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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47887-2023

Date of decision: 29.01.2024

Dr. Sham Lal Thukral

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.K. Singla, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court by way of filing the present petition under Section 482 Code of Criminal Procedure,1973 (hereinafter ‘Cr.P.C.’) for quashing of FIR No. 147 dated 27.07.2023 under Section 420 of the IPC registered at Police Station Canal Colony Bathinda, District Bathinda (Annexure P-19) and all consequential proceedings.

FACTUAL BACKGROUND

2. Briefly, the facts are that the petitioner entered into an agreement to sell (Annexure P-1) with respondent no. 3 for sale of his residential plot (plot no. 96 measuring 500 square yards) situated at Co-

operative Housing Complex House Fed Colony, Bathinda at the rate of Rs. 8000/- per square yard. Respondent no. 3 issued a cheque no. 014605 dated 10.05.2008 for Rs. 10,00,000/- in favour of the petitioner in furtherance of the same. The date for execution of sale deed was fixed as 24.08.2008 subject to payment of the remainder of the sale consideration by respondent no. 3. Since 24.08.2008 was a Sunday, the petitioner appeared before the Sub Registrar, Bathinda on 25.08.2008 for execution of the said sale deed. The presence of the petitioner was marked and an attested affidavit was issued by Sub Registrar, Bathinda (Annexure P-2). However, respondent no. 3 did not have the requisite funds to pay the remaining sale consideration. Thereafter, on 16.03.2010, respondent no. 3 instituted a suit for specific performance and permanent injunction against the petitioner before the learned Civil Judge (Senior Division), Bathinda. Vide order dated 25.05.2010, learned Civil Judge vacated the ex parte stay order and framed issues (Annexure P-5/A).

3. Since the petitioner was in dire need of money to pay remaining installments of SCO No. 23, Ganpati Enclave, Dabwali Road, Bathinda and meet expenses of his daughter's marriage, he sold the plot in question to one Narinder Kumar Verma in the name of his close relative- Seema Rani. House Fed Colony Bathinda transferred the aforesaid plot in the name of Seema Rani vide order dated 23.05.2011 (Annexure P-6). Seema Rani was also impleaded as a necessary party in the plaint on an application made to that effect by respondent no.3. After considering all the material available on record, learned Civil Judge dismissed the suit of respondent no. 3 vide judgment and decree dated 29.04.2019 (Annexure P-12).

4. Aggrieved by the same, respondent no. 3 preferred an appeal before learned District Judge, Bathinda which was entrusted to learned Additional District Judge, Bathinda and is now pending for 17.10.2023. On 07.06.2023, respondent no. 3 moved an application (Annexure P-14) before Inspector General/ ADGP, Bathinda Range alleging that the petitioner and Seema Rani have defrauded him by not executing the sale deed in his favour. The IG/ADGP, Bathinda Range marked the same for inquiry by respondent no. 2 who constituted a Special Investigation Team consisting of SP, City, DSP, City Bathinda and SHO, PS Canal Colony, Bathinda, headed by SP, City. The petitioner appeared before SP, City and on 03.07.2023 made a representation requesting him to not proceed with the inquiry till the culmination of civil appeal pending before learned Additional District Judge, Bathinda.

5. The petitioner filed CRM-M-36541-2023 wherein this Court, vide order dated 28.07.2023 (Annexure P-18), issued notice of motion and directed that petitioner be not summoned to the police station without prior permission of this Court. However, on directions of respondent no. 2, the instant FIR was lodged against the petitioner. The petitioner was called to the police station and threatened to be arrested. The petitioner filed an application before the learned Additional Sessions Judge, Bathinda requesting for concession of anticipatory bail which was allowed vide order dated 04.08.2023 (Annexure P-22) which was made absolute vide order dated 08.09.2023 (Annexure P-23).

CONTENTIONS

6. Learned counsel for the petitioner *inter alia* contends that the

present FIR is lodged on the ground that the petitioner did not appear before Chairman, Bathinda Housing Complex for execution of the sale deed in favour of respondent no. 3 even though he had paid Rs. 10,00,000/- as earnest money. It is further alleged that the petitioner kept on delaying the transfer of the plot in question on one pretext or another and defrauded him by transferring the same to Seema Rani. However, the petitioner had in fact appeared before the Sub Registrar, Bathinda and District Manager, House Fed Colony Bathinda and his presence is also duly marked. Moreover, respondent no. 3 failed to mention in his application before IG/ ADGP, Bathinda Ranget that he had filed a suit for specific performance and permanent injunction before learned Civil Judge (Senior Division), Bathinda which was dismissed vide judgment and decree dated 29.04.2019 (Annexure P-12), the appeal against which is pending before learned Additional District Judge, Bathinda.

7. Learned counsel for the petitioners further contends that offence under Sections 420 of IPC is not made out and the instant dispute is purely civil in nature which has been given a criminal colour by respondent no. 3, in connivance with the police, in exercise of his political influence. There is an inordinate delay of 15 years in filing of the present complaint before IG/ADGP, Bathinda Range which makes it clear that it is only done to build pressure on the petitioner to execute the sale deed in favour of respondent no. 3.

8. Per contra learned State counsel contends that the registration of FIR is justified since petitioner had received Rs.10,00,000/- from respondent no. 3 as earnest money but failed to execute the sale deed in his favour and

instead, the disputed plot was sold to Seema Rani.

OBSERVATIONS AND ANALYSIS

9. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the civil remedy as available to respondent no. 3 has already been initiated by him by filing a civil suit for specific performance of agreement to sell (Annexure P-1) which has been duly dismissed by learned Civil Judge (Senior Division), Bathinda vide judgment and decree dated 29.04.2019 (Annexure P-12) and an appeal against the same is pending before learned Additional District Judge, Bathinda. Further, the petitioner had appeared before the Sub Registrar, Bathinda on 25.08.2008 for execution of the said sale deed which is corroborated by the attested affidavit issued by Sub Registrar, Bathinda. (Annexure P-2). Respondent no. 3 did not have the requisite funds to pay the remaining sale consideration.

10. It is settled law that the recourse to inherent power of under Section 482 Cr.P.C. can be adopted to ensure that criminal proceedings are not allowed to be used as weapons of harassment. Undoubtedly, the existence of pending civil suit between the petitioner and respondent no. 3 before a competent civil Court makes it clear that the current dispute is essentially of civil nature and respondent no. 3 has already taken recourse to the civil remedy available. In the considered opinion of this Court, the criminal proceedings launched by respondent no. 3 cannot be sustained in the facts and circumstances of the present case. Reliance in this regard can be place on the judgment rendered by this Court in **Charanjit Sharma and another v. State of Punjab and others 2023(4)Law Herald 3146.**

11. Further, the sole test to ascertain whether the initiation of criminal proceedings in a cheating case is merited is to see whether a culpable intention can be attributed to the accused since the very beginning. The dishonest and fraudulent intention at the inception is an essential ingredient of the offence. A mere breach of contract or agreement, in absence of a dishonest intention from the beginning of the transaction, cannot give rise to criminal proceedings. Unless and until the dishonest intention right at the beginning for the performance or the entrustment in terms of any transaction of civil nature is present, the criminal proceedings are totally unwarranted as in the present case, and the remedy lies in civil law.

12. A two Judge bench of the Hon'ble Supreme Court in **M/s Indian Oil Corporation v. M/s NEPC India (2006) 6 SCC 736**, speaking through Justice R.V. Raveendran, observed as follows:

“10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.”

13. Further, a perusal of the short reply dated 17.01.2024 filed by SSP, Bathinda indicates that a cancellation report is recommended by the SI Bhag Param Paras Singh, SHO, Police Station Canal Colony, Bathinda and a departmental inquiry has been initiated against him. The relevant part of is reproduced below:

“7. That SHO, Police Station Canal Colony, Bathinda submitted that as the matter has already been adjudicated by the Court of learned Civil Judge (Senior Division), Bathinda and the claim of the complainant Surjit Singh has been dismissed, so it is not advisable to carry on the criminal proceedings on the same facts as the matter is of civil nature, so a cancellation report is to be prepared and submitted in the competent court of law.

8. That SHO, Police Station Canal Colony, Bathinda submitted his detailed report no.1464/5A dated 25.12.2023 and the said report has been verified by Deputy Superintendent of Police. City-I. Bathinda vide his report no.3123/5A dated 25.12.2023 and he has also agreed with the recommendation made by SHO, Police Station Canal Colony, Bathinda to the effect that a cancellation report is to be prepared and submitted in the present case.

9. That in compliance of order dated 22.09.2023 SHO, Police Station Canal Colony, Bathinda has not attended this Hon'ble High Court as observation has been made by this Hon'ble High Court in the order dated 28.11.2023, a report has been submitted by Superintendent of Police (Investigation), Bathinda and departmental inquiry has been recommended to be initiated against SI Bhag Param Paras Singh, SHO, Police Station Canal Colony, Bathinda. A departmental inquiry has been initiated against SHO, Police Station Canal Colony, Bathinda vide office order no.370-75/Supdt. Dated 09.01.2024 and departmental inquiry has been entrusted to Parvesh Chopra, Deputy Superintendent of Police, Homicide and Forensic, Bathinda.”

CONCLUSION

14. In view of the discussion above, this Court finds that the issue involved between the parties is purely of civil nature. Respondent no. 3 has already approached the jurisdictional civil Court by instituting a civil suit in this regard which has been dismissed and an appeal against the same is still pending. It is a fit case to invoke the wholesome power of this Court under Section 482 of CrPC to prevent respondent No. 3 from abusing the process

of law and use criminal proceedings as a weapon of harassment against the petitioners.

15. Consequently, the present petition is allowed and FIR No. 147 dated 27.07.2023 under Section 420 of the IPC registered at Police Station Canal Colony Bathinda, District Bathinda (Annexure P-19) and all consequential proceedings arising therefrom are quashed qua the petitioner.

16. The SSP, Bathinda is directed to submit a compliance report with regard to the departmental inquiry initiated against SHO, Police Station Canal Colony, Bathinda.

17. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

29.01.2024
Ajay Goswami

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