

(2012) 09 P&H CK 0218

In the Punjab And Haryana At Chandigarh

Case No : CRM No. M. 27800 of 2009 (O and M)

Bagicha Singh @ Bagicha Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 09 P&H CK 0218

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : P.P.S. Duggal, for the Appellant; J.S. Sandhu, AAG, Punjab and Mr. Ajay Kumar, Advocate for Mr. P.S. Jammu, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—Feeling aggrieved against the alleged inaction on the part of police authorities, petitioner has approached this Court by way of instant petition u/s 482 of Code of Criminal Procedure, invoking its inherent jurisdiction for direction to the official respondents, to hand over the enquiry to some independent agency. Learned Counsel for the petitioner, at the very outset, submits that it is not prayer of the petitioner that a criminal case be ordered to be registered against respondent Nos. 5 and 6. He further submits that only prayer of the petitioner was for ordering an enquiry against respondent Nos. 5 and 6.

2. Learned Counsel for the petitioner further submits that the land, which was in possession of the petitioner, as depicted in Annexure P-1, was sold by the petitioner. He fairly concedes that petitioner was not the owner of the land but he sold only the possession thereof, as the land was owned by the provincial government. The further allegation of the petitioner is that he paid Rs.46 lacs to respondent No.5 but without any receipt. Learned Counsel for the petitioner next contended that when the job for which he paid Rs.46 lacs to respondent No.5

was not got done, respondent No.5 issued two cheques in favour of the petitioner, which are appended as Annexure P-4. Both these cheques came to be dishonoured by the bank. However, petitioner did not file any complaint u/s 138 of Negotiable Instruments Act, 1881 (for short 'the Act') against respondent No.5. He also submits that the petitioner could not file the complaint u/s 138 of the Act for the reason that having been returned by the bank, both the cheques in original, were got snatched from the petitioner by respondent No.5, with the help of police officials. Thereafter, he moved a representation dated 14.8.2009, Annexure P-6, before Senior Superintendent of Police, Jalandhar but no action was taken. Having been left with no other option, the petitioner has approached this Court,

3. Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 15.12.2009 of Diljinder Singh Dhillon, Deputy Superintendent of Police, Sub Division Shahkot, District Jalandhar, was filed on behalf of respondent Nos. 1 to 4. Separate replies were filed on behalf of respondent Nos. 5 and 6.

4. Learned Counsel for the State, on instructions from HC Balwinder Singh, Police Station Shahkot, District Jalandhar, submits that

the alleged representation dated 14.8.2009, Annexure P-6, was never received on behalf of the petitioner. He refers to the specific allegations taken in this regard in para 4 of the reply. Thus, he submits that in this view of the matter, the case of the petitioner is based on falsehood and the present petition is liable to be dismissed with heavy costs.

5. Having heard the Learned Counsel for the parties and after going through the record of the case, this Court is of the considered opinion that the present one is not a fit case for exercising the inherent powers u/s 482 Cr.P.C. I say so because the petitioner himself has not approached this Court with clean hands.

6. First of all, admittedly, the petitioner was not owner of the land and he had allegedly sold only the possession thereof to raise the money for handing over the same to respondent No.5. The only argument raised by the Learned Counsel in this regard that it is a general practice in the State of Punjab that possession of land owned by provincial government is being sold, does not appeal to reason at all.

7. Further even if, it is accepted that the petitioner was having sufficient funds at his disposal to pay respondent No.5, he was at liberty to file the complaint u/s 138 of the Act once the cheques issued in his favour vide Annexure P-4, by respondent No.5 were allegedly dishonoured.

8. The next contention raised by the Learned Counsel for the petitioner that he immediately moved Senior Superintendent of Police by way of his representation dated 14.8.2009, Annexure P-6, has been very specifically and strongly denied by the respondents. The averment taken in para 9 of the reply filed on behalf of respondent Nos. 1 to 4 reads as under:-

No application Annexure P-5 dated 14.8.2009 was ever moved to Sr. Superintendent of Police, Jalandhar. Even as per the record of Model Police Station Shah/cot and office of Sr. Superintendent of Police, Jalandhar, no such applications Annexure P3 and P5 were ever received from petitioner. The office of Sr. Superintendent of Police, Jalandhar and Model Police Station Shah/cot have given their certificates in this respect, which are enclosed as Annexure R-1/T and R-2/T.

9. Further in such a situation, the petitioner was not left without remedy. If he chose not to avail his remedy, he is to blame only himself. It is well settled that the inherent powers u/s 482 Cr.P.C. are to be exercised sparingly and with circumspection only in three situations provided u/s 482 itself.

10. After giving thoughtful consideration to the contentions raised by Learned Counsel for the parties and keeping in view the facts and circumstances of the present case, this Court is of the considered view that the present one is a case which is wholly misconceived, bereft of any merit and it must fail. Resultantly, the present petition is ordered to be dismissed.