
(2006) 10 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 58617-M of 2004

J.R. Sharma and others

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406

Citation : (2007) 2 RCR(Criminal) 418

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Advocate : Hemant Bassi, for the Appellant; J.S. Toor, Addl. A.G. Haryana For the Respondent No. 2 Mr. Sushil Jain, for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—Prayer in the present petition, filed u/s 482 of the Cr.P.C., is for quashing of FIR No. 191, dated 17.8.2004, registered under Sections 406/420 of the IPC, at Police Station, Sector 31, Faridabad.

2. Counsel for the petitioners contends that the FIR does not disclose the commission of an offence. The facts, narrated in the FIR, disclose a civil dispute with regard to ownership of plot No. 10, Block No. 16, Spring Field Colony, Extension No. 1, Faridabad and, therefore, the FIR be quashed. It is contended that one Smt. Oberoi was allotted the aforementioned plot in 1963 for a total consideration of Rs. 13,300/-. She paid Rs. 9,193/- upto 1971. The balance amount of Rs. 4,103/- was not paid and, therefore, any rights that may have arisen/conferred upon her, pursuant to the aforementioned allotment, came to an end by efflux of time. The petitioners sold the said plot to one Sanjay Dawar in the year 2003. It is further contended that the aforementioned facts do not disclose the commission of any criminal offence, but the existence of a simple civil dispute. It is contended that it has been repeatedly held that where the FIR discloses a civil dispute, namely, the violation of an agreement to sell, the FIR

and all subsequent proceedings emanating therefrom, in the absence of any facts, leading to an inference of mens rea/dishonest intention, should be quashed. It is also urged that the allotment was made in the year 1963, but the FIR has been lodged in the year 2003. It is contended that this delay is sufficient to quash the FIR. Reliance is placed upon Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh and Another, ; Suresh Vs. Mahadevappa Shivappa Danannava and Another, ; Manisha Goyal v. State of Punjab, 2005 (1) RCR (Cri.) 162 and Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, .

3. It is further contended that the High Court can quash an FIR and proceedings emanating therefrom at any stage and the fact that investigation is pending, does not bar the exercise of jurisdiction to quash an FIR, which appears to be an abuse of the process of the law. For the above proposition, reliance is placed upon R.P. Kapur Vs. The State of Punjab, ; State of West Bengal and Others Vs. Swapan Kumar Guha and Others, ; State of Haryana and others Vs. Ch. Bhajan Lal and others, ; M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate, AIR 1997 (SC) 761 : 1998 SC 128 and Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, .

4. Counsel for the State of Haryana, as also counsel for the complainant/respondent No. 2 pray that the present petition be dismissed on the sole ground that investigation is in progress and no special circumstances exist as to warrant interference at this stage. It is vehemently argued that as the final report has not been submitted the police be allowed to conclude investigation. It is contended that the Hon"ble supreme Court in State of Karnataka and Another Vs. Pastor P. Raju, , has held that power to quash criminal proceedings cannot be exercised to interfere with the statutory powers of the police to conduct investigation, into the alleged commission of a cognizable offence. Reliance is also placed upon Union of India (UOI) Vs. Prakash P. Hinduja and Another, ; King Emperor v. Khwaja Nazir Ahmad, 1943(44) 71 IA 203; H.N. Rishbud and Inder Singh Vs. The State of Delhi, ; State of West Bengal Vs. S.N. Basak, ; Abhinandan Jha and Others Vs. Dinesh Mishra, and State of Bihar and Another Vs. J.A.C. Saldanha and Others, .

5. On merits, it is submitted that the petitioners are partners of M/s. Northern India Land and Finance Corporation, Chandni Chowk, New Delhi. They allotted the aforementioned plot to Ms. Oberoi and were therefore legally bound to have executed a sale-deed in her favour, as she had paid the entire sale consideration, which is duly reflected in the receipts issued by the petitioners and collected by the police during investigation. It is contended that as no other amount was due to the petitioners, they had no right to sell the plot belonging to Ms. Oberoi, and the mere fact that a long period of time had elapsed from the original allotment, would not extinguish her rights in and to the plot. It is further contended that respondent No. 2 never offered possession of the plot to Ms. Oberoi and, therefore, even if some balance amount was due, it was payable at the time of

offer of possession, and therefore, the petitioners had no right in fact or in law to sell her plot. It is further argued that as the FIR discloses the commission of cognizable offences, the argument that the dispute is purely civil in nature is misconceived and, therefore, the present petition be dismissed.

6. I have heard learned counsel for the parties and perused the paper book.

7. The FIR, as translated by counsel for the petitioners, reads as follows :-

To the Superintendent of Police Faridabad - Complaint against J.R. Sharma, Mr. Khosla, R.P. Sharma and J.P. Gupta all partners of M/s. Northern India Land and Finance Corporation Limited, Chandni Chowk Delhi. Sir, it is most respectfully submitted that the above named partners are responsible for the day-to-day functioning of the said firm. The above named person have knowingly and intentionally cheated the applicant by executing a sale-deed in favour of the same plot No. 10, Block C Spring Field Colony, Sector 30, Faridabad. Total cost of which was earlier received by them from the applicant as per the documents in photocopy enclosed herewith for your kind perusal and necessary action. The above named partners of the said firm were legally bound to execute the sale-deed in favour of applicant, but despite of full payment awards cost of the plot in question, they have committed offence of cheating, fraud, misrepresentation by executing a sale-deed in favour of some one else by keeping the applicant in dark and their action as such also tantamounts to criminal breach of trust. The applicant approached the above named about few days ago in the area of Spring Field Colony where they threatened the applicant to face due consequences, in case he resists for the sale-deed of the plot in question in presence of Devender and Pappu residents of Itmadpur and Old Faridabad respecting at above 12.30 p.m. afternoon. In this way your good office is requested to take necessary action against the above culprit for the offences committed by them immediately. Thanking you, Sd/- not eligible Choudhary H.O. 375, Chawla Colony.

8. Admittedly, the present petition was filed, while investigation was still in progress. The Hon'ble Supreme Court, while considering the powers of the High Court, to quash an FIR, during the pendency of investigation, in *State of Karnataka and another v. Pastor. P. Raju* (supra), held as follows :-

15. There is another aspect of the matter which deserves notice. The FIR in the case was lodged on 15.1.2005 and the petition u/s 482 Cr.P.C. was filed within 12 days on 27.1.2005 when the investigation had just commenced. The petition was allowed by the High Court on 23.2.2005 when the investigation was still under progress. No report as contemplated by Section 173 Cr.P.C. had been submitted by the in-charge of the police station concerned to the Magistrate empowered to take cognizance of the offence. Section 482 Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any court but the power cannot be exercised to interfere with the statutory power of the police to

conduct investigation in a cognizable offence. This question has been examined in detail in *Union of India v. Prakash P. Hinduja*, where after referring to *King Emperor v. Khwaja Nazir Ahmad*; *H.N. Rishbud v. State of Delhi*; *State of W.B. v. S.N. Basak*; *Abhinandan Jha v. Dinesh Mishra* and *State of Bihar v. J.A.C. Saldanha*, it was observed as under in para 20 of the Report (SCC) : (*Prakash P. Hinduja* case, SCC p. 209)

20. Thus the legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer-in-charge of the police station in court u/s 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency.

This being the settled legal position, the High Court ought not to have interfered with and quashed the entire proceedings in exercise of power conferred by Section 482 Cr.P.C. when the matter was still at the investigation stage.

9. It is, thus, apparent that where investigation is still in progress, powers u/s 482 of the Code, cannot be invoked, to quash an FIR. The statutory powers of the police to conduct investigation into a cognizable offence, ought not to be interfered with. Contention of counsel for the petitioners that the aforementioned judgment does not lay down an absolute rule of law but is a judgment rendered in the facts and circumstances of that case, in my considered opinion, is unacceptable. The Hon''ble Supreme Court has clearly held that where investigation is in progress, the FIR should not be quashed. The judgments relied upon by counsel for the petitioners to contend that the power to quash an FIR in the exercise of powers u/s 482 of the Cr.P.C. can, depending upon the facts and circumstances of a case, be exercised at any stage, even where investigation is pending, are not applicable to the present controversy, in view of the judgment in *State of Karnataka and another v. Pastor P. Raju* (supra).

Even on merits, a perusal of the FIR does not lead to an inference that the facts narrated therein, do not disclose the commission of any offence. Admittedly, plot No. 10 was allotted to Ms. Oberoi in 1963. A dispute exists on facts, as to whether Ms. Oberoi paid the entire sale consideration or not. It is the stand of the respondents that Ms. Oberoi paid all the amounts, due from her, and as possession of the plot was never offered to her, her right to the said plot did not cease by efflux of time. Therefore, as investigation, into disputed questions of fact is still pending the contention of counsel for the petitioners that the FIR does not disclose the commission of any offence cannot be accepted. The other contention that the FIR discloses a simple civil dispute also merits rejection. In case, Ms. Oberoi was entitled to the ownership and possession of the plot, the petitioners had no right to sell the plot and, therefore, they cannot be heard to urge that no offence has been committed. Even otherwise, as noticed herein above, investigation is in progress and any finding, as regards the contentious facts, put forth, may entail prejudice to either party and, it would therefore be

inappropriate to express any definite opinion and or quash the FIR at the stage of investigation. The judgments, cited by counsel for the petitioners, in support of his plea for quashing, do not advance his case, in any manner in view of the facts referred to herein before.

In view of what has been stated above, as investigation is still in progress, the present petition is dismissed, without prejudice to the rights of the petitioners to raise all the pleas, raised herein, before the trial Court, at an appropriate stage.