

**228 IN THE HIGH COURT OF PUNJAB ANND HARYANA
CHANDIGARH**

**CRM-M-57215-2018 (O&M)
Date of Decision: 16.02.2024**

KRISHAN KUMAR AND OTHERS

.....Petitioners

versus

TULSI DEVI

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Kumar Yadav, Advocate
for the petitioners.

Mr. J.P Sharma, Advocate
for the respondent.

HARPREET SINGH BRAR J. (Oral)

1. The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of the impugned order dated 09.10.2018 (Annexure P-4) passed by learned Additional Sessions Judge, Narnaul vide which the order dated 15.09.2016 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Narnaul while directing the same to restore the case and pass a summoning order.

FACTUAL MATRIX

2. The facts, in brief, are that allegedly, petitioner no.1 acting as the General Power of Attorney of petitioner no.2 (owner in possession), executed an agreement to sell on 24.12.2014 qua land measuring 18 marlas for a sale consideration of Rs.6,37,500/-. Out of the aforesaid amount, Rs. 4,96,000/- was paid by the respondent as earnest money to petitioner no.1 and 2 and the balance amount of Rs. 1,41,500/- was agreed to be paid on the date of execution of the aforesaid sale deed, i.e., 24.12.2105. When on 24.12.2015 the respondent requested petitioner no.1 and 2 to execute the agreement to sell dated 24.12.2014, the

petitioner no.1 and 2 assured that they would be present at the office of the Sub-Registrar but did not come. The respondent remained present at the office with the balance sale consideration but to no avail. When the respondent made an inquiry on her own and found out that instead of executing the sale deed in favour of the respondent who was willing to pay the balance sale consideration, the petitioners being members of the same family, in connivance with each other and in order to cause wrongful loss to the respondent, transferred the aforesaid land in the name of petitioner no.3 by way of sale deed dated 21.08.2015 and even the necessary mutation was also sanctioned on 24.09.2015 in favour of petitioner no.3.

3. Thereupon, the respondent filed a suit for specific performance against the petitioners and in alternative, prayed for recovery of an amount of Rs.6,37,500/- and also challenged the sale deed dated 21.08.2015. The learned Civil Court, Narnaul, decreed the same vide judgement and decree dated 25.08.2017 (Annexure P-1) in favour of the respondent for recovery of Rs.4,96,000/- along with interest @ 8% per annum from 25.12.2014 till realization within 3 months from petitioner no.2, after observing that even though Rs.4,96,000/- was paid out of Rs.6,37,500/- by the respondent but the possession was not handed over to her, thereby, pointing towards the fact that the aforesaid transaction was for the security of loan as alleged by the petitioners-defendants before the said Court.

4. Thereafter, the respondent filed a complaint case against the petitioners under Sections 419, 420, 467, 468, 471 and 120-B IPC. The learned trial Court dismissed the same vide order dated 15.09.2016 (Annexure P-2) after observing that the respondent-complainant failed to point out the manner in which the petitioners cheated her or if any wrongful loss to her or any wrongful gain to the petitioners-accused had been caused in the said transaction.

5. Aggrieved by the decision of the learned trial Court, the respondent preferred a revision petition against the same before the learned Additional Sessions Judge, Narnaul which was allowed vide order dated 09.10.2108 (annexure P-4) and the learned trial Court was directed to restore the said case and to pass summoning order in accordance with law. The learned Revisional Court recorded that the petitioners-accused had an intention to cheat and defraud the respondent-complainant and as the petitioners had also usurped the earnest money, Section 420 and 406 IPC would be attracted. Aggrieved by the aforesaid order, the petitioners have approached this Court by way of the present petition.

CONTENTIONS

6. The learned counsel for the petitioners *inter alia* contends that a criminal colour is being given to a civil dispute by the respondent as it was only a dispute of civil nature between the parties regarding agreement to sell and a suit for specific performance has already been decreed in her favour qua the same dispute. In order to support this argument, learned counsel for the petitioners places reliance on the judgement passed by the Hon'ble Supreme Court in ***Murari Lal Gupta vs. Gopi Singh, 2005(13) SCC 699*** and the judgements of Co-ordinate bench in ***Mohinder Kaur vs. State of Punjab and another, 2007(2) RCR(Crl.) 540; Arun Kumar and another vs. State of Punjab and another, 2006(3) RCR(Crl.) 793; Manisha Goyal vs. State of Punjab, 2006(1) RCR(Crl.) 162***. It is further submitted that even the learned Civil Court had observed in its judgement dated 25.08.2017 (Annexure P-1) that the agreement to sell was written in lieu of a security loan.

7. Learned counsel for the respondent at the outset submits that the order passed by the learned Revisional Court is valid and legal and has been passed after due consideration of the facts as well as law. It is further contended that the whole

transaction was carried out by the petitioners in connivance with each other with intention to cheat and defraud the respondent in order to cause wrongful loss to her and therefore, the plea taken by the petitioners that it is a civil dispute is unfounded and wrong.

ANALYSIS & OBSERVATION

8. After giving my thoughtful consideration to the submissions put forth by all sides and on careful perusal of the material on record, this Court is inclined to accept the prayer made by the petitioners.

9. The civil remedy as available to the respondent has already been availed by her by filing a civil suit for specific performance of agreement to sell dated 24.12.2014. A perusal of the judgement dated 25.08.2017 (Annexure P-1) passed by the learned Civil Court indicates that there was a specific recital in the agreement to sell that on failure of the petitioners to execute the sale deed on the date fixed, the respondent would have the right to get the sale deed executed and registered before the Court of law.

10. Furthermore, this Court finds that the culpable intention to cheat from the very inception is completely missing in the present case. Therefore, the above-mentioned impugned order is liable to be quashed. A similar view was taken by a two Judge bench of the Hon'ble Supreme Court in **Vesa Holdings P. Ltd. v. State of Kerala (2015) 8 SCC 293**. Speaking through Justice C. Nagappa, it was observed as follows:

“ 9. 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 I.P.C. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. 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 court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.”

11. Pertinently, a two Judge bench of the Hon’ble Supreme Court in **G. Sagar Suri v. State of U.P. (2000) 2 SCC 636**, speaking through Justice D.P. Wadhwa, has made the following observation:

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

12. Similarly, 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 through criminal prosecution should be deprecated and discouraged.”

13. Recently, a two Judge bench of the Hon’ble Supreme Court in **Kunti and Another v. State of U.P. Criminal Appeal No. 1380 of 2023** decided on 03.05.2023, speaking through Justice Sanjay Karol, observed as follows:

*“9. However, we do not find the need to engage with the grounds as urged, because a perusal of the record in no uncertain terms reflects the dispute as being of a civil nature. This court recently, in **Sarabjit Kaur v. State of Punjab and Anr.**, observed that “A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation*

of failure to keep up promise will not be enough to initiate criminal proceedings.”

10. A two judge bench of this Court in ARCI v. Nimra Cerglass Technics (P) Ltd. 2, while deliberating upon the difference between mere breach of contract and the offence of cheating, observed that the distinction depends upon the intention of the accused at the time of the alleged incident. If dishonest 1 2023 SCC OnLine 210 2 (2016) 1 SCC 3485 intention on part of the accused can be established at the of time of entering into the transaction with the complainant, then criminal liability would be attached.

11. In Vijay Kumar Ghai v. State of W.B (2022) 7 SCC 124, one of us, (Krishna Murari J.,) observed in reference to earlier decisions as under:

“24. This Court in G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri) 513] observed that it is the duty and obligation of the criminal court to exercise deal of caution in issuing the process, particularly when matters are essentially of civil nature.

25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corpn. [Indian Oil Corpn. v. NEPC Indian Ltd. (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188] noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that: (Indian Oil Corpn. Case [Indian Oil Corpn. v. NEPC Indian

Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188] SCC p. 749, para 13).

“13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

12. Having regard to the above well-established principles and also noting that the present dispute is entirely with respect to property and more particularly buying and selling thereof, it cannot be doubted that a criminal hue has been unjustifiably lent to a civil natured issued.”

CONCLUSION

14. For the aforesaid reasons, this Court finds that the issue involved between the parties is purely of civil nature. The respondent has already approached the jurisdictional civil Court by instituting the civil suit in this regard which has been decreed in her favour. It is a fit case to invoke the wholesome power of this Court under Section 482 of CrPC to prevent the respondent from abusing the process of

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

15. In view of the above discussion, the present petition is allowed and the impugned order dated 09.10.2018(Annexure P-4) is set aside. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

16.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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