

(2015) 08 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : CRM-M-11243 of 2010 (O&M)

Navinder Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 120-B, 405, 406, 415, 420

Citation : (2015) 08 P&H CK 0008

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : R.S. Athwal, for the Appellant; A.S. Sidhu, AAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sabina, J—Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No. 9 dated 01.02.2010, under Sections 420, 120-B of the Indian Penal Code, 1860 ("IPC for short), registered at Police Station Behram, District Shaheed Bhagat Singh Nagar (Nawanshahr) (Annexure P-1) and all the subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner has submitted that respondent No. 2 had agreed to purchase land measuring 16 Kanals from petitioner No. 2. Agreement to sell dated 07.02.2005 was executed in this regard. As per the agreement to sell, sale-deed was to be executed on or before 07.08.2006. Although, petitioner No. 2 was in Canada on the date fixed for execution of the sale-deed- but he had executed a Power of Attorney in favour of petitioner No. 1 to execute the sale-deed in favour of respondent No. 2. However, respondent No. 2 failed to perform his part of the contract and petitioner No. 2, then sold the land to some other person vide sale-deed dated 17.07.2009. Respondent No. 2 has already availed his civil remedy by filing a suit for specific performance of agreement to sell

(Annexure P-2). The dispute between the parties could be said to be purely civil in nature and the criminal proceedings initiated against the petitioners were liable to be quashed.

3. In support of his arguments, learned counsel for the petitioner has placed reliance on *Manisha Goyal Vs. State of Punjab*, (2006) 1 RCR(Criminal) 162 , wherein, it was held as under:--

"An agreement to sell requires the proposed vendor to deliver property to the proposed vendee on payment of an agreed consideration, by executing a sale-deed on the date mutually fixed. Violation of an agreement to sell, in the facts and circumstances of the present case, in my considered opinion, discloses a civil dispute. By merely stating that the petitioner refused to execute a sale-deed and/or return the money, would not convert this purely civil dispute into a criminal offence. A perusal of the FIR, as also the reply filed, does not disclose criminal culpability. Section 406 of the IPC provides for punishment for misappropriation. The failure to return earnest money, in the facts and circumstances of the present case, cannot be termed as "misappropriation" as defined under Section 405 of the IPC. In so far as Section 420 of the IPC is concerned, the ingredients of Section 415 of the IPC that constitute an offence, under Section 420 of the IPC, are missing. For a person to cheat, dishonest intentional, must arise at the inception of the transaction. The ingredients of offences of cheating and/or misappropriation, set down by the Hon"ble Supreme Court, in the judgments, referred to herein before, are singularly missing in the present case. In the case in hand, the FIR does not disclose any facts that would lead to a prima facie conclusion that the petitioner harboured a dishonest intention at the inception of the transaction, or in any manner committed an offence of criminal breach of trust.

Another significant fact that persuades me to quash the FIR is that the complainant has filed a civil suit, a copy of plaint is annexed as Annexure P-1 with the present petition. A perusal of the plaint reveals that the averments therein differ from those in the complaint. In the complaint, the complainant alleges that the petitioner stated that she has already entered into an oral agreement to sell with other persons, none of whom were able to get the sale-deed registered. The plaint of the civil suit does not disclose any such fact. Apparently these facts were twisted with the object of clothing them with a semblance of criminality. The attempt of the complainant to convert a civil dispute into one of a criminal nature disclosed his mala fides. The tendency to convert disputes into criminal disputes is on the increase and investigating agencies must guard against these tendencies."

4. Learned counsel for the petitioner has further placed reliance on *Arun Kumar and another versus State of Punjab and another*, 2006 (3) R.C.R. (Criminal) 793, wherein, it was held as under:--

"Similar is the position in the present case. An agreement of sale-deed was not

executed between the parties. The same was adhered to by the petitioners. There is no allegation that right at the beginning of the transaction, there was fraudulent or dishonest intention on the part of the petitioners. When they failed to keep up promise subsequently, such a culpable intention right at the beginning, i.e. when they made the promise, cannot be presumed. In such a situation complainant had remedy of filing of a civil suit for specific performance. He could not, however, get an FIR registered. The registration of FIR was thus, an abuse of the process of law. With a view to securing ends of justice, I deem it appropriate to quash the FIR and all the proceedings taken thereunder."

5. Learned counsel for the petitioner has also placed reliance on Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh and Another, AIR 1999 SC 1480 : (1999) CriLJ 598 : (1998) 6 JT 414 : (1998) 5 SCC 694 : (1998) AIRSCW 4007 , wherein, it was held as under:--

"The latter part thereof illustrates that at the time when agreement for sale was executed, it could have in no event been termed dishonest so as to hold that the complainants were cheated of the earnest money, which they passed to the appellant as part-consideration, when possession of the total land involved in the bargain was passed over to the complainant-respondents, and which remains in their possession. Now, it is left to imagine who would be interested in delaying the matter in completing the bargain when admittedly the complainants have not performed their part in making full payment. The matter is therefore before the civil court in this respect. The liability, if any, arising by the breach thereof is civil in nature and not criminal. We therefore allow this appeal, and set aside not only the impugned orders of the High Court, but quash the proceedings too which are pending before the Magistrate. The complainant-respondents shall pay compensatory costs to the appellant for these vexatious proceedings which we assess at Rs. 10,000 which the respondents are directed to pay to the appellant within six weeks from today."

6. Learned counsel has placed reliance on State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , wherein, the Apex Court has held as under:--

"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. Can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:--

(1) Where the allegations made in the first information report or the complainant/respondent No. 2, 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.

(2) 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 Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) 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.

(4) Where, the allegations in the FIR 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 Magistrate as contemplated under Section 155(2) of the Code.

(5) 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.

(6) 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings are 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.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

7. Learned State counsel as well as counsel for respondent No. 2, on the other hand have opposed the petition.

8. In the present case, facts are not in dispute. Admittedly, petitioner No. 2 had executed agreement to sell (Annexure P-2) in favour of respondent No. 2. As per the agreement to sell, petitioner No. 2 received Rs. 1,00,000/- by way of earnest money. Sale-deed was to be executed on or before 07.08.2006. Respondent No. 2 has already filed suit for specific performance of agreement to sell in question. Admittedly, petitioner No. 2 was the owner of the property in question and could validly execute the agreement to sell in question. Thus, the dispute between the

parties, in the present case, can be said to be purely civil in nature. The present case can be said to be at the most breach of contract by the petitioner No. 2.

9. Since the dispute between the parties can be said to be purely civil in nature, continuation of criminal proceedings against the petitioners would be nothing, but abuse of process of law.

10. Accordingly, this petition is allowed. FIR No. 9 dated 01.02.2010, under Sections 420, 120-B IPC, registered at Police Station Behram, District Shaheed Bhagat Singh Nagar (Nawanshahr) and all the consequential proceedings, arising therefrom, are quashed.