learned Magistrate as per section 200 Cr.P.C and the impugned order seeking report from the local police concerned under Section 202 Cr.P.C. It was rather necessary for the learned Magistrate to seek the report under Section 202 Cr.P.C in regard to the respondents concerned, who at the time of filing of complaint were residing outside its jurisdiction as the inquiry under Section 202 is intended to prevent the issue of process in the complaint which is either false or vexatious or intended only to harass such a person. Hence, the impugned order passed by the learned trial Court appears to be a meritorious one and does not warrant any interference by this Court.

CONCLUSION

7. In view of the above discussion, the present petition stands dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

24.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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