

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.No.11817-M of 2004 (O&M)

Date of Decision: October 31, 2006

Dinesh Rally & another

...Petitioners

VERSUS

State of Punjab & another

...Respondents

PRESENT: Mr.Yogesh Goel, Advocate,
for the petitioners.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

Mr.R.S.Khosla, Advocate,
for respondent No.2.

RANJIT SINGH, J.

Criminal Misc.Application No.66030 of 2006 is allowed. Compromise deed, Annexure A-1, is taken on record.

This petition has been filed for quashing of an old FIR No.85 dated 20.3.1998 registered under Sections 409/420/467/468/471/120-B IPC at Police Station, Sadar Ludhiana, now Police Station, Jodhewal, Ludhiana. In addition, quashing of consequential proceedings in the form of report under Section 173 Cr.P.C., order dated 26.4.2003 passed by Lok Adalat and order dated 16.5.2003 passed by Judicial Magistrate Ist Class, Ludhiana has also been sought.

In brief, the facts of the case are that one Mohinder Singh, father of respondent No.2 (Charanjit Singh) had filed a complaint in the Court of Illaqa

Magistrate, Ludhiana against Mulakh Raj, Dinesh Rally, Satish Kumar, Raj Kumari and Sunder Lal seeking registration of a case under Sections 406/467/420/120-B IPC under the provisions of Section 156(3) Cr.P.C. Criminal case in the form of FIR No.85 dated 20.3.1998, referred to above, was registered at Police Station Sadar, Ludhiana. The allegations made in the FIR were that Mohinder Singh, owner of some piece of land situated in village Taraf Saidan Ludhiana, had given a power of attorney in regard to the land measuring 5 kanals out of khasra Nos.1860/1242, 1861/242, 243, 244, 254 to Mulakh Raj, father of petitioner No.2. Said Mulakh Raj, acting on this power of attorney, sold one plot measuring 112-1/2 sq.yards in favour of Dinesh Rally, petitioner No.1. Agreement of sale dated 2.11.1991 was executed in the form of sale deed on 14.10.1997. Another plot measuring 500 sq.yards was sold to one Raj Kumari vide sale deed dated 29.3.1993. It was disclosed in the FIR that the power of attorney had in fact been cancelled on 24.11.1997 and Mulakh Raj, the attorney, had not returned the money to the complainant, Mohinder Singh. It is also disclosed that petitioner No.2 is not only the son of attorney Mulakh Raj but is brother-in-law of petitioner No.1 Dinesh Rally.

After registration of the case, the arrest of Mulakh Raj and Satish Kumar followed. They were later on released on bail. Raj Kumari co-accused, however, was released on anticipatory bail. While granting bail, the Additional Sessions Judge, observed that this appeared to be a case of settlement of accounts between Mohinder Singh and Mulakh Raj and as such was prima-facie a case of civil nature. Another fact taken note of to say that the case appeared to be of a civil dispute was that Mulakh Raj was admittedly holding a valid power of attorney on behalf of the complainant

and as such liability, if any, was of a civil in nature. Mulakh Raj had also represented to Senior Superintendent of Police, Ludhiana pleading his false implication. Co-accused Raj Kumari had approached Additional D.G.P. Crime complaining of registration of a false case against her. Investigations accordingly were got conducted by the local police as well as by the Crime Branch and thereafter case was cancelled on 22.7.1998. Not satisfied, Mohinder Singh, father of respondent No.2, filed a criminal complaint against the petitioners and co-accused Mulakh Raj and Sunder Lal on the same very allegations as were earlier made in the FIR. After recording preliminary evidence wherein, the complainant appeared as a witness. Judicial Magistrate Ist Class, Ludhiana took cognizance of offence only against Mulakh Raj and dismissed the complaint qua the others including the petitioners. Copy of the order dated 25.9.2000 in this regard has been annexed with the petition as Annexure P-8. This order was impugned in a revision by the complainant, but same was subsequently got dismissed as withdrawn by him and as a result thereof, the order passed by Judicial Magistrate Ist Class, Ludhiana became final. The petitioners complain that though the cancellation report of the FIR was prepared but strangely it was submitted before the Lok Adalat on 26.4.2003. During this time only, Mohinder Singh complainant had died and accordingly his son, respondent No.2, appeared before the Lok Adalat and made a statement that he wished to continue with the case. On his statement, the cancellation report was rejected by Lok Adalat on 26.4.2003, which is stated to be without jurisdiction. The protest petition was also filed, whereupon Judicial Magistrate Ist Class, Ludhiana had returned the file to the concerned police station for further investigation with direction that the matter be

investigated by a senior officer other than the officer, who had earlier conducted the investigation. In this background, the investigation was entrusted to Deputy Superintendent of Police (Rural). The petitioners while appearing before him brought to his notice the entire background, who still filed challan against the petitioners without taking into account the earlier orders, referred to above. In this background, it is pleaded that the process of law is being mis-used by respondent No.2 and the police officials and prayer as such is made for quashing of the entire proceedings including the FIR in exercise of jurisdiction under Section 482 Cr.P.C.

Notice in this petition was issued. It appears that during the pendency of this petition, the disputes between the parties have been amicably resolved and a compromise has been arrived at. On 24.10.2006, when the matter was taken up for hearing, the counsel for the petitioners had sought time to place on record the compromise deed. Criminal Misc.Application No.66030 of 2006 was accordingly moved for placing on record the compromise deed dated 26.12.2005, which was allowed on 31.10.2006.

Since the matter had been compromised between the parties, the detailed submissions on merits of the petition for quashing the same were not heard. The offences alleged in the FIR, as referred to above, except for offence under Section 420 IPC, are compoundable. In view of this distinctive feature of the case, it is not considered essential to go in detail to see if the proceedings can be ordered to be quashed on the basis of a compromise or not. This would have required consideration in detail if indeed offences under the sections as alleged, were really made out. As already noticed, while granting bail, Additional Sessions Judge, Ludhiana

had made observation that the dispute basically is of settlement of accounts. This appears to be so. It has not been disputed by any one that late Mohinder Singh had given valid power of attorney to Mulakh Raj and he was duly authorised agent of Mohinder Singh at the time of sale of plots to the petitioners and other co-accused. It needs a notice that the police itself had decided to file the cancellation report, which was misconceivedly placed before the Lok Adalat. One need not stretch oneself to show that a criminal matter, specially so when it related to the acceptance of a cancellation report in FIR, could not have validly been considered and decided by the Lok Adalat. Be that as it may, the fact remains that the dispute between the parties, which is clearly of civil nature, has now finally been settled. Having regard to facts and circumstances of this case, it is doubtful if any offence under the alleged sections would be made out. Since the matter has now been compromised between the parties and the written deed of compromise in this regard has been placed on record, no useful purpose would be served in allowing these proceedings to continue. It may also be worth noting that this FIR was got registered in the year 1998. The complainant in the FIR, who had given this power of attorney, is no more. The case is or was being prosecuted by son of the complainant, who has now arrived at a compromise with the petitioners. It is also worth noting that even the Magistrate in complaint case had refused to summon the petitioners and had summoned only Mulakh Raj. No wonder, the parties have now settled this dispute. To bring harmony and good relations between the contesting parties, it would be in the interest of justice that these proceedings should be brought to an end. The assertion of the petitioners that the proceedings in this case having regard to the background, as noticed

above, is an abuse of process of the Court cannot be discounted. In the compromise also, respondent No.2 has clearly said that he would not have any objection in case the FIR and the proceedings are quashed. If he had made this statement on similar lines before the Lok Adalat, then perhaps these proceedings could have evaded there and then.

Taking the totality of the facts and circumstances into consideration, coupled with the compromise arrived at between the parties, I am of the considered opinion that the FIR and the subsequent proceedings including the order dated 26.4.2003 passed by Lok Adalat and order dated 16.5.2003 passed by Judicial Magistrate Ist Class, Ludhiana cannot be sustained.

Accordingly, the present petition is allowed. The FIR and the subsequent proceedings including the order dated 26.4.2003 passed by Lok Adalat and order dated 16.5.2003 passed by Judicial Magistrate Ist Class, Ludhiana are hereby quashed.

October 31, 2006
ramesh

(RANJIT SINGH)
JUDGE