
(2016) 02 P&H CK 0302

In the Punjab And Haryana At Chandigarh

Case No : CRM-M No. 8431 and 8432 of 2014 (O&M) and CRM-M No. 37933 of 2014 (O&M).

Sandip Somany

APPELLANT

Vs

State of Haryana and another.

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420, 465

Citation : (2016) 3 AICLR 445 : (2016) 2 LawHerald 1305

Hon'ble Judges : Kuldeep Singh, J.

Bench : Single Bench

Advocate : Manav Gupta, Advocate and A.P.S. Deol, Sr. Advocate with Samrat Malik, Advocate, for the Appellant; M.S. Sidhu, Addl. A.G., Haryana and J.S. Ghuman, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Kuldeep Singh, J. - By this single judgment of mine, I shall dispose of three criminal petitions i.e. CRM-M Nos.8431 of 2014 filed by Sandip Somany, 8432 of 2014 filed by Rajendra Kumar Somany and 37933 of 2014 filed by Ram Niwas Jindal, arisen out of the same FIR No. 263, dated 14.03.2009, under Sections 406, 420, 465, 467, 468, 471 and 120-B IPC, registered at Police Station Karnal Civil Lines, District Karnal. All the aforesaid three petitioners by filing different petitions have sought quashing of FIR in question along with consequential proceedings arising therefrom qua them.

2. It is stated that petitioner Sandip Somany along with his father Rajendra Kumar Somany had jointly owned a portion of 43 kanal, 13 marla land, situated in revenue estate of Village Uchana, Tehsil and District Karnal. Through a General Power of Attorney dated 02.07.2008 (registered at Jalandhar on 01.09.2008), they authorised Ram Niwas Jindal to deal with the said land for the purpose of sale and execution of the necessary documents and consequence thereof.

3. Shri Ram Niwas Jindal acting as GPA entered into an agreement to sell dated 14.07.2008 with Mr. Vinod Saini for the purpose of selling the said land at an aggregate price of Rs. 1.25 crore per acre and had received earnest money to the tune of Rs. 70 lac. Mr. Vinod Saini made another payment of Rs. 50 lac by way of cheques dated 06.10.2008 towards the earnest money to be paid in furtherance of the said agreement to sell. The cheque was issued by M/s. UFIPL Infrastructure Ltd. i.e. respondent No. 2 in favour of Ram Niwas Jindal at the behest of Vinod Saini.

4. On the date fixed for final payment of the entire amount, Mr. Vinod Saini expressed his inability to do so and sought for extension of time for making the said payment. Mr. Ram Niwas Jindal acceded to the said request of Mr. Vinod Saini on moral grounds and granted more time for making the said payment till 10.02.2009. On 10.02.2009, Mr. Vinod Saini did not make the balance payment as promised and also did not come to the office of Tehsildar, Karnal Courts till 4.00 p.m. for the purpose of executing the sale deed. However, Mr. Ram Niwas Jindal duly appeared before the Tehsildar and filed an affidavit and got his presence marked before the Executive Magistrate, Karnal. Thereafter, Ram Niwas Jindal sent a legal notice dated 12.02.2009 to Mr. Vinod Saini for rescinding the said agreement to sell due to non-fulfilment of the agreed terms and payment of the final amount by 10.02.2009. Therefore, Mr. Vinod Saini was left with no right, title or interest in any manner over the said land and Ram Niwas Jindal was fully entitled to deal with the said land.

5. Thus, Ram Niwas Jindal acting in furtherance of GPA sold the land to Golden Moments Pvt. Ltd., vide registered sale deed dated 24.06.2011. Sandip Somany and his father Rajendra Kumar Somany had received the entire amount of consideration.

6. It transpired that Mr. Vinod Saini after entering into an agreement with Ram Niwas Jindal, further entered into an agreement to sell dated 10.10.2008 for the purpose of selling the said land to M/s. UFIPL Infrastructure Ltd.-respondent No2 at an aggregate price of Rs. 1.97 crore per acre and had received an amount of Rs. 4.75 crore as earnest money. Mr. Vinod Saini misrepresented M/s. UFIPL Infrastructure Ltd. that he is GPA holder of Mr. Ram Niwas Jindal for selling the said land. In fact, there was no General Power of Attorney in favour of Mr. Vinod Saini on the said date.

7. On finding out the aforesaid position, M/s. UFIPL Infrastructure Ltd. registered the FIR in question against Mr. Vinod Saini, Vishal Gupta and Mrs. Bhavana Gupta. Vishal Gupta was the Director of the complainant-Company and stated to have hatched a conspiracy with his wife Bhavana Gupta and his employee Vinod Saini.

8. It was alleged in the complaint that modus operandi adopted by Mr. Vishal Gupta was that he had first entered into an agreement to sell dated 14.07.2008 with Mr. Ram Niwas Jindal through his employee Mr. Vinod Saini and had agreed

to purchase the said land for an aggregate price of Rs. 1.25 crore per acre and thereafter, acting as the Director of the complainant-company had entered into an agreement to sell for the said land with Mr. Vinod Saini for an aggregate price of Rs. 1.97 crore per acre and thereby cheated, cheating the complainant-company to the tune of Rs. 72 lac per acre.

9. The Sub Registrar, Jalandhar had filed verification report dated 13.08.2010 that GPA dated 02.07.2008 is a genuine document. A civil suit was filed by respondent No. 2 for specific performance or in alternative for refund of Rs. 4.75 crore. It is stated that Sandip Somany as well as respondent No. 2 entered into a Memorandum of Understanding (in short "MOU"), dated 17.11.2013, whereby Sandip Somany undertook to pay the amount of Rs. 10 crore in full and final settlement of all the disputes. Accordingly, the said amount was paid and the civil suit was withdrawn. The said fact was mentioned in the order dated 10.01.2014 passed by Hon"ble the Supreme Court granting anticipatory bail in present FIR. It is also stated that as per terms of MOU, the complaints were to be withdrawn and the FIR was to be quashed.

10. In reply, respondent No. 2 took the plea that MOU was for withdrawal of the civil suit but not for exonerating the petitioners from the criminal liabilities in the FIR in question.

11. It is alleged that the petitioner connived for impersonation and further drawn financial benefits as indicated in the report under Section 173 Cr.P.C. The offences are non-compoundable. Merely because Hon"ble the Apex Court granted the anticipatory bail to the petitioners that does not mean that the FIR is to be quashed qua the petitioners.

12. I have heard learned counsel for the parties and have also carefully gone through the case file.

Admittedly, in the FIR (Annexure P-1), the allegations were levelled against Vishal Gupta, Bhavana Gupta, Mr. Vinod Saini and Ram Niwas Jindal. Later on, the names of Sandip Somany, Rajendra Kumar Somany and Ram Niwas Jindal were included in the supplementary challan. Petitioners seek quashing of FIR in question on the basis of MOU.

13. The copy of admitted MOU dated 17.11.2013 placed on file shows that it was entered into Rajendra Kumar Somany and Sandip Somany on the one hand and respondent No. 2 on the other hand. There was specific mention of the complaints dated 15.07.2011 and 25.07.2011 against the first party and FIR in question registered against Vishal Gupta, Bhavana Gupta, Vinod Saini and Ram Niwas Jindal.

The relevant extract from the said MOU is as under:

"Whereas the Parties to the MOU have agreed to settle the dispute/differences and the Party of the SECOND PART [UFIPL] since his grievances have been fully settled/satisfied has agreed to withdrawn the Complaints filed on 15.07.2011 and

25.07.2011 and quash the proceedings arising from FIR No. 263 of 2009 against the Party of the FIRST PART (SOMANYYS).

4. The FIRST PART [SOMANYYS] may file a Petition before the Hon''ble High Court of Punjab and Haryana at Chandigarh for the purpose of withdrawing the Complaints filed on 15.07.2011 and 25.07.2011 and for quashing the proceedings arising from FIR No. 263 of 2009 against them since the SECOND PART (UFIPL) is fully satisfied."

14. Undisputedly, as per copy of the cheques, two cheques to the tune of Rs. 2.50 crore each were paid on 17.11.2013. In this way, Rs. 5 crore was paid on 17.11.2013. Another sum of Rs. 5 crore was paid through two cheques amounting to Rs. 2.50 crore each on 19.11.2013. Copies of which are on file.

15. However, payment of Rs. 10 crore is not disputed by respondent No. 2-complainant.

16. Plea of learned counsel for petitioner is that after receiving the entire amount of consideration of Rs. 10 crore, now respondent No. 2-complainant has backed out to give consent for quashing of the complaints as well as FIR in question.

17. Learned counsel for the petitioner has referred to the order dated 10.01.2011 passed by Hon''ble the Apex Court, in which while granting the anticipatory bail to the petitioners, the fact regarding the payment of Rs. 10 crore by the petitioners to the complainant was taken into consideration.

18. Undisputedly, the civil suit for the specific performance has already been withdrawn.

19. Learned counsel for the petitioner has referred to the following authorities

1. "Ruchi Aggarwal v. Amit Kumar Aggarwal and others", 2005(3) Supreme Court Cases 299.

2. "Mohd. Shamim and others v. Nahid Begum (Smt) and another", 2005(3) Supreme Court Cases 302.

3. "Rajesh and others v. State and another", I (2008) DMC 442.

4. "V.N. Gupta and others v. State and another" 2013(2) JCC 1079.

5. "Ashok Chawla v. State and another" 2013 (3) JCC 1741.

6. "Dr. Vimla v. Delhi Administration" AIR 1963 SC 1572.

7. "R. Kalyani v. Janak C. Mehta and others", (2009) 1 SCC 516.

8. "Dr. Aakash Deep Makkar and others v. Dr. Vanish and another".

20. It is argued that once the agreement is acted upon, the complainant cannot wriggle out of the same.

21. In Ruchi Aggarwal's case (supra), the Hon'ble Apex Court in the similar circumstances observed as under:

"5. In the compromise petition, referred to herein above, both the parties had agreed to withdraw all the civil and criminal case filed by each against the other. It is pursuant to this compromise, the above divorce as sought for by the appellant was granted by the husband and pursuant to the said compromise deed the appellant also withdrew Criminal Case No. 63 of 2002 on the file of the Family Court, Nanital which was a complaint filed under Section 125 of the Criminal Procedure Code for maintenance. It is on the basis of the submission made on behalf of the appellant and on the basis of the terms of compromise, the said case came to be dismissed. However, so far as the complaint under Sections 498-A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act is concerned, which is the subject-matter of this appeal, the appellant did not take any steps to withdraw the same. It is in those circumstances, a quashing petition was filed before the High Court which came to be partially allowed on the ground of the territorial jurisdiction, against the said order the appellant has preferred this appeal.

Therefore, we are of the opinion that the appellant having received the relief she wanted without consent on the basis of the terms of compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents."

22. Similarly, in Mohd. Shamim's case (supra) of similar nature, the Hon'ble Apex Court observed as under:

"12. In view of the fact that the settlement was arrived at the intervention of a judicial officer of the rank of the Additional Sessions Judge, we are of the opinion, the contention of the first respondent herein to the effect that she was not aware of the contents thereof and the said agreement as also the affidavits which were got signed by her by misrepresentation of facts must be rejected. In the facts and circumstances of this case, we have no doubt in our mind that the denial of execution of the said deed of settlement is an afterthought on the part of respondent 1 herein.

16. In view of the conduct of the first respondent in entering into the aforementioned settlement, the continuance of the criminal proceeding pending against the appellants, in our opinion, in this case also, would be an abuse of the process of the court. Appellant 1, however, would be entitled to withdraw the sum of Rs. 50,000 which has been deposited in the court. We, therefore, in exercise of our jurisdiction under Article 142 of the Constitution direct that the impugned judgment be set aside. The first information report lodged against the appellants is quashed. The appeal is allowed. However, this order should not be treated as a precedent."

23. More or less the position is similar in the other authorities referred above. In the present case also, the complainant has been compensated by payment of Rs. 10 crore by petitioner Sandip Somany and his father Rajendra Kumar Somany. Ram Niwas Jindal was their authorised GPA.

24. In the MOU, which is, in fact, a compromise agreement between the parties, it was undertaken by respondent No. 2-complainant to give consent for quashing of the FIR in question. However, now he is denying to have given the said consent by taking one or the other legal plea. The civil suit on the basis of said MOU has already been withdrawn.

25. As such, I am of the view that the present FIR is nothing but misuse of process of court and law qua the present petitioners.

26. Accordingly, all the aforesaid three petitions are allowed and the FIR in question qua the present petitioners along with all the consequential proceedings arising therefrom stand quashed.