Prem Chand Vs State of UT Chandigarh and Another

CRM No. M-38388 of 2012 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 11, 2012

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 438#Penal Code, 1860 (IPC) â€" Section 420, 465

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: Deepak Bhardhwaj, for the Appellant;

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.
The compendium of the facts, culminating in the commencement, relevant for the limited purpose of deciding the

instant 2nd petition for anticipatory bail and emanating from the record, is that, complainant Chet Ram is a senior citizen and old person of 78

years. He is allottee/owner of House, bearing No. 701/11 Bapu Dham Colony, Sector 26, Chandigarh. His son Prem Chand (petitioner) started

residing with him in the same house. On the fateful day, the complainant came and found Ravinder Singh son of Ajit Singh staying in his house. He

did not allow him (complainant) to enter into his house, illegally removed all the documents, luggage and other household articles. When the

complainant confronted his son Prem Chand in this regard, then, he threatened him with dire consequences of elimination. On inquiry, it revealed

that petitioner has illegally agreed to mortgage the house of his father Chet Ram (complainant) to Ravinder Singh son of Ajit Singh, received the

consideration amount, prepared forged documents and cheated his own father. In the background of these allegations and in the wake of complaint

of complainant, a criminal case was registered against the petitioner, by virtue of FIR No. 205 dated 23.7.2012 (Annexure P1), on accusation of

having committed the offences punishable under sections 420 and 465 IPC by the police of Police Station Sector 26, Chandigarh, in the manner

indicated here-in-above. Having exercised and remained unsuccessful of his right before the Additional Sessions Judge, now the petitioner has

preferred the present 2nd petition for anticipatory bail in the pointed criminal case, invoking the provisions of section 438 Cr.P.C.

2. After hearing the learned counsel for the petitioner, going through the record with his valuable help and after deep consideration over the entire

matter, to my mind, there is no merit in the instant 2nd petition in this respect.

3. Ex facie, the arguments of learned counsel that since the petitioner was residing in the house of his father and all the essential ingredients of

section 420 IPC are not complete, so, he is entitled to the concession of anticipatory bail, are neither tenable nor the observations of Hon''ble

Apex Court in case Md. Ibrahim and Others Vs. State of Bihar and Another, are at all applicable to the facts of the present case, wherein, while

deciding the criminal appeal, it was observed that ""to constitute an offence u/s 420, there should not only be cheating, but as a consequence of

such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person or (ii) to make, alter or

destroy wholly or in part a valuable security, which is capable of being converted into a valuable security."" There can hardly be any dispute with

regard to the aforesaid observations, but the same would not come to the rescue of the petitioner in the instant 2nd petition for anticipatory bail in

this context.

4. As evident from the record that complainant Chet Ram, father of petitioner, was allottee/owner of the house in question. He permitted the

petitioner to reside there. Taking the benefit of undue advantage and absence of the complainant, the petitioner cheated his own father and

fraudulently agreed to mortgage his house to Ravinder Singh son of Ajit Singh, created forged documents and put him in its possession. Therefore,

prima facie, all the essential ingredients of the indicated offences are complete and the contrary submissions of learned counsel for petitioner ""stricto

sensu"" deserve to be and are hereby repelled under the present set of circumstances.

5. Not only that, during the course of the investigation, the petitioner agreed to get the house vacated by paying back money to Ravinder Singh and

promised to hand over the keys to his father, by means of writing/compromise (Annexure P3), which, in substance, is as under:-

It is submitted that I Prem Chand s/o Sh. Chet Ram r/o H.No. 701/11 Bapudham Colony, Sector 26, Chandigarh (House No. 44, Parshant Vihar

Baltana, District Mohali) have mortgaged House No. 701/11 with Sh. Ravinder Singh s/o Sh. Ajit Singh village Maloya in lieu of Rs. 4,25,000/-

and I would get the house vacated on 12.04.2012 by paying back the money. I would hand over the keys of the house to my father along with all

the documents after getting it vacated. In case my father dies in a year than the share of this house be given to all the brothers (Seven Brothers).

After the death of the father if the house is sold than the share be given to Prem Chand as well.

6. It is not a matter of dispute that petitioner had earlier filed a petition for anticipatory bail, bearing CRM No. M-32281 of 2012, which was

withdrawn by his counsel, to enable him to file a fresh petition after complying with the compromise (Annexure P3), vide order dated 12.10.2012.

7. Instead of complying with the compromise/undertaking, the petitioner has preferred the instant 2nd petition for anticipatory bail. Meaning

thereby, he has the intention to cheat his father from the very beginning. As indicated earlier, taking undue advantage and absence of his father, the

petitioner illegally agreed to mortgage the house, prepared the forged documents and received an amount of Rs. 4,25,000/-. It is strange case of

cheating his father by his son. The complainant purchased the house in dispute after spending his hard-earned entire earnings of his life to enable

him to live in peace, but it was the petitioner, who has cheated him, illegally agreed to mortgage the property to Ravinder Singh and received the

pointed amount. Therefore, to me, since the forged agreement/documents and mortgaged amount are yet to be recovered, so, the custodial

interrogation of petitioner is essential. In case, he is allowed the benefit of anticipatory bail, then, the recovery of agreement/documents, mortgaged

amount and effective investigation is not possible, which would naturally adversely affect & weaken the case of the prosecution.

8. Moreover, the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest, recovery of agreement/documents,

mortgaged amount from the petitioner and investigation by the police. The Court has also to see that the investigation is in the province of the police

and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the police, in exercising the judicial

discretion in granting the anticipatory bail. At the same time, the Court should not be unmindful of the difficulties likely to be faced by the

investigating agency and the public interest likely to be affected thereby.

9. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course

of trial of main case, the present petition filed by the petitioner is hereby dismissed in the obtaining circumstances of the case. Needless to mention

that nothing observed, here-in-above, would reflect, on the merits of the case, in any manner, during the course of trial, as the same has been so

recorded for a limited purpose of deciding the instant petition in this relevant connection.