
(1990) 12 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9937-M of 1990

Sukhdev Khanna, Advocate Chandigarh

APPELLANT

Vs

Union Territory of Chandigarh

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Citation : (1991) 1 RCR(Criminal) 646

Hon'ble Judges : S.S.Grewal, J

Advocate : Anand Swaroop, R.S. Cheema, Sunidh Kashyap, Advocates for appearing Parties

Judgement

S. S Grewal, J.

1. This petition under section 482 of the Cod of Criminal Procedure Code (hereinafter referred to as the Code), relates to quashment of impugned FIR No. 150, dated 731985, registered against the petitioner under sections 420. 471 and 474 of the Indian Penal Code, at Police Station Central, Sector17, Chandigarh.

2. In brief, facts relevant for the disposal of this petition, as emerge from the impugned first information report, are, that the petitioner and Shri Jaswant Singh his coaccused were known to the first informant, namely, Pawittar Singh Walia, for the last several years and they had family relations with him. The first informant reposed great confidence in both of them. In July, 1981, both the present petitioner and Jaswant Singh, came to the first informant that the Plot No. 2165 (RPL No. 17741), Sector 15. Chandigarh, was for sale and was available at throwaway price. Both the said accused took the first informant and his son to the site and induced them to purchase the plot because of location of plot and its price which was very reasonable. Both of them showed to the first informant and his son, power of attorney in the name of Shri J. K. Sharma, from the real owner of Shri Hem Singh Bhangra. In the first week of August, 1981, Shri Jaswant Singh; and the petitioner, visited the house of the first informant and again requested him to purchase the plot in question, and allured him that

he will get the plot in question at a very low and very reasonable rate, having good location and a life long property. They also placed before him a power of attorney in favour of Shri J.K. Sharma to whom they claimed to be a good friend and further stated that the first informant may consider Shri Sukhdev Khanna in place of Shri J. K. Sharma, and also assured the petitioner about the correctness and genuineness of the power of attorney. The latter reposing confidence in them gave the consent for purchase of plot in the name of his son. The sale price of the plot was settled at Rs. 1,40,000/ Rs. 20,000/ were paid in cash as earnest money by Shri Rupinder. Vir Singh (petitioner's son) to the present petitioner and Jaswant Singh for making this payment to Shri J.K. Sharma. On 10/8/1981, both the petitioner and Jaswant Singh came to the residence of first informant and took his son Rupinder Vir Singh along with them for signing the agreement of the plot in question. After sometime they returned back along with written agreement duly signed by his son Rupinder Vir Singh and witnessed by the present petitioner and Jaswant Singh. The receipt of Rs. 20000/ as earnest money was also acknowledged in the said agreement. On the demand of the petitioner and Shri Jaswant Singh that Shri L K. Sharma was insisting for an additional amount of Rs. 2000/ being in dire need of money Rupinder Vir Singh, aforesaid delivered a Bank Draft No. 194457/143419 dated 11/8/1981 for an amount of Rs. 20000/ in favour of Shri J. K. Sharma, issued by Oriental Bank of Commerce, Sector 17 to Shri Jaswant Singh coaccused of the petitioner for payment to Shri J. K. Sharma. On 19/8/1981 on the farther demand Rs. 20,000/ were paid by Bank Draft No 194610/1486 dated 19/8/81 in favour of Shri J.K. Sharma issued by the same bank to the petitioner for onward payment to Shri J.K. Sharma. Balance of Rs. 80,000/ was paid to the petitioner by the first informant's son in cash in the presence of Paramjit Singh as desired and insisted by them in different instalments from time to time on their persistent demand. Information was also given that the full amount as agreed to was required for the clearance of the plot as the same stands resumed by the Estate Office. They further told the first informant that after clearance from the Estate Officer no objection certificate for the registration of sale deed will be obtained and thereafter the sale deed will be executed. Keeping in view the urgency and their pursuance. The whole consideration was paid to them and in lieu thereof a receipt signed by Shri J. K. Sharma for full and final payment of settled amount was delivered by them to the first informant. Thereafter, neither the deal was finalised, nor, the sale deed was executed in spite of repeated requests made by the first informant to the petitioner and his coaccused Jaswant Singh. The first informant became suspicious on their evasive attitude, indifferent behaviour and delaying tactics to execute the sale deed and then started making enquiries which revealed that the said plot was originally purchased in auction by Shri Hem Singh Bhangra who ultimately surrendered the same to the Estate Officer, Chandigarh; that no person in the name of Shri J. K. Sharma ever lived on the address given by the petitioner and his coaccused Jaswant Singh as mentioned in the agreement. The bank drafts were deposited and encashed from Savings Bank Account No. 2008 of Shri J. K. Sharma at State Bank of Patiala, High Court

Branch, Chandigarh. That account had been opened in the bank in connection with this deal only. Thus according to the first information both the petitioner and Jaswant Singh induced him and his son to part with the amount of Rs. 1,40,000/ and they conspired to cheat both of them. They also committed forgery by preparing false, documents. It was further alleged that they knew from the very beginning that the power of attorney in favour of Shri J. K. Sharma was a forged one and they intentionally concealed this fact from the first informant and his son and never introduced Shri J. K. Sharma to them. The first informant also suspected that some more people are also involved in this cheating and there is foul play, in the Bank operations also.

3. The learned counsel for the parties were heard.

4. In order to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, to quash the proceedings pending at the initial stage, before the Magistrate taking cognizance of the offence, this Court is guided by the allegations, whether those allegations, set out in the complaint or the chargesheet, do not in, law constitute or spell out any offence and that resort to criminal proceedings, would, in the circumstances, amount to an abuse of the process of the Court, as observed by the apex Court in *State of Bihar v Murad Ali Khan and others*, AIR 1989, Supreme Court 1.

5. On behalf of the petitioner, it has rightly been submitted that from the perusal of the impugned first information report, neither there is any specific allegation against the petitioner that the first informant was deceived by any fraudulent or dishonest inducement on the part of the petitioner to enter into alleged, agreement for sale of the plot in dispute, in favour of the first informant or his son Rupinder Vir Singh Nor there is any specific allegation against the petitioner that after any such alleged deception, the first informant or his son were induced to deliver the sale consideration of Rs. 1,40,000/ either to the petitioner or to Shri J. K. Sharma, on the basis of any forged power of attorney.

6. Careful perusal of the impugned first information report dated 731985, reveals that the alleged proposal concerning sale of the plot in dispute through Shri J. K. Sharma, attorney was made by the petitioner and his coaccused Jaswant Singh to the first informant in July 1981. The said proposal was repeated by them to the first informant in first week of August 1981 and the agreement to sell, copy whereof is Annexure P1, was executed on 10.8.81 when, both, the petitioner and his coaccused Jaswant Singh came to the first informant and took his son Rupinder Vir Singh with them for signing the agreement. Perusal of the agreement to sell, copy whereof is Annexure P1, reveals that the said agreement for sale of plot in question was executed between Shri J. K. Sharma vendor and Rupinder Vir Singh vendee for a sale consideration of Rs. 1,40,000/ out of which Rs. 20,000/ had been paid to Shri J. K. Sharma as earnest money by the said vendee. It was also mentioned that the vendee shall pay the balance amount to Shri J. K. Sharma vendor, and get separate receipt for the same and that Shri J. K. Sharma will deposit the required sum in the Estate Office for getting the said

plot restored. It is also recited in the said agreement that Shri Hem Singh Bhangra along with his son is the auctionpurchaser of the plot in question and he had purchased the same in auction for a sum of Rs. 85,000/ on leasehold basis; that first instalment of Rs. 21250/ was deposited by the auctionpurchaser and that the plot was resumed by the Union Territory Administration, for nonpayment of the rest of the instalments, and that revision was filed by the auctionpurchaser to get the plot released. It is also mentioned therein that genuine power of the attorney is being given to facilitate Rupinder Vir Singh, so that he may get the plot registered in his name, or, in the name of his nominee and that Shri J. K. Sharma will bring the owner to get any formality completed for smooth transfer of the plot in the name of Mr. Rupinder Vir Singh or his nominee. Both the present petitioner and Jaswant Singh had merely signed as marginal witnesses to the said agreement to sell. It is pertinent to note that there is no specific mention in the agreement to sell either that the same was got executed between the parties at the instance of the petitioner, or, that he had made any representation, or taken part in the negotiations concerning the execution of the said agreement to sell, or had represented that Shri J.K. Sharma held any genuine power of attorney on behalf of the auctionpurchaser. The said recitals taken at their face value, do not support the payment of Rs. 20,000/ as earnest money by petitioner to Shri J.K. Sharma. The recitals in the alleged agreement to sell clearly indicate that both the first informant and his son knew Shri J.K. Sharma from the very beginning and had entered into negotiations for sale with him and the allegation made by the first informant that because of delay in executing the sale deed he started making inquiry which revealed that the plot was originally purchased in auction by Hem Singh Bhangra who ultimately surrendered the same to Estate Office, Chandigarh, and that no person in the name of Shri J. K. Sharma lived on the address given by the petitioner or his coaccused cannot prima facie taken to be correct. Besides, it is significant to note that as per recitals in the agreement for sale, payment of Rs. 20,000/ was made in cash as earnest money by Rupinder Vir Singh to Shri J. K. Sharma, whereas, according to the allegations in the impugned first information report, payment of Rs. 40,000/ was made through two bank drafts bearing No. 195557/153419 dated 1181981 and 194610 dated 1981981 amounting to Rs. 20,000/ each, both issued by the Oriental Bank of Commerce, Sector17, Chandigarh in the name of Shri J.K. Sharma. Both the aforesaid bank drafts were first deposited in the Saving Bank Account of Shri J. K. Sharma with State Bank of Patiala, High Court Branch, Chandigarh, and subsequently encashed by him. The balance amount of Rs. 80,000/ was allegedly paid to the petitioner by the first informant and his son at a much later stage.

7. All the allegations, referred to above either in the impugned First Information Report or in the agreement of sale at best, may constitute civil liability for nonperformance of the agreement to sell, or, for return of sale consideration allegedly paid by the first informant or his son Rupinder Vir Singh. These allegations do not, in any manner, prima facie, show that first informant or his

son Rupinder Vir Singh, had been deceived, because of any fraudulent or dishonest inducement on the part of the petitioner, nor it can be said that on the basis of any such inducement, the first informant or his son handed over an amount of rupees one lac in cash and Rs. 40000/ through bank drafts to the petitioner or his coaccused Jaswant Singh for payment to Shri J. K. Sharma. Thus, from the allegations in the impugned first information reports and recitals in the agreement to sell, it cannot, prima facie, be said that the alleged power of attorney by the auction purchaser in favour of Shri J.K. Sharma was forged, or, that the same was used by the petitioner in order to cheat the first informant or his son Rupinder Vir Singh in respect of the payment of alleged sale consideration of Rs. 1,40,000/ to Shri J.K. Sharma.

8. For the foregoing reasons, no prima facie case for commission of any offence under sections 420, 467, 471 and 474 of the Indian Penal Code, has been made out against the petitioner and continuation of proceedings against him on the basis of the impugned first information report would, in the circumstances of the present case, amount to abuse of the process of the Court. Thus, the impugned first information report and consequent proceedings taken thereunder, against the petitioner, are directed to be quashed. This petition is accordingly allowed. However, there will be no legal bar to take appropriate action against the coaccused of the petitioner on the basis of the impugned first information report.