

2024:PHHC:167694



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117/2 two cases

CRM M-52829 of 2019 (O&M)
Date of Decision: 16.12.2024

(1) Santosh Jain and another ...Petitioners
Versus
State of Punjab and another ... Respondents

CRM M-52678 of 2024 (O&M)

(2) Sweety Jain and another ...Petitioners
Versus
State of Punjab and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Atul Goyal, Advocate
for the petitioners (in both the petitions).

Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. Lakshay Garg, Advocate with
Mr. Simarpreet Singh, Advocate
for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. This order shall dispose off two petitions filed by the petitioners under Section 482 Cr.P.C., i.e., CRM M-52829-2019 titled as “Santosh Jain and another Vs. State of Punjab” and CRM M-52678-2024 titled as “Sweety Jain and another Vs. State of Punjab and another”, with a prayer to quash the FIR No. 117 dated 17.07.2019 under Sections 420, 465, 467, 468, 471 and 120-B

IPC registered at Police Station Punjab Agriculture University (PAU) District Police Commissionerate Ludhiana (Annexure P-1) and all consequential proceedings arising therefrom.

2. These petitions have been filed by Santosh Jain widow of late Krishan Gopal, her son Amit Jain and daughters Sweety Jain and Preeti Jain.

3. The FIR in the present case has been got registered by Tejinder Singh, who claims himself to be the power of attorney of Sukhjeet Singh son of Gurcharan Singh, resident of Canada and the said FIR has been reproduced below:-

“One Complaint bearing No. UID 1504139 dated 11.02.2019 from one Tejinder Singh son of Amar Singh resident of Lalton Kalan, District Ludhiana was received via Post whose contents are as under:

Respected Sir, To Hon'ble Commissioner of Police, Ludhiana

Sub: Complaint against (1) Santokh Jain (2) Amit Jain resident of Hatti Railway Road, Patti District Tarn Taran (3) Sweety Jain daughter of Krishan Gopal wife of Sh. Bhushan Kumar resident of House No. 1120, Purana Bazaar, Ludhiana (4) Preeti Jain daughter of Sh. Naresh Jain resident of Vikas Vihar Colony, Kalka (Haryana) (5) Rakesh Khanna son of Sh. Harbans Lal Khanna resident of New Madhopuri, District Ludhiana (6) Tarsem Kumar Jain resident of House No. 3/61, Street No.3, Near Shivaji Mandir, Ludhiana by hatching a conspiracy with each other and thereby usurping the land of the

complainant by also using the revenue record by forging the same and thereby committing the offences u/s 420/465/467/468/471/120-B IPC.

Respected Sir, I Tajinder Singh son of Amar Singh resident of Lalton Kalan, Ludhiana. I am having the Power of Attorney of Sukhjeet Singh son of Gurcharan Singh who is resident of the Canada and on the basis of the same I am giving the present complaint.

1. That Sukhjeet Singh son of Gurcharan Bingh is the owner in possession of one plot measuring 320 square yards situated in Khasra No. 18/5/3 Khata No. 2588/2814 as mentioned in the Jamabandi for the year 2011-12, Ludhiana and I take care of the said property. The said land was purchased by Gurcharan Singh son of Jagir Singh resident of Village Bagha Khurd vide Sale Deed dated 11.03.1994 vide Wasika No. 33041 from one Randhir Singh son of Santa Singh son of Fateh Singh resident of Village Haibowal Kalan. Copy of the Sale Deed is annexed herewith. After the death of Gurcharan Singh the mutation of the above said land was sanctioned in the name of Sukhjeet Singh son of Gurcharan Singh and the copy of the mutation is also attached herewith.

2. That the above said accused persons want to take possession of our plot forcibly and in this regard we had called at 100 helpline number and also informed at Police Post at Jagatpuri. From here I have come to know that accused persons on the basis of wrong Vasika bearing No. 31/60 dated 05.06.2013 want to take possession of my plot. When I took out the record of their Vasika I came to know that the copy of the Vasika is duly

annexed in the record of the Registrar and the Khasra number mentioned in the same is 18/5/3. They had given a copy in the police station wherein they had changed the Khasra No. 17/3/4 and 18/5/3 by doing cutting. On the basis of the wrong copy of the Vasika, they in connivance with the revenue officials of the Revenue Office have got sanctioned a mutation in their favour and on the basis of this wrong mutation they intend to take possession of my plot. In-fact our ownership is duly recorded in the Revenue Record since 1994. In-fact in their civil case as well they had mentioned the Khasra No. as 18/5/3, whereas neither there is any mention of Khasra No. 17/3/4 in their Agreement to Sell nor they had mentioned Khasra No. 17/3/4 in their Civil Suit. But the accused persons in connivance with each other have done all this so that they may take possession of extra property. From the perusal of the Revenue Record it is clear that no vacant property is available in Khasra number 18/5/3 and for this reason itself they had not annexed any mutation in the civil suit as well. In this way accused persons in connivance with each other, in a pre-planned manner, have committed cheating with the Government and with the Court and by wrongly adding the Khasra No. 17/3/4 have got registered a Sale Deed and the said Sale Deed has also been got executed without any mutation. On the basis of this wrong Sale Deed they intend to take possession of our plot. It is therefore respectfully prayed to you that appropriate action against the accused persons may kindly be taken and a case under section 420/465/467/468/471/120-B

*IPC may kindly be registered and justice be done to us.
Sd/- Tejinder Singh”.*

4. Learned counsel for the petitioners contended that the allegations levelled by the complainant in the present FIR are totally fictitious and baseless and he managed to get the FIR registered by colluding with the local police. It is claimed by the complainant that the land measuring 300 square yards was purchased by Gurcharan Singh father of the complainant from Randhir Singh vide sale deed dated 11.03.1994 whereas the petitioners were claiming themselves to be owners of the said property on the basis of a sale deed bearing Vasika No. 31/60 dated 08.05.2013 and are forcibly trying to take possession of the same. Learned counsel for the petitioners further contended that in fact, the complainant has concealed the material facts and the FIR is based on false and incorrect facts.

5. Learned counsel for the petitioners contended that in fact Mohinder Kaur wife of Randhir Singh executed an agreement to sell dated 22.10.1989 for the sale of land in question, i.e., plot measuring 300 square yards situated in Khasra No. 18/5/3 in Baibowal Kalan, Ludhiana, in favour of Krishan Gopal, i.e., husband of petitioner No. 1 and father of all other petitioners. After execution of the agreement, Mohinder Kaur did not get the sale deed executed in favour of Krishan Gopal, despite the receipt of the sale consideration. Ultimately, Sh. Krishan Gopal filed a civil suit seeking specific performance of the agreement dated 22.10.1989. The suit filed by

Krishan Gopal was dismissed by the Court of Civil Judge, Senior Division, Ludhiana on 15.12.1999. Krishan Gopal, husband of petitioner No. 1 and father of other petitioners preferred an appeal before the District Judge, Ludhiana and vide judgment and decree dated 14.02.2002 (Annexure P-3) suit filed by Krishan Gopal was decreed and the judgment was never challenged before any Court of law. Krishan Gopal filed an execution application before the Executing Court and the Court appointed a Local Commissioner to get the sale deed executed in favour of the decree holder, i.e., Krishan Gopal. During the proceedings, decree holder died and the judgment debtor had already died. Ultimately, the sale deed No. 3160 dated 05.06.2013 was executed in favour of the legal heirs of decree holder, namely, Krishan Gopal, i.e., all the present petitioners of the plot measuring 300 square yards situated in Khasra No.18/5/3 and the copy of the said sale deed has been annexed herewith as annexure P-4. Even, the petitioners made a statement before the Court of Civil Judge (Junior Division) Ludhiana that they had get the possession of the property in question and they had withdrawn the execution petition. Still further, in the year 2016, the copy of the sale deed got misplaced and one DDR dated 21.09.2016 (Annexure P-8) was registered. Consequently, another certified copy was applied at the Office of Sub Registrar, Ludhiana and the same was obtained by the petitioner. Now, it is apparent that the claim of the petitioners is based on the sale deed dated 05.06.2013 (Annexure P-4), which was got

executed by Local Commissioner appointed by the Court, in compliance of a judgment and decree dated 14.02.2002 passed by the Court of Additional District Judge, Ludhiana (Annexure P-3) whereas the complainant himself claiming the ownership of the plot in question on the basis of an alleged sale deed dated 11.03.1994, which was executed by the husband of the judgment debtor, i.e., Mohinder Kaur. Whereas, the petitioners had been declared to be owners in possession of the plot in question by the Civil Court on the basis of an agreement to sell dated 22.10.1989, which was executed in favour of Krishan Gopal, husband of the petitioner No. 1 and father of rest of the petitioners.

6. Learned counsel further contended that the petitioners are the owners in possession of the property measuring 300 square yards as depicted in the site plan situated in Khasra Number 18/5/3. Even, the petitioners had no concern with Khasra Number 17/3/4 and no sale deed pertaining to the said land was executed in favour of the petitioners. Learned counsel further contended that the petitioners are not owners in possession of the plot situated in Khasra Number 17/3/4 and, therefore, there was no question of causing any loss to the complainant. Learned counsel for the petitioner further contended that the petitioners are real owners of the plot of Khasra Number 18/5/3 and said situation is duly reflected in all the original documents and the respondent/complainant had no concern with the

said land. Even, the complainant side wanted to take physical possession of the plot by demolishing the boundry wall but they were stopped by the villagers.

7. Ultimately, the petitioners alongwith their co-sharers had filed a civil suit on 29.01.2019 (Annexure P-9) against the complainant. Still further, vide order dated 31.01.2019, the Court of Civil Judge (Junior Division), Ludhiana, passed an interim injunction in favour of the petitioners/plaintiffs and the complainant/respondent was restrained from interfering in the peaceful possession of the petitioners in any manner. He further contended that the petitioner No. 1 is not maintaining good health and, consequently, the respondent wanted to take forcible possession of the property in question.

8. On the other hand, learnd State counsel assisted by the learned counsel for the complainant vehemently aruged that the petitioners have illegally occupied the plot in question and the sale deed was executed in favour of the complainant prior to the sale deed of the petitioners. The complainant is claiming the ownership on the basis of a sale deed dated 11.03.1994, whereas, the accsued were claiming their ownership wrongly on the basis of a registered sale deed dated 05.06.2013, which was executed after a long period and the petitions deserve to be dismissed by this Court.

9. I have heard learned counsel for the parties and perused the record.

10. The Hon'ble Supreme Court has held in the matter of **Mohd. Ibrahim Vs. State of Bihar (2009) 8 SCC 751** as under:-

"19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so

deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

A clarification

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

24. The term "fraud" is not defined in the Code. The dictionary definition of "fraud" is "deliberate deception, treachery or cheating intended to gain advantage".

section 17 of the Contract Act, 1872 defines "fraud" with reference to a party to a contract.

27. The term "fraudulently" is mostly used with the term "dishonestly" which is defined in Section 24 as follows:

"24. `Dishonestly'.-Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing `dishonestly'."

28 [Ed.: Para 28 corrected vide Official Corrigendum No. F.3/Ed.B.J./149/2009 dated 6-10-2009.]. To "defraud" or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

(i) Fraudulent removal or concealment of property (Sections 206, 421 and 424).

(ii) Fraudulent claim to property to prevent seizure (Section 207).

(iii) Fraudulent suffering or obtaining a decree (Sections 208 and 210).

(iv) Fraudulent possession/delivery of counterfeit coin (Sections 239, 240, 242 and 243).

(v) Fraudulent alteration/diminishing weight of coin (Sections 246 to 253).

(vi) Fraudulent acts relating to stamps (Sections 255 to 261).

(vii) Fraudulent use of false instrument/weight/measure (Sections 264 to 266).

(viii) Cheating (Sections 415 to 420).

(ix) *Fraudulent prevention of debt being available to creditors (Section 422).*

(x) *Fraudulent execution of deed of transfer containing false statement of consideration (Section 423).*

(xi) *Forgery making or executing a false document (Sections 463 to 471 and 474).*

(xii) *Fraudulent cancellation/destruction of valuable security, etc. (Section 477).*

(xiii) *Fraudulently going through marriage ceremony (Section 496).*

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

Section 504 of the Penal Code

29. The allegations in the complaint do not also make out the ingredients of an offence under Section 504 of the Penal Code. Section 504 refers to intentional insult with intent to provoke breach of peace.

The allegation of the complainant is that when he enquired with Accused 1 and 2 about the sale deeds, they asserted that they will obtain possession of land under the sale deeds and he can do whatever he wants. The statement attributed to Appellants 1 and 2, it cannot be said to amount to an "insult with intent to provoke breach of peace". The statement attributed to the accused, even if it was true, was merely a statement referring to the consequence of execution of the sale

deeds by the first appellant in favour of the second appellant.

Conclusion

30. The averments in the complaint if assumed to be true, do not make out any offence under Sections 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under Section 341 and causing hurt under Section 323 IPC."

11. In the matter of ***Paramjeet Batra Vs. State of Uttarakhand (2013) 11 SCC 673***, the Hon'ble Supreme Court of India has held as under:-

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

12. Similar observations have been made by the Hon'ble Supreme Court of India in the matter of ***Uma Shankar Gopalika Vs. State of Bihar (2005) 10 SCC 336.***

13. In the present case also, it is apparent from the allegations levelled by the complainant that a civil wrong has been illegally converted into a criminal offence. From the allegations levelled by the complainant, it is apparent that the complainant is alleging the ownership and possession on the basis of a sale deed dated 11.03.1994 executed by Randhir Singh, husband of judgment debtor, namely, Mohinder Kaur whereas the petitioners have based their whole case on the basis of a sale deed dated 05.03.2013 on the basis of a sale deed got executed by the Civil Court in their favour. Even, the Civil Court decree has attained finality and has never been challenged before any Court of law. Even, the petitioners had not cheated anyone and their sale deed was based on an agreement to sell dated 22.10.1989, which is prior in time. The petitioners had correctly purchased the said land in compliance of the Civil Court judgment and decree dated 14.02.2002 passed by the Court of Additional District Judge, Ludhiana.

14. Apart from that, it is apparent that the complainant and his accomplices were interfering in the peaceful possession of the petitioners. Consequently, the petitioners alongwith other co-sharers had filed a suit for injunction against the complainant on 29.01.2019

and on 31.01.2019, the interim injunction application was decided in favour of the petitioners and the respondent/complainant has been restrained from interfering into the peaceful possession of the plaintiffs, i.e., the petitioners. Thus, it is apparent that a civil dispute has been illegally converted into a criminal case and the dispute was essentially of civil nature between the parties.

15. Consequently, both the petitions are allowed and the FIR No. 117 dated 17.07.2019 under Sections 420, 465, 467, 468, 471 and 120-B IPC registered at Police Station Punjab Agriculture University (PAU) District Police Commissionerate Ludhiana (Annexure P-1) and all other consequential proceedings arising therefrom are ordered to be quashed against the petitioners in both the petitions.

16.12.2024	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No