

(2006) 09 P&H CK 0322

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 15826-M of 2005

Panchayat Mohalla Sudan
Ludhiana Dharamshala

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: Sept. 12, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 420, 468

Citation: (2007) 1 RCR(Criminal) 391

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Advocate: Sumeet Mahajan, for the Appellant; R.K. Nihalsinghwala, DAG, Punjab For the Respondent No. 5 Mr. Gurcharan Dass, for the Respondent

Final Decision: Allowed

Judgement

T.P.S. Mann, J.

The present petition has been filed for seeking registration of FIR against respondent No. 5.

2. It has been submitted that the petitioner Society is involved in religious and charitable affairs. The Society looks after the affairs of Dharamshala since time immemorial. There is a Smadh of Baba Malha in the Dharamshala situated at B-IV-1120, Mohalla Sudan, Ludhiana. The Society owns a number of buildings. One Parma Nand was appointed as care-taker of Dharamshala to collect the rent and to deposit the same with the Panchayat. Aforesaid Parma Nand died in the year 1996-97. A number of properties, owned by the aforesaid Society were rented out to different tenants. Respondent No. 5 is nephew of aforesaid Parma Nand. But respondent No. 5 was neither appointed as Chela of said Parma Nand nor he was authorised to deal with the properties of the Dharamshala in any manner. The society was also owner of House No. B-II-1055 (old) B-IV-1076 (new), Mohalla Sudan,

Ludhiana measuring 58-1/2 sq. yards comprising of two rooms, two stores, stairs, bathroom, verandah. Shri Raj Kumar Kapoor is one of the tenants in the aforesaid property owned by Panchayat Mohalla Sudan, Ludhiana Dharamshala. Apart from the aforesaid property, Dharamshala owns another building bearing No. B-II-1018 (old) B-IV- 1122 (new), Mohalla Sudan, Ludhiana. Amar Singh and Jaswant Singh both sons of Bachan Singh were also tenants in the said house. Piara Nand, respondent No. 5, who claimed himself to be a Chela of Mahant Parma Nand, instituted a suit against Sudesh Kumar and Tarsem Lal and many others including President of the Society titled Mahant Piara Nand v. Sudesh Kumar and others. In the said suit during cross-examination, Mahant Piara Nand denied having sold the property in question. One day Narinder Kapur and Raj Kumar Kapur along with members of his family tried to raise construction in the aforesaid house of Dharamshala. Members of the Panchayat went to the spot and asked the aforesaid persons not to raise constructions as the said property belongs to Panchayat Mohalla Sudan. The aforesaid persons told the members of the Panchayat that they have purchased the property from Piara Nand. It is at that point of time when it was discovered that Piara Nand respondent No. 5 had allegedly sold the property in question to Kapoors which did not belong to him but belonged to the aforesaid Society/Dharamshala. Parma Nand was merely a care-taker and had been entrusted with right to collect the rent on behalf of the Society. Similarly aforesaid Amar Singh and Jaswant Singh tried to raise constructions on the house which was in their occupation as tenant and when stopped by members of the Panchayat, they were told that they had purchased the said house purportedly by sale deed dated 28.2.1992 executed by Piara Nand. The aforesaid incidents happened in the year 2001. The aforesaid properties belonged to Dharamshala Mohalla Sudan which were meant for the common benefit of the residents of the area and that building owned by the Dharamshala Mohalla Sudan were/are being used by the community and that the income derived from the property used for celebrating auspicious occasions, like Vaisakhi, Janam Ashtami and for conducting other religious affairs. Therefore, said properties did not belong to any individual much less to respondent No. 5. Respondent No. 5 by selling the aforesaid property, by posing himself to be owner, committed offence under Sections 420, 468, 469, 470 and 471 IPC.

3. As soon as Panchayat Mohalla Sudan (Regd.) came to know about the sale of the aforesaid properties belonging to Dharamshala in the year 2001, it applied for supply of the certified copies of the sale-deeds dated 4.12.1991 and 28.2.1992. At that point of time, it was discovered that Mahant Piara Nand alleged Chela of Mahant Parma Nand, vide sale-deed dated 4.12.1991, sold house No. B-II-1055 (old) B-IV-1076 (new) measuring 58-1/2 sq. yards for a meagre amount of Rs. 25,000/- to Smt. Kiran Kapur wife of Narinder Kapur and Smt. Madhu Kapur wife of Raj Kumar Kapur, residents of 494, College Road, Civil Lines, Ludhiana and by sale-deed dated 28.2.1992 sold house No. B-II-1018 (old) B-IV-1122 (new) to aforesaid Amar Singh and Jaswant Singh.

4. The petitioner had made a representation to Additional Director General of Police, Punjab, Chandigarh with a prayer that a case be registered against respondent No. 5 for selling the property in question and causing wrongful loss to the Dharamshala Mohalla Sudan, Ludhiana (Regd.). However, no action had been taken by the police although a direction was issued by Additional Director General of Police to Senior Superintendent of Police, Ludhiana for getting the matter investigated.

5. Reply has been filed by respondent Nos. 1 to 4, which has been adopted by respondent No. 5. It has been submitted therein that the complaint submitted by the petitioner was duly enquired into and it was found that the matter was of civil nature and with regard to the same, civil cases were already pending in different Courts. The petitioner was also associated with the enquiry. After the completion of the enquiry, the opinion from Deputy D.A. (Legal) was taken, who vide his letter dated 11.2.2005 opined that till the disposal of the civil cases pending in different Courts, no criminal action was required to be taken and the complaint be kept pending till the disposal of those civil cases.

6. I have heard the counsel for the parties and perused the records.

7. It is not denied by respondent Nos. 1 to 4 that respondent No. 5 has not committed any offence. The stand of the official respondents is that no criminal case should be registered till the disposal of the civil cases filed with respect to the same subject matter.

8. In *M/s. Medchl Chemicals & Pharma Pvt. Ltd. v. Biological E. Ltd.*, 2000(2) RCR(Cri.) 122, the Hon'ble Supreme Court clearly observed that both civil and criminal remedies can be pursued at the same time and further that the criminal proceedings could not be quashed if the civil remedy was available. Both the remedies were mutually exclusive but co-extensive. They differed only in their contents and consequence. It was held as under :-

17. On careful reading of the complainant, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 415, 418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. We, however, hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the Court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact "they are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect

civil remedies at all for suing the wrong-doer in cases like arson, accidents etc. It is anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and impart.

9. In view of the above, the present petition is required to be allowed with a direction to respondent Nos. 2 to 3 take action against respondent No. 5 in case the allegations made by the petitioner against respondent No. 5 disclose commission of any cognizable offence by him.

Order accordingly.