

Avtar Singh Khurana Vs State and Another

Court: Delhi High Court

Date of Decision: July 22, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) & Section 320, 482
Penal Code, 1860 (IPC) & Section 120B, 406, 420, 468, 471

Hon'ble Judges: Sunil Gaur, J

Bench: Single Bench

Advocate: K.T.S. Tulsi, Mr. Arun Vohra, Mr. Raj Kamal and Mr. Mahee Pradhan, for the Appellant; Mukesh Gupta, Additional Public Prosecutor for respondent No. 1-State and Mr. D.S. Kohli, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Sunil Gaur, J.

After filing of charge-sheet in FIR No. 697/2002 under Sections 406/420/468/471/506/120B of IPC registered at P.S.

Lajpat Nagar, Delhi quashing of above-said FIR is sought by petitioner who is alleged to be instrumental in commission of forgery to cheat

Kuldeep Singh-First Informant of the FIR in question. Normally, such petitions are not entertained as petitioner has efficacious remedy of assailing

the charge-sheet filed at the stage of hearing on point of charge before trial court and to secure a discharge. Since this petition has been already

admitted and both the sides were heard and thereupon this petition is being disposed of by this order after perusing the material on record. The

crux of the charge-sheet filed in FIR in question is that property No. F-90, East of Kailash, Delhi was sold by one Laxmi Narain to co-accused of

petitioner as well as to the complainant/First-Informant, who are real brothers. A Power of Attorney was executed in favour of petitioner by the

seller-Laxmi Narain alongwith Agreement to Sell of 6th June, 1974. Complainant/First-Informant had one third share in aforesaid property

(hereinafter referred to as "subject property"). Complainant-Kuldeep Singh, who settled in London, had visited India on the death of his brother

Gurinder Singh in July, 2002 and was surprised to learn that subject property has been converted into free-hold in the names of co-accused while

excluding complainant on the basis of forged Agreement to Sell, etc. The forgery alleged is that original Agreement to Sell of the year 1974 of

subject property was in the name of petitioner's co-accused and the complainant, which was replaced by forged Agreement to Sell of the year

1974, but was prepared on a stamp paper purportedly issued to third party in June, 1981. During investigation, it has been found that the stamp

paper on which the forged Agreement to Sell was executed in favour of petitioner's co-accused while excluding complainant was done with active

connivance of petitioner, who is related to the parties and is said to be a property dealer.

2. Learned senior counsel for petitioner has sought quashing of the FIR in question by contending that the dispute raised in the FIR is purely civil

one and the registration of FIR in question is an abuse of the process of the court as civil litigation instituted by complainant in September, 2002 is

already pending and when complainant could not obtain interim relief in civil proceedings, in October, 2002 criminal proceedings in respect of

pending civil proceedings have been initiated and charge-sheet in the FIR in question has been filed.

3. It was vehemently contended by learned senior counsel for petitioner that petitioner is not the beneficiary of the alleged forgery and cheating and

so the ingredients of the offence alleged is lacking qua petitioner. It was urged on behalf of petitioner that there is delay of 14 years in launching the

criminal proceedings as the alleged forgery or cheating was committed by petitioner's co-accused way back in the year 1993. It was pointed out

by learned senior counsel for petitioner that there is no investigation regarding forgery of signatures of Laxmi Narain on the Agreement to Sell and

what renders criminal proceedings, sterile is that in civil proceedings complainant has already got in the name of petitioner deleted and so

continuance of proceedings arising out of the FIR in question would be contrary to the dictum of Apex Court in Gian Singh Vs. State of Punjab

and Another, which is as under:-

59. B.S. Joshi and Others Vs. State of Haryana and Another, , Nikhil Merchant Vs. Central Bureau of Investigation and Another, , Manoj Sharma

[(2008) 16 SCC 1 : (2010) 4 SCC (Cri.) 145] and Dewan Chand Builders and Contractors Vs. Union of India (UOI) and Others, do illustrate

the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power u/s 482 of the Code and

Section 320 does not limit or affect the powers of the High Court u/s 482. Can it be said that by quashing criminal proceedings in B.S. Joshi and

Others Vs. State of Haryana and Another, , Nikhil Merchant Vs. Central Bureau of Investigation and Another, , Manoj Sharma [(2008) 16 SCC

1 : (2010) 4 SCC (Cri.) 145] and Dewan Chand Builders and Contractors Vs. Union of India (UOI) and Others, this Court has compounded the

non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence u/s 320 and

quashing of a criminal case by the High Court in exercise of inherent power u/s 482. The two powers are distinct and different although the ultimate

consequence may be the same viz. acquittal of the accused or dismissal of indictment.

4. While relying upon the afore-noted dictum and the submissions advanced on behalf of petitioner, quashing of the FIR in question and the

proceedings emanating therefrom is sought in this petition.

5. Learned counsel for respondent No. 2-complainant refutes the submissions advanced on behalf of petitioner and contends that the ingredients of

forgery and cheating are clearly made out and so, civil proceedings as well as criminal proceedings can continue simultaneously. It is asserted by

learned counsel for respondent No. 2 that there are clear cut allegations against petitioner of actively conniving in the preparation of forged

Agreement to Sell of the year 1974 in the year 1993 and of getting subject property converted from lease-hold to free-hold in favour of

petitioner's co-accused while deliberately excluding complainant, who had one third share in it. Learned counsel for respondent No. 2 had

reminded this Court of the settled legal position that in serious offences, criminal prosecution ought not be scuttled merely because civil proceedings

are pending as ingredients of criminal offence exist and dropping of petitioner in the civil proceedings depicts bonafides of complainant as no relief

was claimed against petitioner in the civil proceedings. Thus, dismissal of this petition is sought.

6. A passage from Apex Court's decision in Gian Singh (supra) cannot be read in isolation as in the aforesaid decision, courts have been cautioned

not to quash the FIR in serious offences. It is not even the case of petitioner that the alleged offence is not serious one. Merely because civil

proceedings are pending, criminal proceedings cannot be quashed at the threshold as there is no basis upon which this Court can opine that the

allegations levelled against petitioner are patently false or that continuance of proceedings in the FIR in question is an abuse of process of the

Court. This is an aspect which pertains to realm of evidence. It cannot be said that the subject matter of the FIR is of purely civil nature as there

are clear allegations of petitioner conniving with co-accused to commit the offence in question by forging agreement to sell to deliberately exclude

complainant/First-Informant.

7. The law relating to simultaneous continuation of civil and criminal proceedings is well settled by the Apex Court in Syed Askari Hadi Ali

Augustine Imam and Another Vs. State (Delhi Admn.) and Another, . The pertinent observations made on this aspect are as under:-

Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can

be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and

circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of

the case.

It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal

proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former

should be disposed of as expeditiously as possible. The law in this behalf has been laid down in a large number of decisions.

8. Whether petitioner gains anything by conniving with co-accused is an aspect which cannot be pre-judged at this initial stage, as the trial is yet to

begin. This aspect would be the subject matter of consideration at trial. It is no longer *res integra* that at the threshold of trial, it is to be only seen as

to whether a prima facie case is made out or not. Even on strong suspicion, an accused can be made to face the trial. On this aspect, pertinent

observations of Apex Court in *Amit Kapoor* are as under:-

At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an

offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible

with the innocence of the accused or not. The final test of guilt is not to be applied at the stage.

9. In the considered opinion of this Court, the proceedings arising out of the FIR in question ought to continue so that truth comes out regarding

complicity of petitioner in alleged forgery of Agreement to Sell in question. It cannot be said by any stretch of imagination that continuance of

proceedings arising out the FIR in question is an abuse of the process of court. Since charge-sheet of this FIR case discloses a prima facie offence,

so proceedings arising out of it ought to be taken to its logical end.

10. Interim order stands vacated. Parties to appear before trial court on 7th August, 2013. Trial court is directed to proceed with the trial in

accordance with law expeditiously.

11. Trial court be apprised of this judgment forthwith. With aforesaid directions, this petition and the pending application are dismissed while

refraining to comment upon merit lest it may prejudice petitioner at trial.