

(2013) 05 P&H CK 0116

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 9242 of 2013

Gurminder Singh

APPELLANT

Vs

Union Territory and Others

RESPONDENT

Date of Decision: May 1, 2013

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 173

Citation: (2013) 171 PLR 214

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: Deepak Thapar, for the Appellant;

Final Decision: Dismissed

Judgement

Rajiv Narain Raina, J.

A private law property dispute between owners, builders etc. relating to residential House No 2366, Sector 35-C, Chandigarh, involving complex private financial dealings between the parties which include a gift deed and a family settlement entered into between the parties, i.e. the petitioner and respondents No. 3 and 4 claiming ownership rights of the disputed property through late Smt. Gian Kaur, who was an issueless widow of late Kartar Singh the original owner of the property in dispute, has been brought to this Court for resolution by invoking Articles 226 and 227 of the Constitution of India. The petition calls in question the impugned orders passed by the Police Complaints Authority, U.T. Chandigarh, (for short the "Authority") constituted by notification dated 23.6.2010 in compliance of the directives issued by the Supreme Court [Prakash Singh and Others Vs. Union of India \(UOI\) and Ors](#), which decision kick started the much needed police reforms in the country with a mandate to constitute in each State a Police Complaints Authority headed by a retired Judge of the High Court to entertain and opine on complaints presented against police personnel to hold them accountable to human rights

violations and serious misconduct committed by them in the discharge of their official duties. The Authority has passed the impugned order dated 30.9.2011 castigating the role of Inspector Anokh Singh, the then SHO, Police Station Sector 36, Chandigarh of misusing his powers by detaining the real owners of the said disputed property without any just cause or reason compelling them to vacate the house in dispute and to enter into a compromise with those whom the police owe allegiance to beyond the call of duty. The Authority has also found Sub Inspector Rakesh Kumar of the Crime Branch of having acted with bias and malafides in showing undue haste to help wrongdoers for which they deserve suitable punishment after holding departmental inquiry against the wrongdoers. Fresh investigation has been recommended to the Inspector General of Police, U.T. Chandigarh, since the earlier inquiry by the Crime Branch was closed on a single day by Sub Inspector Rakesh Kumar and Inspector Amanjot Singh citing pendency of a civil suit making the matter sub judice. It is alleged that Inspector Amanjot Singh's brother happens to be a relative of the petitioner. Certain questioned documents are also said require to be examined by an expert according to the opinion expressed by the Authority. There are allegations of forgery as well which the Authority says cannot and should not be brushed aside "on the basis of a lone statement made by the very person against whom allegation of forgery is made".

2. The Authority has now passed an order dated 12.4.2013 requesting the Inspector General of Police, U.T. Chandigarh to register an FIR in the matter relating to fraud, forgery and fabrication of documents etc. This opinion of the Authority is impugned in this petition by the petitioner.

3. Mr. Deepak Thapar, learned counsel appearing for the petitioner submits that the directions/recommendations of the Authority tantamount to returning a finding of forgery against the petitioner and therefore cause prejudice to him. He draws the attention of this Court to the order in which it is recorded as follows:

In the present case, all the aforesaid documents are said to be fake and forged papers. Agreement to sell dated 6.4.2010 has been drafted on plain papers with a stamp valued at Rs. 5/- affixed on it. It is not attested by the Notary Public. Payments are mostly shown in cash except through one Cheque of Rs. 10 lakh. Thus, out of Rs. 79 lakh claimed to have been paid, Rs. 69 lakh are shown as paid in cash. Amarjeet Singh has clarified that he had indeed received the Cheque for Rs. 10 lakh but that related to a different financial transaction and had nothing to do with the so-called agreement to sell dated 6.4.2010. Amarjeet Singh says that Gurminder Singh had given him a loan of Rs. 10 lakh on 7.5.2010. Post dated cheques were given to Gurminder Singh as security at that time. It is clear that payments have been mostly shown in cash and that raises a question mark about their authenticity.

Amarjeet Singh has filed a report dated 22.7.2011 prepared by Sri Sumit K. Arora, an examiner of questioned documents. As per his report, the signature of Amarjeet Singh on the receipt dated 19.7.2010 showing the payment of Rs. 24 lakh to him

does not tally with his specimen signature as found in his passport. It makes it clear that all the documents in question need to be examined by an expert. The question relating to forgery cannot and should not be brushed aside on the basis of a lone statement made by the very person against whom allegation of forgery is made.

4. He further submits that the Authority has exceeded its jurisdiction in recommending registration of an FIR. Indisputably, the petitioner has filed a civil suit at Chandigarh for specific performance of the contract against the complainants i.e. respondents No. 3 and 4 who are husband and wife claiming ownership through Smt. Gian Kaur and her husband the late Kartar Singh the original owner of the suit disputed property.

5. It appears well settled that the criminal law can be set in motion by anyone on the allegation of commission of crime or cognizable offense.

6. By its very nature an FIR has to describe at least something of what is seen, heard, felt or experienced through the sensory organs. Therefore, it is difficult to believe that the Authority would have no jurisdiction to form opinion and to make a recommendation for registration of an FIR against such persons who may be prima facie involved in wrongdoing. There is no direction in any of the orders impugned which would impede fair investigation at the hands of the Inspector General of Police, U.T. Chandigarh or to call upon him to conduct investigation in a particular way. This Court is not persuaded to hold that the recommendation for registration of an FIR is beyond the scope of jurisdiction and powers conferred on the Authority which is set up to save citizens from police excesses alleged.

These are all matters which would need transparent and impartial investigation to unearth the truth of the allegations. The petitioner has not been and could not possibly be held guilty of any crime by the Authority. After all the Authority is constituted to look into cases of serious misconduct of police personnel and to examine issues of human rights violations. It can well suggest, opine, recommend and direct registration of an FIR involving police excesses for purpose of holding a fair investigation. That power, in the view of this Court, remains with the authority short of presenting the final report u/s 173 of the Code of Criminal Procedure, 1973 before the Ilaqa Magistrate. At that stage the Court of competent jurisdiction would take over to pass an appropriate order leaving parties to resort to their legal remedies as available in law.

7. Neither can it be contended by any person that his conduct cannot be investigated or that he is immune from being questioned by the police with respect to his wrongdoing when facts demand. The law must take its course. So also the civil suit filed by the petitioner in the trial Court at Chandigarh for specific performance of the contract agreement and nothing said in this order would be taken as an expression of opinion on the merits of the case which lie exclusively in the domain of fresh investigation at the hands of a fresh set of investigators overseen by the

Inspector General of Police, UT, Chandigarh. All that I intend to say is that this is not a fit case for interference in the extraordinary writ jurisdiction exercised by this Court either under Article 226 or 227 of the Constitution or to enter into the arena of disputed facts to scuttle a criminal investigation for bad reason or to pre-empt it. I do not find that any prejudice has been caused to the petitioner by any of the impugned orders or the one declining review. The result of investigation is not yet known. I also do not find any intrinsic merit in the submission of Mr. Thapar that the observations made by the 2nd respondent authority in the order dated 30.9.2011 deserve to be expunged or quashed lest they adversely effect and prejudice the property rights of the petitioner or that the observations same may have far reaching implications on the civil litigation pending between the parties. This appears to be misplaced apprehension in the mind of the petitioner. The case is primarily based on documentary evidence and inferential reasoning that may be drawn from such facts which facts no one on earth can change, much less this Court. What is to be deduced from those facts is a matter of deductive logic achievable only through skill of trained investigators charged with the duty to find out guilt or innocence of a citizen. If there is no wrongdoing there is no fear.

8. No ground is made out warranting intervention in extra ordinary writ jurisdiction or to call upon this Court to answers the prayers by issuing a writ in the nature of a mandamus or a writ of certiorari going to record. The petitioner at best would remain at liberty to avail alternative remedies, if available in law, and if advised. The questions raised in this petition are too complicated questions of fact to be resolved in the summary affidavit jurisdiction of this Court without admitting evidence. The petition is, for these reasons, dismissed with the liberty to the petitioner to avail alternative remedies in accordance with law.