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(2013) 08 P&H CK 0277

In the Punjab And Haryana At Chandigarh

Case No : C.R.M. No. M-8710 of 2012

Gurbachan Singh Bhasin APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2013) 08 P&H CK 0277

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Rajan Malhotra, for the Appellant; Anshuman Narula, Advocate, for Mr. V.K. Bali, Advocate for the Respondent No. 3 and Mr. Luvinder Sofat, AAG, Punjab assisted by H.C. Ashok Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—Petitioner Gurbachan Singh Bhasin has filed this petition u/s 482 of the Code of Criminal Procedure for quashing of the first information report No. 132, dated 14.04.2006, under sections 420, 120B of the Indian Penal Code, registered at Police Station Derabassi and all consequential proceedings qua the petitioner pending in the Court of Sub-divisional Judicial Magistrate, Derabassi. Learned counsel for the petitioner argued that the bank respondent No. 3, who is the complainant in this case, wrote a letter dated 23.11.2000 to the petitioner for compromise and settlement of the dues against M/s. Gurjas Engineers Pvt. Ltd., in which the present petitioner is the sole Managing Director. He further argued that the Bank had lodged the first information report on 14.04.2006 after a lapse of three years from May 03, 2003 when it came to its knowledge that fraud has been committed upon the bank. He further argued that the bank respondent No. 3 has no cause of action against the present petitioner to lodge the first information report as the property in question had been sold, in compliance of the order dated 28.04.2004 by way of public auction on 20.10.2005. The sale consideration of Rs. 29,81,000/- was adjusted by the Bank against the recovery of clues from the petitioner. Thus, it is submitted that the

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filing of the first information report is abuse of process of law. Lastly, he argued that there is no wrongful loss to the bank.

2. Learned Counsel for the State submits that the challan has been presented in the court and the charge has been framed against the petitioner on March 15,2012. The petitioner has an alternative remedy to file revision against the framing of the charge dated 15.03.2012, therefore, this petition u/s 482 Cr.P.C. is not maintainable. He further argued that the case is fixed for prosecution evidence, therefore, the quashing of the proceedings is not warranted.

3. Learned counsel for the respondent No. 3, submits that the petitioner in connivance with the respondent No. 2 has committed a fraud upon the bank. He argued that the present petitioner had sold the property mortgaged with the bank vide two registered sale deeds dated 19.09.1995 and 08.01.1997, which had already been attached by the order of the Civil Court in execution proceedings dated 25.04.1995 and in compliance of the order of civil court, a note regarding attachment of the property was made in the revenue record on 06.09.1995. The petitioner in connivance with respondent No. 2, made wrong entries, and was thus successful in defrauding the bank. The Learned Counsel prayed for the dismissal of the petition.

4. This court has heard the learned counsel for the parties and perused the record.

5. The brief facts of this case are that the bank has filed a suit for recovery against the petitioner and his brother being M.Ds. of M/s. Gurjas Engineers Pvt. Ltd., which was decreed on 16.05.1991 for a sum of Rs. 4,94,358.56/- with interest from the date of filing of the suit. Thereafter, the bank started recovery proceedings by way of filing execution. The land of the petitioner was ordered to be attached on 25.04.1995 and in pursuance of this order; order of attachment was incorporated in the revenue record on 06.09.1995. In spite of entry made in the jamabandi with regard to the attachment order, the respondent No. 2 made a note in the revenue record in order to cheat the bank in connivance with the petitioner to the effect that the attachment order has got nothing to do with Khewat No. 100/150 and also made a false record that the land should not be considered to be attached. This note apparently made the attachment order ineffective, though, the attachment order was still on force. The main beneficiary of this false entry is the petitioner. On the basis of this document, the petitioner sold 1/4th share of the aforesaid khasra which came to the knowledge of the bank only when, the Civil Court ordered for auction of the same. The land was sold in auction on 20.10.2005 and the sale in favour of auction-purchaser was confirmed by the court on 13.09.2007. The arguments of the learned Counsel for the petitioner that the petitioner has no mens rea, has no force because the facts shows that the intention of the petitioner from the very beginning was to fraudulently cheat and deceive the bank in-connivance with respondent No. 2. He not only cheated the bank but also the subsequent purchasers of the land. Mens rea is such state of mind, which cannot be proved by leading direct positive

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evidence. It is internal state of mind of a person, which can be inferred from his actions and conduct. On 19.09.1995 and 08.01.1997 on the date of execution of the sale deeds of the mortgaged land in favour of the bank by the petitioner and attached by the civil court, the petitioner had no perfect clear saleable interest without encumbrances in the land, which the petitioner had full knowledge. He cannot feign ignorance. But more else is required for proving mens rea.

6. The case was registered after thorough inquiry and obtaining legal opinion from the District Attorney, against the present petitioner, his brother Rajinderbir Singh and the respondent No. 2. During the course of inquiry, it came to the light that the owners of Gurjas Industries namely Gurbachan Singh and Rajinder Singh took loan twice on the same property i.e. firstly from PFC Chandigarh and secondly from State Bank of India, Chandigarh. The State Bank of India got the property attached and the copy of the attachment order passed by the court was sent to the Revenue authorities and entry regarding attachment was made on 06.09.1995 in the revenue record in pursuance of civil court order dated 25.04.1995. The argument of the learned Counsel for the respondents as per petition that the present petitioner colluded with respondent No. 2 and got wrongful entry made in the revenue record as detailed above and succeeded in committing fraud against the answering respondent/bank. The petitioner further sold the property vide two registered sale deeds dated 19.09.1995 and 08.01.1997 i.e. Annexure R-2 and R-3 respectively already mortgaged with the answering respondent/bank, and inspite of legal attachment order. The petitioner has committed acts of fraud repeatedly as mentioned above, firstly when wrong entries were made by respondent No. 2 in collusion with the petitioner as mentioned above and secondly when petitioner sold the mortgaged property much later than the order of attachment of mortgaged property was passed by the civil court and then the averments were made in the sale deeds that the property is not under any sort of encumbrances.

7. Firstly, this court is not inclined to grant any discretionary relief to the petitioner as the conduct of the present petitioner is such that he had made him ineligible for such a relief. The petitioner at the initial stage has not submitted himself to the jurisdiction of the court. He was not arrested and P.O. proceedings were initiated against him as well as his brother, Rajinderbir Singh, who were ultimately declared Proclaimed Offended by the court on 06.06.2007. The present petitioner was subsequently arrested on 22.09.2009, and later on he was granted bail on 05.10.2009. A supplementary challan u/s. 173 of the Code was presented in the court in which the charges against the petitioner have already been framed vide order dated 15.03.2012. His co-accused Rajinderbir Singh has already expired. Admittedly the petitioner has not filed any revision against the framing of the charge dated 15.03.2012. This court issued notice of motion on 26.03.2012 in this case. The learned counsel for the petitioner on that day has not disclosed the fact of framing of charge by the court on 15.03.2012, at the time of motion hearing. It was the duty of the counsel to narrate all the true facts before the court and not to conceal anything from the court. So these facts

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disentitles the present petitioner for granting discretionary relief in favour of the petitioner.

8. So far point of limitation is concerned, there is no limitation provided for taking action against the culprits. The petitioner has fraudulently deceived the bank and cheated with the public money. The lodging of first information report Annexure P-8 on 14.4.2006, is well within time on the basis of inquiry report, initiated on the complaint filed by the bank on 9.10.2003. Admittedly the fraud came to the knowledge of the bank authorities in May, 2003 and Sh. B.R. Sharma Assistant General Manager, State Bank of India, Main Branch, Section-17, Chandigarh on 09.10.2003 wrote a letter to the Sr. Superintendent of Police, Patiala for lodging First Information Report against the present petitioner and respondent No. 2. So the bank authorities as early as possible wrote to the police and it was after thorough inquiry the impugned FIR was lodged. So by no stretch of imagination it can be said that the presentation of the challan was beyond limitation.

9. The last argument of the learned Counsel for the petitioner is that the petitioner is a senior citizen of about 81 years and ailing from old aged diseases. He has suffered two heart attacks and 50% of his heart and kidney are damaged, is under regular treatment of various doctors. This argument has no force as on this ground the relief for quashing of the FIR cannot be granted. However, he has a remedy u/s 205 of the code.

10. It is well settled law that powers u/s. 482 of the Code has to be exercised sparingly, carefully and cautiously and only when such exercise is justified. In this case challan has already been presented, the charge has been framed against which the petitioner has not filed any revision and the case is fixed for prosecution evidence. The petitioner has raised disputed question of facts which cannot be gone into by this court, while exercising discretionary power.

11. For the reasons stated above, there is no merit in this petition u/s. 482 of the Code, the petition is, hereby, dismissed. It is observed that the above observation will not affect the case of the petitioner while deciding on merits, after full trial.

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