

(2013) 07 P&H CK 0459

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM No. M-18096 of 2011 (O and M)

Palwinder Singh and Another

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: July 1, 2013

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 155(2), 156(1), 482
- Penal Code, 1860 (IPC) - Section 420, 506

Hon'ble Judges: Sabina, J

Bench: Single Bench

Advocate: Gursimran Singh, for the Appellant; Deep Singh, AAG, Punjab and Mr. Ravinder Sharma, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Sabina, J.

Petitioners have filed this petition under Sections 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No. 84 dated 26.04.2011 u/s 420 and 506 of the Indian Penal Code, 1860 (in short "IPC"), registered at Police Station Tarn Taran and all the subsequent proceedings arising therefrom. Learned counsel for the petitioners has submitted that the dispute between the parties was purely simple in nature as it relates to money dispute. Civil suit for recovery of the amount in question filed by the complainant was dismissed by the Civil Court and the judgement and decree dated 03.04.2010 passed by the Civil Court had become final. Hence, the FIR in question was liable to be quashed.

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

3. Learned counsel for respondent No. 2 has submitted that complainant could resort to his civil as well criminal liability.

4. Case of respondent No. 2, as per the FIR, in brief, is that he had entered into an agreement of sale of combine with the petitioners for a sum of Rs. 6,15,000/-. Out of the sale price, Rs. 2,00,000/- were paid by the petitioners and the rest of the amount was to be paid on 04.09.2003. Petitioners paid Rs. 85,000/- to the complainant and Rs. 3,33,000/- were to be paid to the Bank. Out of the said amount, one installment had been paid by the petitioners to the Bank. However, remaining amount had not been paid by the petitioners. Hence, FIR in question was lodged.

5. A perusal of the FIR, itself, reveals that the dispute between the parties is purely civil in nature. As per the complainant, he had agreed to sell his combine to the petitioners. However, the petitioners had failed to pay the entire amount of sale consideration to the complainant. Complainant resorted to civil remedy by filing suit for recovery of Rs. 1,17,000/-. Copy of the judgment passed by Civil Court has been placed on record as Annexure P-2. A perusal of the same reveals that the suit filed by the complainant was dismissed. A perusal of the said judgment further reveals that the Civil Court has held that the complainant/plaintiff had failed to establish that he had purchased any combine. Further the complainant had failed to prove agreement dated 18.09.2003 on record. Moreover, the suit had been filed beyond the period of limitation. Thus, in the present case, the remedy available to the complainant was to file a civil suit for recovery and he had done so and had failed to prove his case in the said proceedings. Suit of the complainant was dismissed on 03.04.2010.

6. During the course of the arguments, it has transpired that the decision of the Civil Court in the suit for recovery of amount in question, filed by the complainant has become final. Since the complainant had failed to get the relief in the civil proceedings, he filed the FIR in question on 26.04.2011, after a long delay.

7. In the case of [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), 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 u/s 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 channelised 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 u/s 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 u/s 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 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.

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.

8. In the facts and circumstances of the present case, continuation of criminal proceedings against the petitioners would be nothing but abuse of process of law. Accordingly, this petition is allowed. FIR No. 84 dated 26.04.2011 under Sections 420 and 506 IPC, registered at Police Station Tarn Taran and all the subsequent proceedings arising thereto are quashed.