
(2012) 03 P&H CK 0103

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-7506 of 2011

Dayapal Singh and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(3), 482
Penal Code, 1860 (IPC) — Section 120B, 34, 419, 420, 467

Citation : (2012) 03 P&H CK 0103

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Advocate : D.S. Bali, with Ms. Neha Mann, for the Appellant; Kartar Singh, D.A.G. Haryana for Respondent No. 1 and Mr. Ramender Chauhan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The conspectus of the facts and material, culminating in the commencement, relevant for the limited purpose of deciding the core controversy, involved in the instant petition and oozing out, from the record, is that, complainant Dalip Singh son of Bakhsu Ram respondent No. 2 (for brevity "the complainant") was the owner and in possession of the land in question. His real brother, Dayapal Singh (petitioner No. 1) is working as Head Constable in Haryana Police. He hatched a criminal conspiracy with his others co-accused Vinod Kumar and Shyam Lal and got executed a false & fictitious agreement to sell dated 5.10.2007 (Annexure P2), by virtue of which, the land belonging to the complainant was illegally shown to have been sold for a consideration amount of Rs. 7,50,000/- in favour of petitioner No. 1 and an amount of Rs. 5 lacs was received by him (complainant) as earnest money. Levelling a variety of allegations and narrating the sequence of events in detail, in all, according to the complainant that petitioners-accused dishonestly cheated him by impersonation, committed a forgery, prepared & used the false documents as genuine for the purpose of cheating and deceived him in the manner described hereinbefore. In

the background of these allegations and in the wake of complaint of the complainant, the present case was registered against the petitioners-accused, by means of FIR No. 63 dated 17.4.2009 (Annexure P1) on accusation of having committed the offences punishable under Sections 419, 420, 467, 468, 471 and 120-B read with Section 34 IPC by the police of Police Station Bawani Khera, District Bhiwani.

2. The petitioners did not feel satisfied with the registration of the criminal case and preferred the instant petition to quash the FIR (Annexure P1) and all other subsequent proceedings arising therefrom, invoking the provisions of Section 482 Cr.PC.

3. The case set up by the petitioners, in brief in so far as relevant, was that prima-facie, no case under the indicated offences is made out against them. The matter is purely of a civil nature, which is subject matter of civil suit between the parties. Their innocence is proved from another agreement dated 16.9.2008 (Annexure P3), the application (Annexure P4) written by the complainant to the District Town Planner (in short "the DTP"), the reply (Annexure P5) received by him from the DTP, statement (Annexure P6), the report dated 7.10.2010 (Annexure P7) of DSP and the copy of order dated 18.8.2010 (Annexure P9) etc. On the strength of aforesaid grounds, the petitioners sought to quash the impugned FIR (Annexure P1) and all other consequent proceedings arising thereto as depicted hereinabove.

4. Although the DSP and other police officials deeply tried to save the skin of main accused Dayapal Singh, Head Constable, filed the reply and status report, but the complainant has refuted the prayer of petitioners and filed his separate reply, inter-alia pleading certain preliminary objections of, maintainability of the petition, concealment of facts, cause of action and locus standi of the petitioners. It was claimed that the petitioners have committed the heinous offences of cheating, fraud, prepared, used the forged documents as genuine and illegally fabricated the agreement to sell (Annexure P2), wrongly transferring the land of complainant (his real brother) in favour of petitioner No. 1. The complicity of petitioners is clearly borne out from the report (Annexure R2) of Shamsheer Singh Malik, Examiner of Questioned Documents & Forensic Science Consultant, Hisar. After considering the entire matter, the trial Magistrate ordered the registration of the FIR against them. Instead of reproducing the entire contents of the reply of complainant and in order to avoid the repetition of facts, suffice it to say that he has reiterated all the allegations contained in the complaint, which formed the basis of FIR (Annexure P1). However, it will not be out of place to mention here that he has stoutly denied all other allegations contained in the main petition and prayed for its dismissal.

5. After hearing the learned counsel for parties, going through the record with their valuable assistance and after deep consideration over the entire matter, to my mind, there is no merit in the present petition in this context.

6. What cannot possibly be disputed here is that the Hon''ble Supreme Court has authoritatively held, in a celebrated judgment in cas State of Haryana and others Vs. Ch. Bhajan Lal and others, , which was again reiterated in case Som Mittal v. Government of Karnataka 2008 (2) R.C.R. (Criminal) 92, that the criminal prosecution can only be quashed in rarest of rare case at the initial stage as per the following conditions:-

(i) 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.

(ii) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code.

(iii)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.

(iv) Where, the allegations in the F.I.R. 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 S. 155(2) of the Code.

(v) 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.

(vi) 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.

(viii)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.

7. Not only that, again the Hon''ble Apex Court in case Jeffery J. Diermeier & Anr. v. State of West Bengal & Anr. 2010 (3) R.C.R. (Criminal) 183, having interpreted the scope of section 482 Cr.PC, has ruled (para 16) as under:-

16. Before addressing the contentions advanced on behalf of the parties, it will be useful to notice the scope and ambit of inherent powers of the High Court u/s 482 of the Code. The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of process of Court; and (iii) to otherwise

secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.

8. Above being the legal position and material on record, now the short and significant question, though important, that arises for determination in this petition is, as to whether any ground for quashing the impugned FIR (Annexure P1) at this initial stage is made out or not?

9. Having regard to the rival contentions of learned counsel for the parties, to me, the answer must obviously be in the negative in this respect.

10. As is evident from the record that according to the complainant that all the accused forged the signatures of complainant, hatched a criminal conspiracy and got executed a false & fictitious agreement to sell (Annexure P2), by way of which, his land was illegally shown to have been sold for a consideration amount of Rs. 7,50,000/- in favour of petitioner No. 1 and an amount of Rs. 5 lacs was received by him (complainant) as earnest money. In this manner, there are direct and very serious allegations that the petitioners-accused dishonestly cheated the complainant by impersonation, committed a forgery, prepared & used the false documents as genuine for the purpose of cheating and deceived him in the manner described hereinbefore. Meaning thereby, as the direct and very glaring allegations of heinous crime are assigned to the petitioners, the Bench mark set out in the aforesaid judgments and essential ingredients for quashing the criminal prosecution at the initial stage are totally lacking in this case, therefore, no ground for quashing the impugned FIR (Annexure P1) is made out under the present set of circumstances.

11. Ex facie, the arguments of learned counsel that the petitioners have been falsely implicated by the complainant, the story of the prosecution is highly improbable and its version is negatived from the indicated documents (Annexures P2 to P9), are not only devoid of merit but misplaced as well at this stage.

12. The mere fact that Balbir Singh and Suresh Kumar, DSPs have favourably observed in the reply and status report dated 16.2.2012 respectively in favour of main accused Dayapal Singh HC, ipso facto, is not a ground to quash the impugned FIR (Annexure P1). On the contrary, it proves their malafide intentions in discharge of their official duties to rudely help HC Dayapal Singh. This grave misconduct on the part of the DSPs was also noticed by the SDJM, Bhiwani and accordingly informed the SP, Bhiwani, vide memo No. 1390 dated 22.7.2010

(Annexure R1), which, in substance, is as under:-

That FIR no. 63 dated 17.4.2009 u/s 419, 420, 467, 471, 120-B, 34 IPC was registered against Mr. Daya Pal & others as per the orders court u/s 156 (3) Cr.PC. Court had ordered registration of this F.I.R. on the reliance of forensic expert's report produced by complainant that a forged agreement dated 05.10.2007 was prepared by accused Daya Pal and on the complaint of complainant Dalip Singh S/o Sh. Bakshu Ram, R/o Village Balyali, Bawani Khera, Distt. Bhiwani.

Final report was prepared S.H.O. Bawani Khera, Police Station on 05.08.2009. Following points have been not investigated before preparing of the final report.

1. Proper investigation has not been done of the agreement dated 5.10.2007 for the forgery of which said F.I.R. has been registered. Private forensic report has given his opinion that signature of the complainant has been forged on it. Forensic Lab of Madhuban also has not declared the signature of Dalip Singh on this agreement as true one, however, it has been clearly mentioned that at position "Q-3" signature of Dalip Singh are forged and no opinion can be given on Q-1, Q-2, Q4 since signatures are faded.

2. No records of investigation from witnesses have been mentioned in the final report.

3. Final report has been prepared on the basis of sale letter 16.5.2008 for which this F.I.R. was not registered. Also no record of investigation from witnesses of this sale letter has been mentioned in final report.

On the basis of above points, I come to the conclusion that this is fit case for reinvestigation and therefore request you to reopen the case.

13. Instead of initiating any action against the DSPs, the SP Bhiwani did not adhere to the sensitivity and seriousness of the offences committed by the police official. Moreover, the DSPs are not legally empowered to decide the genuineness or otherwise of the alleged agreement to sell (Annexure P2). It is the duty of the Court to decide its genuineness and validity. The DSPs cannot assume the function of the court in this relevant connection.

14. As to whether the petitioners have been falsely implicated, the story of the prosecution is highly improbable, the indicated documents are genuine or not, what would be their effects and all other submissions relatable to appreciation of evidence (as now sought to be urged on their behalf), would be the moot points to be decided after receiving the evidence of the parties, during the course of trial by the trial Court. The documents (Annexures P2 to P9) may be relevant for the purpose of defence of the accused at the appropriate stage of trial. Possibly, no one can lose sight of the fact that the main accused Dayapal Singh HC in Haryana Police and other police officials are unscrupulously helping him. If all such points taken by the petitioners in the instant petition, which require determination by the trial Court, are to be decided by this Court in the garb of

petition u/s 482 Cr.PC, then the sanctity of the trial would pale into insignificance and amount to nullify the statutory procedure of trial as contemplated under the Code of Criminal Procedure, which is not legally permissible.

15. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

16. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the main case, as there is no merit, therefore, the present petition is hereby dismissed in the obtaining circumstances of the case.

17. Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits during the trial of the main case, as the same has been so recorded for a limited purpose of deciding the instant petition in this relevant direction. At the same time, the Registry is directed to send a copy of this judgment to DGP Haryana, who will hold an inquiry in the indicated grave misconduct of the concerned DSPs and other police official to help the main accused Dayapal Singh HC, having surpassed all the cannons of legal procedure of investigation in such a heinous crime and to take appropriate action in the matter within a period of three months, positively under intimation to this Court.