IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-58885-2022
Reserved on: 05.01.2024
Pronounced on: 11.01.2024
2024: PHHC: 008298

****

SATISH KUMAR JAIN

. . . . Petitioner

Vs.

State of Punjab

. . . . Respondent

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. P.S. Ahluwalia, Advocate, with
Mr. Keerat Dhillon, Advocate, for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

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<u>DEEPAK GUPTA, J.</u>

By way of this petition filed under Section 482 CrPC, petitioner prays for quashing of FIR No. 79 dated 16.07.2020 (Annexure P1), registered at Police Station City Zira, District Ferozepur, for offences punishable under Sections 406, 420, 467, 468, 471 and 120B IPC along with supplementary challan (Annexure P2) and all the consequential proceedings emanating therefrom qua the petitioner.

<u>Background of the Matter (as per status report of the respondents)</u>:

2.1 In CA No.6572 of 2004 titled ***"PGF Ltd. Vs. Union of India",*** (2015) 13 SCC 50, Hon'ble Supreme Court vide order dated 12.03.2013, in order to ensure that none of the investors of PGF Ltd., who had parted with their valuable savings & earnings by falling prey to promise extended to them, are deprived of their investments, had directed the investigation of the matter to CBI, Department of Income Tax as well as SEBI regarding the alleged malpractices being done by PGF Ltd.

2.2 Pursuant to above order, FIR No. RC.BD-1/ 2014/ E/ 0004/ BS &FC, New Delhi dated 19.02.2014 was registered against M/s PACL Ltd. and PGF Ltd. and its directors under Sections 409, 411, 420, 467, 468, 471, 120B IPC. Raids were conducted in February 2014 in the offices of M/s PACL Ltd., in which CBI seized original sale/title deeds of the properties belonging to M/s PACL Ltd. and its group/associate companies, situated all over India. A list of properties was sent by the CBI to Government of Punjab, so as to direct the Registrar concerned in the State to obtain prior approval of the Sub Registrar or the Deputy Commissioner before registering any sale deed, GPA, lease deed and conveyance deed etc. pertaining to the properties belonging to M/s PACL Ltd. Subsequently, Government of Punjab also issued a letter dated 30.06.2015 to all the Deputy Commissioners in this regard.

2.3 Further, in CA No.13301 of 2015, Hon'ble Supreme Court vide its order dated 02.02.2016, constituted a committee under the Chairmanship of former Chief Justice of India, Justice (Retd.) R.M. Lodha, so as to dispose of the properties and the lands of M/s PACL Ltd. to return the money of the investors. Said committee was asked to collect relevant record including the title deeds from the CBI. Hon'ble Supreme Court vide it's another order dated 25.07.2016 stayed the sale/transfer/alienation of all the properties of the aforesaid companies.

State Case (as per status report of the respondents):

3.1 One Pradeep Singh of District Patiala, made a complaint to DGP, Punjab, alleging that they had been cheated by the persons, who were disposing of the properties belonging to M/s PACL Ltd. fraudulently by preparing forged and fabricated documents in violation of the order dated 25.07.2016 of Hon'ble Supreme Court.

3.2 Inquiry into the said complaint was conducted by DSP, Zira, Ferozepur and based on his report, FIR No. 79 dated 16.07.2020 (Annexure P1) was registered at Police Station City Zira, District Ferozepur, for offences punishable under Sections 406, 420, 467, 468, 471 and 120B IPC. Special Investigation Teams were constituted from time to time. Later on, one Mandeep Kajla submitted a representation dated 10.02.2022 before Director, Bureau of Investigation mentioning the details of various properties of M/s PACL Ltd., which were being illegally alienated in violation of the orders of Hon'ble Supreme Court of India. The property associated with the petitioner was found to be mentioned in the said representation.

3.3 On verification of the representation, it was revealed that there was a common land in village Chhatt, Sub-Tehsil, Zirakpur, Tehsil Derabassi, District SAS Nagar, of M/s PACL Ltd. with petitioner Satish Kumar Jain in the name of M/s Malwa Projects Pvt. Ltd. and seven other persons/farmers. NOC was required to be obtained from Justice R.M. Lodha Committee with regard to transfer of this property, as per an entry made in the revenue record (Copy Annexure R7/T). However, the said property had not been partitioned with equitable distribution as per the market value. It was found that petitioner-Satish Kumar Jain, as director of M/s Malwa Project Ltd. had filed application under Section 111 of the Punjab Land Revenue Act before the Revenue Authorities for partition of the land situated in village Chatt. That land was in joint possession of M/s PACL Ltd., M/s Malwa Project Ltd. and 7 others and that in collusion with the Revenue Authorities and others, petitioner got the partition conducted illegally, vide order dated 24.07.2017 in violation of the orders of Hon'ble Supreme Court. It was revealed that a major portion of the frontage of the property had been transferred to the company of the petitioner notwithstanding the fact that entry was made in the revenue record to the effect that no property belonging to M/s PACL Ltd. could have been partitioned without express consent of Justice (Retd.) R.M. Lodha committee constituted by Hon'ble Supreme Court and that said committee was not made party to the partition proceedings.

3.4 Petitioner was joined in the investigation. Sh. Paramjeet Singh, Naib Tehsildar, who passed the order of partition has also been nominated as an accused. On conclusion of investigation, various supplementary chargesheets, including Chargesheet N: 6 qua petition and others, have already been filed before the competent court.

<u>Petitioner's Contentions:</u>

4.1 It is contended by the petitioner that neither he has been arrayed as an accused in the FIR nor any overt act has been ascribed to him. A supplementary challan under Section 173(8) CrPC has been filed by the Investigating Agency, specifying the role of the petitioner, as per which, it had come to light during investigation by the Special Investigating Team that M/s PACL Pvt. Ltd. had purchased certain land in Village Chhatt, Tehsil Zirakpur, District SAS Nagar, vide document No.6929 dated 11.12.2009 through Nathu Ram etc. comprised in Khasra Nos. 696 (4-0) and 697 (4-0), out of which some land has been transferred in the name of Malwa Project Pvt. Ltd., of which petitioner is a Director, in case file No.54/ Partition dated 24.07.2017. As per the Investigating Agency, stay had been granted by Hon'ble Supreme Court of India in CA No.13301 of 2015 regarding sale, transfer, alienation by M/s PACL Pvt. Ltd. and its subsidiary companies and that partition had been intentionally done without making Lodha Committee as a party. It has also been alleged that petitioner had purchased land vide Wasika No.2538 dated 11.07.2016; Wasika No.1463 dated 26.05.2016 and Wasika No.1500 dated 27.05.2016, in none of which, there is mention of Khasra No.696, as the said Khasra was with M/s PACL Pvt. Ltd. and that petitioner has constructed flats by taking unauthorized possession of the said land from M/s PACL Pvt. Ltd. in collusion with others.

4.2 Ld. counsel contends that as per the case put forth by the Investigating Agency, multiple transactions had taken place across the State of Punjab, whereby properties belonging to M/s PACL Pvt. Ltd., directly or through its associate companies, were transferred by the accused in contravention of the orders passed by Hon'ble Supreme Court.

4.3 Ld. counsel contends that as far as the petitioner is concerned, the solitary interface *viz-a-vis* M/s PACL Pvt. Ltd. is that petitioner as Director of Malwa Project Pvt. Ltd. got wrongly partition done in respect of the property situated in Village Chatt, Tehsil Zirakpur, District SAS Nagar, in partition case No.54/2017, in which Malwa Project Pvt. Ltd. and M/s PACL Pvt. Ltd. were co-sharers.

4.4 Ld. counsel contends that as per the supplementary challan, two set of allegations have been leveled against the petitioner in respect of aforesaid partition proceedings pertaining to Khasra No.696 and some part of Khasra No.697. First allegation is that partition of Khasra No.696 and some part of Khasra No.697 could have not taken place, as the same is in violation of the orders passed by Hon'ble Supreme Court, whereby M/s PACL Pvt. Ltd. and its subsidiaries companies are restrained from any sale, transfer or alienation and that partition has been got done wrongly by intentionally not impleading Lodha Commission as a party. Second allegation is that company of the petitioner purchased land in Village Chhatt, by way of three documents executed in 2016, but petitioner had never purchased any land pertaining to Khasra No.696 and so, could not have asked for partition of the said land.

4.5 Ld. counsel contends that chronological sequence of events and certain factual foundations would belie both the allegations, on which basis, the investigating agency has nominated the petitioner as an accused in the instant case.

4.6 Regarding the first allegation, it is contended by ld. counsel that it pertains to partition of Khasra No.696 through file No.54 decided on 24.04.2017 (wrongly mentioned in the final report as 24.07.2017). By pointing out towards Annexure P3, it is contended by ld. counsel that application for seeking partition of its share in joint land was moved by the petitioner on 19.07.2016, whereas the order, whereby M/s PACL Pvt. Ltd.

and associate companies were restrained from selling its land has been passed only thereafter i.e., on 25.07.2016, as is evident from Annexure P4. Besides, petitioner was neither the party to the petition before Hon'ble Supreme Court nor there is anything to indicate that revenue authorities were intimated about the orders so passed by Hon'ble Supreme Court till August/ September 2016. Not only this, there was no stay for seeking partition of the joint land owned by any person in co-sharership with M/s PACL Ltd.

4.7 Ld. counsel contends further that as far as second set of allegations is concerned, it is factually incorrect, because Wasika No.1463 dated 25.06.2016, which forms part of the supplementary challan filed by the investigating agency itself would reveal that petitioner had purchased land comprised in Khasra No.696 as is evident from Annexure P5.

4.8 Ld. counsel contends further that entire set of allegations as leveled by the Investigating Agency would not disclose commission of any criminal offence, so as to justify the petitioner to face the rigmarole of criminal trial. Even if, it be assumed that there is violation of stay order of any kind having been passed by any Court of law that would not *ipso facto* result in invocation of offences of cheating or/and forgery, as has been done in this case. Ld. counsel contends that petitioner neither purchased nor sold any land belonging to M/s PACL Pvt. Ltd. or its associate company. Simply because petitioner and M/s PACL Pvt. Ltd. were co-sharers in certain pieces of land and petitioner moved an application seeking partition of his share, would not attract any penal provision because at no point of time any order was passed by Hon'ble Supreme Court, whereby partition of land was restrained.

4.9 Ld. counsel contends further that since there was no stay of any kind with respect to the partition of land, so initiation of criminal proceedings against the petitioner is misconceived. The application for partition had been moved by the petitioner even before the order of Hon'ble Supreme Court came into existence.

4.10 Ld. counsel contends further that taking the best case of the investigating agency at its face value to the effect that that partition of land has been effected wrongly, it would not indicate commission of any criminal offence because the order of partition is a quasi-judicial order, which has not been reversed till date by any forum and that investigating agency cannot be allowed to sit in appeal over a quasi-judicial order so passed. Still further, it is contended that investigating agency intentionally suppressed the fact about partition case No.55, in which M/s PACL Pvt. Ltd. got possession of 6 bigha 18 biswas of land after partition of the land, though said M/s PACL Pvt. Ltd. was nowhere in possession of the whole khewat prior to the conclusion of the partition proceedings.

4.11 Ld. counsel contends further that regarding the same partition proceedings, earlier an FIR No.139 dated 22.10.2019 under Sections 406, 420 and 120B IPC was registered at PS Chamkaur Sahib, District Roopnagar, wherein clean chit was given to the petitioner as evident from the enquiry report (Annexure P9).

4.12 Still further, there is no individual allegation against the petitioner, who is sought to be fastened with the criminal liability on the basis of being the director of M/s Malwa Project Pvt. Ltd., which runs contrary to the well-established principle of corporation criminal liability, as a director cannot be held vicariously liable for the acts or omission of the company. For this, ld. counsel has relied upon ***M/S Thermax Ltd.& Ors*** vs ***K.M.Johny & Ors, 2011 (4) RCR (Criminal) 409***.

4.13 Ld. counsel further contends that there is no allegation of forgery of any document and therefore, provisions of Section 467, 468 and 471 IPC would have no applicability qua the petitioner. There is no allegation of any impersonation having been done by any person so as to justify the invocation of Section 419 IPC. Ld. counsel contends that even Sections 406 and 420 IPC have been invoked wrongly, as both the offences are antitheses to each other. Moreover, there was no entrustment of any property to the petitioner by the complainant or any other person so as to attract Section 406 IPC. Similarly, there has been no misrepresentation of the complainant or any other person so as to justify the invocation of Section 420 IPC.

4.14 Ld. counsel contends further that earlier CRM-M-10120-2022 and CRM-M-13082-2022 were filed by the petitioner, in which action of the investigating agency for registering the fresh FIR against the petitioner was challenged, though he had been found innocent in earlier FIR No.139 dated 22.10.2019 under Sections 406, 420 and 120-B IPC registered at PS Chamkaur Sahib, District Roopnagar, and that both those petitions were dismissed after observing that there was no investigation of illegal mining and felling of the trees in the previous FIR and therefore, it cannot be said that present FIR is the re-investigation of the already investigated allegations.

4.15 With all the aforesaid submissions, prayer is made for quashing the FIR in question along with supplementary challan (Annexure P2) and the consequential proceedings emanating therefrom qua the petitioner.

Contentions by Ld. State Counsel:

5. Stand of the respondent State has already been mentioned in earlier part of this order. Basing his arguments on the reply filed by way of affidavit of Sh. Slamudin, Deputy Superintendent of Police, Economic Offences Wing, Vigilance Bureau of Punjab, a member of the Special Investigating Team, it is contended by Ld. State counsel that despite stay order of Hon'ble Supreme Court, petitioner in connivance with the co-accused including the revenue officer, got the joint land partitioned, without impleading Lodha Committee as a party and got major portion of the frontage of the property, thus, depriving the investors of M/s PACL Ltd to get back their money through Lodha Committee and thus, he cheated the investors. It is contended that Sh. Paramjeet Singh, Naib Tehsildar, who passed the order of partition has also been nominated as an accused. It is further submitted that after thorough investigation, final report has already been filed and that disputed questions of facts cannot be considered in quashing petition. With these submissions, prayer is made for dismissal of the petition.

6. I have considered submissions of both the sides and have appraised the record carefully.

Court Analysis/Findings:

Undisputed Facts:

7. As is borne out from the record, M/s PACL Ltd. was one of the co-sharers in the land measuring 15 Bigha 9 Biswas 1 Biswasi situated in village Chhat, Tehsil Zirakpur, District SAS Nagar by virtue of a sale deed bearing Wasika No.6929 dated 11.12.2009 (Annexure P6). The said land, in which M/s PACL Ltd. was the co-sharer, also comprised Khasra No.696 (4-0) and 697 (4-0), apart from the other land. M/s Malwa Project Ltd., of which petitioner is the Director, had also purchased share in the aforesaid land by virtue of registered sale deed bearing Wasika No.1463 dated 26.05.2016 (Annexure P5). The land so purchased, also included Khasra No.696 (4-0) and 697 (4-0), apart from other land, in which share had been purchased by M/s Malwa Project Ltd. It is not disputed that apart from M/s PACL Ltd. and M/s Malwa Project Ltd., some other farmers were also the co-sharers in the aforesaid land.

8. Annexure P3 is copy of an order dated 24.04.2017 passed by Assistant Collector Ist Grade, Zirakpur, revealing that M/s Malwa Projects Pvt. Ltd. through its Director Satish Kumar Jain (petitioner) had filed that application under Section 111 of the Punjab Land Revenue Act for partitioning of his share in the joint land held by the said company with M/s PACL Ltd. and other co-sharers/farmers. This application for partition had been moved on 19.07.2016, as is evident from Annexure P3. M/s PACL Ltd. as well as other co-sharers were impleaded as respondents. Necessary order of partition was passed by the revenue authority concerned.

9. It is revealed further that M/s PACL Ltd. was alleged to have embezzled funds of investors under the garb of purchasing properties, which led to the filing of the complaints and multiple litigations/FIRs, which went up to Hon'ble Supreme Court. A committee under the Chairmanship of Hon'ble Justice (Retd.) R.M. Lodha was constituted so that sale proceeds of the properties held by M/s PACL Ltd. could be paid to the investors, as per order dated 02.02.2016.

What Hon'ble Supreme Court restrained and who were restrained:

10. It is further revealed that vide an order dated 25.07.2016 (Annexure P4), Hon'ble Supreme Court in IA No.10 of 2016 in Civil Appeal No. 13301 of 2015, passed the following order: -

> *"Heard the learned counsel.*
>
> *Prayer in terms of para (a) is granted, which reads thus:-*
>
> *'(a) Pass an order directing that PACL Ltd. and/or its Directors/ Promoters/ agents/ employees/ group and/ or associates companies be restrained from in any manner selling/transferring/ alienating any of the properties wherein PACL has, in any manner, a right/interest situated either within or outside India"*

11. It emerges from the aforesaid order dated 25.07.2016:

(i) It restrained M/s PACL Ltd. and/its directors, promoters, agents, employees, groups or associate companies,

*from selling/transferring/alienating in any manner any of the property, in which M/s PACL Ltd. had a right/interest situated either within or outside India.

What is important to notice is that restrain order is against M/s PACL Ltd. and/or its directors/promoters etc. and not against any other private person;

(ii) The aforesaid order is a restrain with regard to sell/ transfer/alienate any of the properties, in which M/s PACL Ltd. had a right/interest. There is no restrain order regarding partitioning of any property, in which M/s PACL Ltd. has a share. More particularly, a person (not a party to the proceedings before Hon'ble Supreme Court), who is a co-sharer in some property, wherein M/s PACL Ltd. is also a co-sharer, has not been restrained in any manner, not to seek partition of his share in the joint property held with M/s PACL Ltd.

12. Although the terms 'sale', 'partition', 'alienation' and 'transfer', are related but they have distinct meanings in different context.

'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

'Partition' in general refers to the act of dividing or splitting something into parts. In context of real estate, partition can also refer to the division of property among co-owners, typically through legal process.

On the other hand, 'alienation' generally refers to the act of transferring ownership or rights from one party to another. It can involve selling, gifting or otherwise transferring property. In the legal terms, 'alienation' can also refer to transfer of property or transfer of certain rights, such as alienation of assets.

'Transfer' is a broad term that encompasses the act of moving something from one place, person or situation to another. In legal and real estate context, 'transfer' often refers to conveyance or passing of ownership or rights from one entity to another.

While 'partition' can be a form of transfer or alienation, not all transfers or alienations involve partition. Partition typically implies addition or separation, while alienation and transfer are broader terms that can include various methods of changing ownership or control.

13. In the present case, as has been observed earlier, vide its order dated 25.07.2016, Hon'ble Supreme restrained M/s PACL Pvt. Ltd. and its directors/promoters etc. from alienating/selling/transferring its landholdings. The purpose was that the assets can be used for refunding the money of investors. It does not appear to be the intention of Hon'ble Supreme Court to restrain private party, particularly a person, who was having certain land in co-sharership with M/s PACL Pvt. Ltd., to restrain such a person from seeking partition of his share.

14. The contention of ld. State counsel to the effect that Justice R.M. Lodha Committee was not made a party to the partition proceedings, has no merit. In fact, vide an order dated 02.05.2016 passed by Hon'ble Supreme Court in IA No.5 of 2016 in Civil Appeal No.13301 of 2015 (Annexure P3), by way of interim relief, prayer (a) was granted, which reads as under: -

> *"(a) pass an order directing that no Civil Court or other Authority or Forum shall entertain a suit or other proceeding in respect of any claim or related matters (s) pertaining to PACL. Ltd. and/or its Directors/Promoters /Group Companies/entities /Individuals etc., arraying therein as parties/ Defendants /Respondents the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd.), and/or its Chairman*

and/or its Members and/or the Securities and Exchange Board of India and further no Injunction shall be granted by any Court or other Authority or Forum in respect of any action taken or to be taken by the Justice (Retd.) R.M. Lodha: Committee (In the matter of PACL Ltd.) and/or its Chairman and/or its Members and/or the Securities and Exchange Board of India, with respect to claims and/or for matter (s) relating to investments/deposits etc. in /with PACL Ltd. or its Directors /Promoters / Group Companies/Entitles /Individuals etc."

15. It is, thus, clear that any Civil Court or authority is restrained from entertaining suit or proceedings in respect of any claim pertaining to M/s PACL Pvt. Ltd. or its directors/promoters etc. by arraying therein parties/ defendants/ respondents, Justice (Retd.) R.M. Lodha Committee or its Chairman/Members etc.

16. Besides, petitioner was not a party to the proceedings before the Hon'ble Supreme Court and so, could not have knowledge of the aforesaid order, as has already been noticed. It has also been noticed earlier that restrain order dated 25.07.2016 was passed by Hon'ble Supreme Court subsequent to the partition proceedings, which were initiated by the petitioner on 19.07.2016.

17. Still further, it is not the case of the Investigating Agency that M/s PACL Pvt. Ltd. did not get any land to the extent of its share in the partition proceedings initiated by the petitioner. The allegation of the Investigating Agency is that M/s PACL Pvt. Ltd. got land of lesser value, whereas the major frontage went to the company of the petitioner. Let it be assumed to be so, the remedy lies to file appeal against the partition order but by no stretch of imagination, penal provisions can be invoked.

18. The contention of ld. State counsel that the specific entry was made in the revenue record Annexure R-7/T to the effect that 'No objection certificate' was required to be obtained from Justice R.M. Lodha committee with regard to transfer of the property belonging to M/s PACL Ltd., has also no merit. Perusal of the copy of Jamabandi for the year 2018-19 (Annexure R7/T) relied by ld. State counsel, would reveal that in its remarks column, there is an entry to the effect: -

> *"Mutation No.3083 partition.*
>
> *Report No.434 Government order dated 26.08.2016.*
>
> *Abovesaid order along with one copy of CBI letter No.2190 RC 8D/ 2014/E /0004/CExx/FC/New Delhi dated 08.09.2016 regarding ownership of M/s PACL Ltd. as well as its connected companies is being sent and it has been directed that keeping in view the interest of the investors, before the transfer of their lands, approval be taken from Justice R.M. Lodha committee"*

19. The aforesaid entry would make it clear that it is based upon a letter dated 08.09.2016 of CBI. The exact date of making this entry is not mentioned, but since it is based on the letter dated 08.09.2016 of the letter of the CBI, so, it is obvious that it must have been made after 08.09.2016 i.e., after the initiation of the partition proceedings by the petitioner, which had already been moved by the petitioner on 19.07.2016 as evident from Annexure P3. Thus, it cannot be contended by the State that petitioner was aware about the entry in the revenue record so as to obtain 'no objection certificate' from Justice R.M. Lodha committee. Besides, by seeking partition, petitioner was not asking for transfer of land belonging to M/s PACL Ltd. He was only asking for separating his share from the joint land.

Whether contempt made out:

20. Proceeding ahead, without holding so and taking the case of the petitioner at its worst, at the most, it may be argued that he has committed contempt of the order dated 25.7.2016 of Hon’ble Supreme Court, though petitioner was not a party to the proceedings nor the restrain order pertains to the petitioner, as has already been noticed, still the remedy was to approach Hon’ble Supreme Court for initiating contempt proceedings.

21. It will not be out of place to mention that some similarly situated persons, as the complainant of this case, initiated contempt proceedings before this Court for willfully disobeying and not complying the orders dated 02.05.2016 and 25.07.2016 passed by Hon’ble Supreme Court in Civil Appeal No.13301 of 2015, as has already been reproduced hereinabove. That COCP-2342-2023 was dismissed by a Coordinate bench of this Court vide order dated 18.10.2023, after holding as under: -

> *“After hearing learned counsel for the parties, this Court finds no merit in the present petition for the following reasons:-*
>
> *(a) The partition proceedings were initiated by the land owners Surjit Singh and Sukhdev Singh and they are not party to the litigation before the Hon'ble Supreme Court. The proceedings were initiated in the year 2016 prior to passing of the order of the Hon'ble Supreme Court and a perusal of the order show that after serving the respondents, i.e., the petitioners, ex-parte proceedings of partition were completed.*
>
> *Therefore, there is nothing on record to suggest that the order of the Hon'ble Supreme Court was brought to the notice of the Naib Tehsildar/ Assistant Collector 2nd Grade, Zirakpur,*
>
> *(b) Even the order dated 25.7.2016 passed by the Hon'ble Supreme Court, as per the interpretation of the petitioner that it restricts the right of joint*

share holder from seeking the partition of the land under the Punjab Land Revenue Act, cannot be accepted. Moreover, the order of partition is already under challenge before the appellate Court who is seized of the matter and will decide whether the order of the Hon'ble Supreme Court was served on the Naib Tehsildar before passing of order;

(c) The letter issued by the Committee on 13.9.2022 is after five years of passing of the order of partition and cannot be interpreted in a manner that there is violation of the order of the Hon'ble Supreme Court;

(d) There is no explanation as to why the contempt proceedings are not initiated before the Hon'ble Supreme Court that too within the prescribed period of limitation under the Contempt of Courts Act.

*In view of the judgments of the Hon'ble Supreme Court passed in **M/s Rajureshwar's** case (supra) and **Vitusah Oberoi's** case (supra), this Court is otherwise is not competent to entertain the contempt petition of an order passed by the Hon'ble Supreme Court.*

Accordingly, this petition is dismissed."

22. Abovesaid view taken by co-ordinate bench of this Court in COCP-2342-2023, is squarely applicable to the facts of present case also. Instead of initiating contempt proceedings in accordance with law, complainant preferred to lodge a criminal case.

Whether any of the offences, for which prosecution of petitioner is sought, is made out from record:

23. Assuming for the sake of arguments that petitioner was bound by the order dated 25.7.2016 of Hon'ble Supreme Court, question is whether by alleged violation of the order, he committed any criminal offence. Petitioner is sought to be prosecuted for offences under Sections 406, 419, 420, 467, 468, 471/120B IPC.

24. Section 406 IPC reads as under:

> ***"406. Punishment for criminal breach of trust**. - Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both*."

25. Criminal breach of trust is defined under Sectio 405 IPC, which reads as under:

> ***"405. Criminal breach of trust**. - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*

26. As evident from above definition, the basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly i) <u>entrustment of property</u>; and ii) <u>misappropriation</u> of it or converting it to his own use to the detriment of the persons, who entrusted it.

27. In this case, ld. State counsel is unable to convince this Court as to what property was ever entrusted by the complainant or anybody else to the petitioner, regarding which criminal breach of trust has been committed. It is his own share in the joint property, which petitioner sought to be portioned by moving application for partition before competent authority. Simply because petitioner was a co-sharer in a joint land held with M/s PACL Pvt. Ltd. and the petitioner sought partition of his share, will not mean that he was entrusted with the property or that by initiating

the partition proceedings, he committed criminal breach of trust. As such, Section 406 IPC is not at all attracted.

28. Section 419 IPC provides punishment for cheating by personation; whereas, this term is defined in Section 416 IPC. These sections read as under:

> ***"Section 419. Punishment for cheating by personation. -****Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both"*
>
> ***Section 416. Cheating by personation. -*** *A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is.*
>
> *Explanation.—The offence is committed whether the individual personated is a real or imaginary person."*

29. In the present case, there is no allegation whatsoever against the petitioner to the effect that he impersonated anybody in any manner whatsoever, so as to invoke Section 419 IPC. As such, Section 419 IPC is not attracted to the case qua the petitioner.

30. Petitioner is also sought to be prosecuted for the offences under Sections 420, 467, 468, 471 read with 120B IPC. The relevant provisions are as under:—

> ***"420. Cheating and dishonestly inducing delivery of property****.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with*

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

465. Punishment for forgery.—*Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

467. Forgery of valuable security, will, etc.—*Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

468. Forgery for purpose of cheating*.— Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

471. Using as genuine a forged document or electronic record*.— Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record."*

31. As far as the offence under Section 420 of the IPC is concerned, in ***International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others Vs. Nimra Cerglass Technics (P) Ltd. and another,*** *2015(4) RCR (Criminal) 883*, the important ingredients to constitute the offence of cheating under Section 420 IPC have been held to be as under: -

> *"The essential ingredients to attract Section 420 IPC are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement."*

32. Cheating is defined under Section 415 IPC, which reads as under:—

> ***415. Cheating.—****Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*
>
> *Explanation.—A dishonest concealment of facts is a deception within the meaning of this section."*

33. Looking at the allegations of the investigating agency, it is not appreciable at all, how the petitioner alleged to have committed the offence of cheating, as there is no allegation that petitioner made false representation to the complainant or anybody else so as to invoke the provisions of Section 420 IPC. None of the ingredients of the offence are present in this case to invoke Section 420 IPC.

34. As far as the offence under Section 465 is concerned, as per Section 465, *"whoever commits forgery shall be punished for the offence under Section 465"*. Forgery is defined under Section 463, which reads as under:—

> ***"463. Forgery.—****Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim*

or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

35. As is evident from the above definition of 'forgery', for committing the offence of forgery, there must be making of a false document with intent to cause damage or injury to the public or to any person. Making the false document is *sine qua* non to constitute the offence of forgery.

36. Making a false document is defined under Section 464 IPC, which read as under:

"Section 464. Making a false document*. - A person is said to make a false document or false electronic record—*

First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason *of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."*

37. In ***Sukhbir Singh Badal vs. Balwant Singh 2023 SCC ONLINE SC 533***, Hon'ble Supreme Court dealt with similar question. Hon'ble Apex Court referred to ***Mohammed Ibrahim vs. State of Bihar (2009) 8 SCC 751,*** wherein while interpreting Sections 464 and 471 IPC and other relevant provisions of IPC, in paragraphs 13 and 14, it was observed and held as under:—

"13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if

(i) *he made or executed a document claiming to be someone else or authorised by someone else; or*

(ii) *he altered or tampered a document; or*

(iii) *he obtained a document by practising deception, or from a person not in control of his senses."*

38. So far as the offences under Sections 467, 468 and 471 IPC are concerned, Section 467 is with respect to forgery of valuable security, Will etc. Section 468 relates to forgery for the purposes of cheating. Section 471 will be applicable in case of using as genuine a forged document.

39. Adverting back to the facts of present case, looking to the allegations in the complaint or the material/evidence collected/recorded during the course of the inquiry/investigation and even assuming the complaint's/investigating agency's averments to be true, the ingredients of the offences punishable under Sections 420, 467, 468, 471 are not at all made out, as Ld. State counsel is unable to point out, as to which of the document has been forged by the petitioner, so as to invoke Section 467, 468 and/or 471 IPC.

40. Pursuant to the partition proceedings initiated by the petitioner, an order has been passed by the revenue authority, which order, by any stretch of imagination, cannot be considered to be a forged document. As already stated, remedy lies to challenge that order by way of appeal before the revenue authorities and not to invoke the penal provisions. There is no allegation that partition order or any other document relied during the partition proceedings by the petitioner is a forged document. As such, Sections 465, 468 and/or 471 IPC have no applicability.

Whether present petition maintainable:

41. As argued by ld. State counsel that petitioner had earlier approached this Court by filing CRM-M-10120-2022 and CRM-M-13082-2022 by claiming that allegations in FIR No.79 dated 16.07.2020 (Annexure P1), registered at Police Station City Zira, District Ferozepur, for offences punishable under Sections 406, 420, 467, 468, 471 and 120B IPC, were the replica of an earlier FIR No.139 dated 22.10.2019 under Sections 406, 420 and 120 IPC, registered at PS Chamkaur Sahib, District Roopnagar, in which petitioner had been found innocent after proper investigation. It had been alleged that registration of the new FIR on the same set of allegations amounted to re-opening of the closed investigation in the garb of the fresh FIR, which is impermissible in law. Those petitions were dismissed by a Coordinate Bench of this Court by common order dated 25.07.2022 (Annexure P10), after observing that there was no investigation of illegal mining and felling of trees in the previous FIR, as was the allegation in the present FIR and therefore, it could not be stated that new FIR was the re-investigation of the already investigated allegations. Ld. State counsel submits that in view of order Annexure P10 of this court in the earlier petition, present petition is not maintainable.

42. In this regard, ld. counsel for the petitioner has rightly drawn attention towards the fact that supplementary challan (Annexure P2) qua the petitioner was filed on 13.10.2022 i.e. after passing of the order dated 25.07.2022 (Annexure P10) in the earlier petitions, and therefore, fresh cause of action arose to the petitioner for challenging the supplementary challan qua him in case FIR No. No.79 dated 16.07.2020 (Annexure P1),

registered at Police Station City Zira, District Ferozepur, for offences punishable under Sections 406, 420, 467, 468, 471 and 120B IPC and in these circumstances, the present petition is maintainable.

43. It is, thus, clear that present petition has been filed so as to challenge the final report under Section 173 CrPC filed against the petitioner on 13.10.2022, giving fresh cause of action to him and as such, the present petition is held to be maintainable.

Parameters for quashing:

44. Having considered all the aspects as per above discussion, whether FIR in question along with supplementary challan qua petitioner, deserve to be quashed. In ***State of Haryana and others Vs. Ch. Bhajan Lal and others" 1992 AIR 604*****,** Hon'ble Supreme Court has laid down the guidelines as to the cases in which High Court can exercise its extraordinary power to quash the FIR under Section 482 Cr.PC. It was held as under: -

> "*8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide of myriad kinds of cases wherein such power should be exercised:*
>
> *"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

45. In the light of aforesaid well settled principles, when the facts of the present case are examined, it is found that this case is covered under guidelines number (a) & (c] of ***Bhajan Lal's case*** **(supra)** and so, the FIR in question deserves to be quashed.

Conclusion:

46. Consequent to the aforesaid discussion, present petition is hereby accepted. FIR No.79 dated 16.07.2020 (Annexure P1), registered at Police Station City Zira, District Ferozepur, for offences punishable under Sections 406, 419, 420, 467, 468, 471 and 120B IPC along with supplementary challan (Annexure P2) and the consequential proceedings emanating therefrom qua the petitioner, are hereby quashed.

(DEEPAK GUPTA)
JUDGE

11.01.2024
Vivek

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? ***Yes***