(2016) 01 P&H CK 0432

In the Punjab And Haryana At Chandigarh

Case No : CRM-M-30246 of 2012 (O&M)

Sudershan Nayyar and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Constitution of India, 1950 — Article 21, Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, Section 420

Citation : (2016) 1 LawHerald 542 : (2016) 5 RCRCriminal 501

Hon'ble Judges : Kuldip Singh, J.

Bench : Single Bench

Advocate : R.S. Rai, Senior Advocate and Anurag Arora, Advocate, for the Appellant; A.P.S. Gill, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Kuldip Singh, J.—1. FIR No. 8 dated 19.1.2012 under Section 420 read with Section 34 IPC has been registered at PS Division No. 2 Pathankot, District Gurdaspur against the present petitioners, namely, Smt. Sudarshan Nayyar, her son Manuj Nayyar and daughter-in-law Upma Nayyar on the complaint of Bakhtawar Singh son of Jasbir Singh - respondent No. 2.

2. The summary of the allegations is that according to Bakhtawar Singh complainant, Manuj Nayyar petitioner, approached him in January 2008 impressing upon him that his mother Smt. Sudershan Nayyar is the sole proprietor of M/s. S.N. Enterprises and they are in dire need of the money and want to sell property bearing Khewat No. 305, Khatoni No. 601, Khasra No. 226, 227 to the extent of 40/86th share measuring 40 marlas situated in Dhangu road, Pathankot. Accordingly, they entered into an agreement with the complainant on 11.4.2008 for sale of the said land for total sale consideration of Rs. 2,75,00,000/- payable by 5.5.2010. Earnest money of Rs. 25 lacs was paid. A further sum of Rs. 75 lacs was paid to all the three petitioners (accused) by

way of cheque and cash, which was duly credited in their bank accounts. At the time of agreement, all the accused/petitioners had assured the complainant that property in question is free from all kind of encumbrances and no litigation is pending and no case has been decided against them by any Court till date. No document concerning the property in dispute was shown to the complaint at the time of execution of the agreement. It was assured that before receiving more money beyond Rs. 25 lacs and before the execution of the sale deed, the entire documents of the property shall be handed over to him in original. When despite waiting endlessly and despite continuous demand, the documents were not handed over, the complainant demanded Rs. one crore back along with interest @ 18% per annum. However, Rs. one crore was not refunded nor the documents of ownership of the property were handed over to the complainant. The complainant then approached the Halqa Patwari of the area and procured the copy of the jamabandi in which it was revealed that M/s. S.N. Enterprises is not the owner of any part of the property in question, whereas the property is owned by six owners to the extent of 1/6th share each, namely, Rattan Chand (husband of Sudershan Nayyar), Sagar Chand, Dwarka Nath, Rajinder Mohan and Raj Kumar son of Kishan Chand and Bimal daughter of Kishan Chand. It was further revealed that the property is under litigation in the civil Court at Pathankot since the year 2007 and also before Divisional Commissioner, Jalandhar. It was stated that all the accused/petitioners were aware of the entire dispute and they have cheated the complainant of Rs. one crore. Therefore, it was alleged that the petitioners have defrauded the complainant. The complaint was dated 23.8.2011. After the receipt of the complaint, an inquiry as conducted by the police and after conducting the inquiry, the present FIR was registered on 19.1.2012.

3. Petitioners seek quashing of the FIR on the ground that petitioner No. 1 Mrs. Sudharshan Nayyar is the owner of the property. It was stated that the disputed property was earlier owned by M/s. Himachal Timber Traders, having partners Rattan Chand, Sagar Chand, Dwarka Nath, Gajinder Mohan, Raj Kumar s/o. Kishan Chand Bimal d/o Kishan Chand. As a dispute arose in the year 1965 between M/s. Himachal Timber Traders and State of Himachal Pradesh, the matter was got settled through arbitration and ultimately, after filing of objections, the award was modified and liability of M/s. Himachal Timber Traders was fixed at Rs. 2,00,073/- with interest @ 6 1/4% vide order dated 27.10.1987. M/s. Himachal Timber Traders obtained the permission from the Himahcal Pradesh High Court on 17.1.1991 for sale of the present property in dispute to settle the liabilities of the said firm towards Himachal State and accordingly, vide sale deed dated 15.2.1992, M/s. Himachal Timber Traders sold the property to M/s. S.N. Enterprises to clear the liability. It is further stated that vide dissolution deed dated 15.3.1996, K.L. Mahajan partner left partnership firm of M/s. S.N. Enterprises and the petitioner became sole proprietor of M/s. S.N. Enterprises and therefore, she was owner of the disputed property on the basis of sale deed dated 15.2.1992. It was further stated that disputed property was not agreed to be sold to the complainant Bakhtawar Singh but was agreed to be sold to

Gursharan Singh and Akinderjit Dhillon to the extent of 1/3rd and 2/3rd share respectively. Only on the filing of FIR, the petitioners came to know that the said vendees had further agreed to sell the land to the present complainant Bakhtawar Singh on 25.8.2009. The said agreement has not seen the light of the day till date. Bakhtawar Singh is neither signatory to the agreement nor there is any privity of contract between the petitioners and Bakhtawar Singh. The petitioners further stated that petitioner No. 2 being the general power of attorney on behalf of petitioner No. 1, appeared before Sub Registrar on 5.5.2010, the date fixed for the execution of the sale deed but the vendee did not turn up. Petitioner No. 1 has never refused to execute the sale deed. As the terms of the agreement were violated, the petitioner No. 1 filed a civil suit for declaration for declaring agreement dated 11.4.2008 null and void. The said civil suit is still pending. It is alleged that the co-owners Sagar Chand and Dwarka Nath had also filed a civil suit for declaration and permanent injunction regarding the disputed property, challenging the mutation in favour of M/s. S.N. Enterprises. The suit was filed on 23.2.2008. In the said suit, no interim injunction was granted and the said suit was dismissed in default on 26.2.2010. An application for restoration was also dismissed in default on 1.8.2010. It was further stated that an application for cancellation of the mutation entry was filed. SDM-cum-Collector remanded the case back to Tehsildar-cum-A.C. Grade II on 6.5.2001. On 18.10.2010, the Divisional Commissioner passed an order of status quo regarding the change of mutation entry. It is stated that the learned Judicial Magistrate had already framed the charges on 5.6.2012. It is further stated that it was basically a civil dispute and FIR has been filed to harass the petitioners. The complainant was not party to the agreement and averments in the complaint in this regard are false. In fact, the vendees had failed to get the sale deed executed on 5.5.2010.

4. Respondent No. 2 in the reply, has taken the plea that the petitioners have entered into an agreement with respondent No. 2 and his family members, claiming to be owner of the disputed property. Civil litigation is pending regarding the said property since the year 2007. The petitioners are not the owners of the property till date. These facts were concealed from respondent No. 2. It was stated that the property was not free from all encumbrances and respondent No. 2 has been cheated. Therefore, the FIR was rightly registered after conducting an inquiry.

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

6. Copy of the agreement to sell dated 11.4.2008 shows that petitioner No. 1 Sudharshan Nayyar being the sole proprietor of M/s. S.N. Enterprises agreed to sell land measuring 2 kanals which is 40/86th share of land measuring Khewat No. 305, Khatauni No. 601, Khasra No. 226(2-2), 227(2-4) plots 2 area 4 kanals 6 marlas. On the said land, one single storey building consisting of garage, office, courtyard, six rooms, bathrooms, 3 rooms, guest room, open space, 6 rooms

with boundary wall and having electric and water connection of every type. Boundary of said area was also mentioned in the agreement. It was mentioned that there is no encumbrance in the property and no litigation is pending. The said building was agreed to be sold for Rs. 2,75,00,000/- in favour of Smt. Akinderjit Dhillon w/o. Daljit Singh Dhillon to the extent of 2/3rd share and Gursharan Singh son of Natha Singh 1/3rd share. Rs. 25 lacs were paid as earnest money, out of which Rs. 20 lacs were paid through demand draft and Rs. 5 lacs in cash. The date of sale deed was fixed as 5.5.2010. In case of failure to execute the sale deed, the vendor was liable to pay the double amount and if the vendees failed to get the sale deed executed, earnest money was to be forfeited. It was further stipulated that if some dispute or claim regarding said building crops up or some claim is made, the said claim shall be satisfied by the vendor and if the same is not done, the vendee will deduct the amount of the said claim from the sale consideration and will get the sale deed executed from the petitioners. The vendees were also entitled to get the sale deed executed in favour of some other person. Further writing dated 31.3.2010 shows that further sum of Rs. 25 lacs was received by the vendors through account payees cheque #0464763 from buyers and Rs. 25 lacs were received by the vendors through Bakhtawar Singh Gill in cash. In this way, on behalf of the vendees, total sum of Rs. 75 lacs has been paid. It is to be noted that the date of execution of sale deed was 5.5.2010. The present complaint to the police was made on 23.8.2011 i.e. One year and 3 months after the date for execution of the sale deed had passed.

7. The copy of the sale deed dated 15.2.1991 shows that M/s. Himachal Timber Trading company through partner Rattan Chand, sold the disputed property to M/ s. S.N. Enterprises. The petitioners have also placed on file a copy of the dissolution deed (Annexure P19), vide which, the second partner K.L. Mahajan retired from the firm M/s. S.N. Enterprises on 15.3.1996. Therefore, Smt. Sudharshan Nayyar was left to be sole proprietor of the said firm. The petitioners have also placed on file a copy of the order of the Himachal Pradesh High Court, vide which, the permission was granted to the said M/s. Himachal Timber Traders to sell the property.

8. Bakhtawar Singh, with whom the said vendees Akinderjit Dhillon and Gursharan Singh are alleged to have entered into further agreement for sale, has alleged in the complaint that the vendees were cheated as litigation regarding disputed property was pending and that the title of the petitioner No. 1 was not clear which was not disclosed to the complainant. In the FIR itself, it is alleged that when Rs. 25 lacs as earnest money was paid on the date of the execution of the agreement i.e. 11.4.2008, the vendees did not see any document of title. Surprisingly, when another sum of Rs. 50 lacs was paid much later on 31.3.2010, there is no mention as to why the documents of title and factum regarding litigation were not checked. There is a gap of about little less than two years in making first payment of Rs. 25 lacs and payment of Rs. 50 lacs by the complainant as attorney of Akinderjit Dhillon. The contents of the agreement

itself shows that it was stipulated that if some claim over the disputed property crops up, the petitioner No. 1-vendor shall be liable to pay the said amount and if the same is not paid, the said amount shall be deducted from the sale consideration and the vendor shall be liable to execute the sale deed.

9. Now coming to the litigation, it comes out that it is not stated that on the date of agreement, there was some stay by any Court regarding alienation. The dispute before the Commissioner is regarding cancellation of the mutation. The mutation does not confer any title. Some of the partners of the M/s. Himachal Timber Traders had made some claim regarding their share. However, the sale was by firm M/s. Himachal Timber Traders through one of its partners with the permission of Himachal High Court and prima facie good title was conferred on the vendee M/s. S.N. Enterprises. The said sale deed can only be set aside by a Civil Court.

10. Now, this Court is to examine whether the vendees had any doubt about the title of the petitioners over the disputed property? Copy of the plaint of Civil Suit filed by vendees Akinderjit Dhillon and Gursharan Singh (Annexure P13) shows that they had filed suit for possession by way of specific performance of agreement of sell dated 11.4.2008. In the said plaint, it is nowhere mentioned that vendor does not have clear title. Rather primary prayer is for directing the vendors Sudarshan Narryar and firm M/s. S.N. Enterprises through its sole proprietor Smt. Sudharshan Nayyar to execute the sale deed. There is no privity of contract between petitioner No. 1 and Bakhtawar Singh Complainant. Agreement was with Akinderjit Dhillon and Gursharan Singh, who have already filed a civil suit on 1.6.2012. The civil suit is pending for decision before the civil Court. Therefore, it does not lie in the mouth of attorney of said plaintiffs that petitioner No. 1 did not have clear title. Further, it comes out that Smt. Sudharshan Nayyar had also filed a suit on 29.9.2011, copy of which is Annexure P9, vide which she had sought declaration to the effect that the agreement to sell dated 11.4.2008 be declared infructuous and ineffective as vendees Akinderjit Dhillon and Gursharan Singh failed to get the sale deed executed within the limitation period. The petitioners have also placed on file an affidavit to show that on 5.5.2010, the petitioner No. 2 being the attorney of petitioner No. 1 had appeared before the Sub Registrar to execute the sale deed (Annexure P6). In this way, it is clear that the cross suits are pending before the civil Courts in which vendor petitioner No. 1 has sought the declaration of declaring the agreement dated 11.4.2008 as infructuous, whereas the vendees Akinderjit Dhillon and Gursharan Singh have filed a suit for specific performance of the said agreement dated 11.4.2008. In none of the said suits, any dispute has been raised that the vendor did not have the clear title to sell the land.

11. Petitioner No. 1 was the owner of the property and Akinderjit Dhillon and Gursharan Singh were the vendees. Petitioner No. 2 is son of petitioner No. 1 and was holding power of attorney on behalf of his mother. Petitioner No. 3 is daughter-in-law of petitioner No. 1. It is not understood as to what offence has

been committed by petitioner Nos. 2 and 3. They appear to have been roped in the case to put pressure on petitioner No. 1 to come to the terms of the complainant. The further question would arise as to whether when a civil suit is already pending and in the said civil suit, there are no allegations that the petitioner No. 1 vendor concealed the litigation and her title to some extent was under dispute and that the vendees were cheated, the question would arise whether the petitioner No. 1 along with petitioner Nos. 2 and 3 could be booked and tried for cheating? I am of the view that the dispute is basically of civil nature. Both the parties have filed cross suits and civil Court is yet to decide whether the agreement has become infructuous or specific performance of the agreement is to be ordered. Against Rs. one crore, alleged to have been paid in the agreement to the petitioner No. 1 in the suit for specific performance, it is alleged that Rs. 75 lacs in total have been paid. Rs. 25 lacs were paid at the time of agreement and Rs. 50 lacs were paid on 31.3.2010. In the plaint, vendees alleged that they had also appeared before the Sub Registrar on 5.5.2010 to get the sale deed executed in their favour. For attracting the liability under Section 420 IPC, it must be established that from the very beginning, there was intention on the part of the petitioner to cheat. In the present case, there was a building on the disputed property and the petitioner No. 1 was in possession thereof and running the firm from the said premises. They had a sale deed in their favour. The mutation does not confer any title. The title flows from the sale deed. There was no order of the civil Court, restraining the alienation of disputed property. Further, there was sufficient stipulation in the agreement to meet the eventuality when a claim is made by 3rd party. Therefore, I am of the considered view that it is basically a civil dispute between petitioner No. 1 and the vendees Akinderjit Dhillon and Gursharan Singh. Petitioner No. 2 Bakhtawar Singh is stated to have entered into an agreement with vendees to purchase the property. Nothing was paid by him to present petitioners in personal capacity.

12. The matter, where the civil proceedings are sought to be converted into criminal proceedings and the process of Court is sought to be misused, was examined in detail by the Hon''ble Apex Court in Chandran Ratnaswami v. K.C. Palanisamy and others, , 2013 AIR (SC) (Crl.) 1317. The Apex Court while examining the case law on the point was referring to the law laid down in the State of Karnataka vs. L. Muniswamy and Others, , (1977) 2 SCC 699 observed as under:-

34. This Court in State of Karnataka vs. L. Muniswamy and Others, , (1977) 2 SCC 699 observed that the wholesome power under Section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than

the ends of mere law though justice must be administered according to laws made by the legislature. It was held in this case (at p. 703 of SCC):

"7. .....

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court''s inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

13. Similarly, the reference was also made to the authority in State of Haryana and Others vs. Bhajan Lal and Others, , 1992 Supp. (1) SCC 335 and the following observations were reproduced:-

35. In State of Haryana and Others vs. Bhajan Lal and Others, , 1992 Supp. (1) SCC 335, this Court in the backdrop of interpretation of various relevant provisions of Cr.P.C. under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

(SCC pp. 378-79, para 102)

"102. (1) ....

(2) .....

(3) ......

(4) .....

(5) .....

(6) .....

(7) 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."

14. The Apex Court also referred to the latter decisions of the Apex Court in which the said guidelines were followed and observed as under:-

36. This Court in Zandu Pharmaceutical Works Ltd. and Others vs. Mohd. Sharaful Haque and Another, , (2005) 1 SCC 122 observed thus:

(SCC p. 128, para 8)

"8. ... It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/ continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

37. In Indian Oil Corpn. v. NEPC India Ltd. and Others, , (2006) 6 SCC 736 this Court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that: (SCC p. 749, para 13)

"13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

38. In the case of Inder Mohan Goswami and Another vs. State of Uttaranchal and Others, , (2007) 12 SCC 1, this Court after considering series of decisions observed:

"46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Criminal Procedure Code though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

xxx xxx xxx

50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice-liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued."

15. In the present case also, it is basically a civil dispute as discussed above. The allegations in the FIR regarding disputed title appears to have been levelled to make out a criminal case, whereas in the Civil Suit for specific possession the vendees do not claim that the vendor does not have any clear title or the title is in dispute.

16. Therefore, registration of present FIR is nothing but misuse of process of Court and a civil dispute is sought to be converted into the criminal litigation to get quick relief. Petitioner Nos. 2 and 3 are not the owners of the property which is the subject matter of the agreement. They appear to have been roped in just to put extra pressure on petitioner No. 1 vendor.

17. Now, further question would arise as to whether the present FIR along with consequential proceedings is liable to be quashed?

18. In view of the fact that this Court has come to the conclusion that it was basically a civil dispute which is pending before the Civil Court and the said civil dispute is sought to be given a colour of criminal dispute of cheating, I am of the view that the present FIR and the consequential proceedings are nothing but misuse of process of law. As such, FIR No. 8 dated 19.1.2012 under Section 420 read with Section 34 IPC has been registered at PS Division No. 2 Pathankot, District Gurdaspur along with all the consequential proceedings stands quashed.

19. The petition is accordingly allowed.

