

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.14414 of 2007

.....

Date of decision:31.7.2007

Randhir Singh and others

.....Petitioners

v.

State of Punjab and another

.....Respondents

.....

Present: Mr. Vikas Bahl, Advocate for the petitioners.

Mr. I.P.S. Sidhu, Senior Deputy Advocate General, Punjab for
the respondent-State.

Mr. Ashok Giri, Advocate for the complainant-respondent
No.2.

.....

S.S. Saron, J.

This petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' – for short) has been filed seeking quashing of FIR No.5 dated 2.8.2006 (Annexure-P.5) registered at Police Station City, Nawanshahar in view of the compromise dated 17.8.2006 (Annexure-P.6) entered into between the petitioners and respondent No.2 as also in view of the fact that the offences for which the FIR has been registered are not remotely made out.

The impugned FIR (Annexure-P.5) has been registered on the complaint of Harbans Kaur (respondent No.2) against the petitioners for the offences under Sections 465, 467, 468 and 471 Indian Penal Code ('IPC' – for short). The complainant (respondent No.2) owns land in Nawanshahar and the accused are said to have committed huge fraud against her which

led to grave injustice. Despite the SHO having called both the parties for recording their statements and taking affidavits had come to the conclusion that a fraud had been committed against the complainant, he did not register a FIR. Rather, the Police officials were pressurizing the complainant for effecting a compromise with regard to a forged and false agreement to sell prepared by the accused. It is alleged that Sanjiv Kumar (non-petitioner) had forged the agreement to sell dated 30.12.2005 between Randhir Singh (petitioner No.1) and late husband of the complainant, namely, Ajit Singh with regard to two Killas of land adjoining the Chandigarh Nawanshahar Highway out of 3 Acres 6 Kanals land for selling the same to Randhir Singh (petitioner No.1) and giving him time of 1.1/2 years for execution of the sale deed. In this manner, the remaining 1 Killa 6 Kanals land towards the rear would be of not much value and the accused could easily occupy the same. Apart from this one more forged agreement, it is stated, was prepared on the same date i.e. 30.12.2005. An amount of Rs.25 Lacs was shown to have been given by Randhir Singh (petitioner No.1) to Ajit Singh-the husband of the complainant in terms of the said agreement. Out of the above amount, land measuring 10 Acres 4 Kanals was purchased at Village Salpur, District Hoshiarpur and it has been shown that Ajit Singh had purchased the same for Rs.15 Lacs and had been granted one year's time for execution of the sale deed. In fact, there are 20 owners of the said land out of whom some are residing abroad and rest of the owners had refused to sell the land. The remaining have also resiled from the forged agreement. Although, the accused had sold this land five times earlier it was a well planned conspiracy as Ajit Singh had to receive the balance sale

consideration in 1.1/2 years time and he had to pay the remaining amount with regard to the purchased land in one year's time which he could not pay under any circumstances. In this manner, the earnest money of Rs.15 Lacs would be forfeited and the agreement to sell cancelled. The commission fee of an amount of Rs.10 Lacs with respect to both these agreements is stated to have been taken in advance by the accused and they have shared it amongst themselves. The husband of the complainant died due to pressure exerted by the accused. In this manner, the land of the complainant is alleged to have been forcibly taken and she had been threatened in the name of Ministers and MLAs.

The case of the petitioners is that Ajit Singh, the husband of the complainant (respondent No.2) had paid Randhir Singh (petitioner No.1) Rs.25 Lacs for which receipt was duly signed and thumb marked by the seller. The seller Ajit Singh never questioned Randhir Singh (petitioner No.1) during his life time. The sale deed in terms of the agreement was to be executed and got registered by 30.6.2007. It is to wriggle out of the aforesaid agreement to sell that the FIR has been lodged by the complainant (respondent No.2). In fact, as per allegations no offences under Sections 465, 467, 468 and 471 IPC were even remotely made out. Moreover, Sham Sunder (petitioner No.2) was only an attesting witness of the agreement to sell dated 30.12.2005. It is stated that there are no allegations against Anil Kotwal (petitioner No.3). It is submitted that when the time for execution of the sale deed was about to come, then respondent No.2 and other legal representatives of Ajit Singh (deceased) got the impugned FIR registered. Ajit Singh, it is stated, died in February 2006 and no complaint was made

[4]

by him and now the FIR has been registered. The FIR has been registered to resile from the agreement to sell. It is also submitted that the petitioners have no concern with the second transaction which had been entered into by Ajit Singh with a third party. After registration of the FIR, the petitioners, who are respectable citizens and have great respect in the village thought it appropriate to accede to the request of respondent No.2 and have cancelled the agreement to sell even though prices had increased manifold. Accordingly, the agreement to sell was cancelled vide cancellation deed dated 17.8.2006. It was recorded that with the consent of both the parties, the agreement has been cancelled and the dispute regarding the earnest money has been amicably resolved. Besides, neither party shall drag the other in legal proceedings. It is submitted that the agreement was cancelled and it was decided that no Police action would be taken by complainant (respondent No.2). Complainant (respondent No.2) has even deposed an affidavit dated 17.8.2006 (Annexure-P.6) inter alia stating that the FIR had been got registered due to some misunderstanding which has been removed and settled and that she does not want to proceed further with the criminal cases. Therefore, the entire dispute having been settled, it is submitted that the FIR in question is liable to be quashed.

Reply has been filed by Harbans Kaur (respondent No.2) wherein it is submitted that with the intervention of respectables, the parties have compromised the matter on 16.8.2006. In view of the compromise, it is submitted that no useful purpose would be served in continuing with the proceedings. Therefore, the deponent (respondent No.2) has no objection in case the proceedings as also the entire First Information Report against all

the accused, namely, Randhir Singh, Sham Sunder, Anil Kotwal, Tarlochan Singh and Sandeep Kumar are quashed.

Reply has also been filed by Dilbagh Singh Pannu, Deputy Superintendent of Police, Nawanshahr on behalf of the State. In the initial reply that was filed it was stated that charges had been framed in the case. The petitioners filed Criminal Misc. No.73070 of 2007 attaching copies of the interim orders (Annexures-A.1 to A.6) of the learned trial Court. On the strength of the same, it is submitted that no charge had been framed in the case. Accordingly, notice was issued to the DSP, Nawanshahr to show cause as to why he be not proceeded against in accordance with law for filing an affidavit stating that charges had been framed. The DSP, Nawanshahr filed an additional affidavit dated 25.7.2007 in which he accepted that no charge had been framed in the case. It is submitted that due to sheer inadvertence and typographical mistake that words; charge had already been framed, were written whereas charge was yet to be framed. The lapse was highly regretted. In view of the regret expressed by the DSP, Nawanshahr, no further action on the show cause notice is required and the same is filed.

The position, therefore, is that the parties have settled their dispute. It may be noticed that the dispute between the parties is with regard to an agreement to sell that was entered into between Ajit Singh, the deceased husband of the complainant (respondent No.2) and the accused. In the case of Ram Viraj Devi v. Amish Kumar Singh, 2006 (3) RCR (Cr.) 308 (Supreme Court) there were allegations that the accused by an oral agreement had agreed to sell a plot for Rs.4 Lacs and received an advance

payment of Rs.80,000/-. However, the accused refused to execute a written agreement. It was held by the Hon'ble Supreme Court that it was a civil liability. The complaint against the accused was quashed. It was observed that the said case was one of extreme exception where the High Court ought to have exercised its inherent jurisdiction and power to set aside the unwarranted and unjustified order of the Magistrate impugned before it by the appellants. In Arun Kumar v. State of Punjab, 2006 (3) RCR (Cr.) 793 (P&H), the accused had entered into an agreement to sell his land to the complainant and received an advance of Rs.6 Lacs. The accused, however, sold the land to some other person. This Court held that no offence of cheating was made out. Besides, there was no allegation that the accused had a dishonest intention right at the beginning. Accordingly, the FIR was quashed with the observations that the complainant had a remedy of filing a civil suit for specific performance. In Hridaya Ranjan Pd. Verma v. State of Bihar, 2000 (2) RCR (Cr.) 484 (SC), it was observed by the Supreme Court after referring to the provisions of Section 415 IPC defining 'cheating' that it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set-forth in the section is doing or omitting to do anything which the person deceived would not do or omit to do if he was not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. It was observed that in determining the question it has to be kept in mind that distinction between

mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Besides, mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence.

In the present case, as has already been noticed, Ajit Singh had entered into an agreement to sell his land and during his life time, he did not complain with regard to any cheating or fraudulent act on the part of the accused. After his demise, his wife when the time was nearing for execution of the sale deed lodged the impugned FIR. In any case, this aspect now is not required to be gone into as the matter between the parties has been compromised. Even though the offences attributed to the accused are non-compoundable, the same would nevertheless not be a bar in the exercise of the inherent jurisdiction of this Court under Section 482 Cr.P.C. to quash the FIR when the parties have agreed to compromise the matter. Besides, the offences as alleged in the facts and circumstances are even otherwise not made out. Moreover, the proceedings before the learned trial Magistrate are at an initial stage and charge has not been framed. The further proceedings were stayed at the time of issuance of notice of motion on 8.3.2007. It may be noticed that the petitioners paid a sum of Rs.20 Lacs to Ajit Singh vide receipt dated 30.12.2005 (Annexure-P.1). Another sum of Rs.5 Lacs was paid vide receipt dated 31.12.2005 (Annexure-P.2) for the

purchase of land measuring 16 Kanals. Ajit Singh, the vendor of the petitioners entered into an agreement on 30.12.2005 (Annexure-P.3) to purchase land from one Tarlochan Singh. In terms of the said agreement, he paid a sum of Rs.15 Lacs. Thereafter, Ajit Singh died and his wife Harbans Kaur (respondent No.2) has lodged the impugned FIR dated 2.8.2006 (Annexure-P.5). As already noticed, the matter has been compromised. Therefore, it would be just and expedient in exercise of the inherent jurisdiction of this Court in terms of Section 482 Cr.P.C. to quash the impugned FIR.

For the foregoing reasons, the criminal miscellaneous petition is allowed and the impugned FIR No.5 dated 2.8.2006 (Annexure-P.5) and all consequential proceedings in pursuance thereof shall stand quashed.

July 31, 2007.

(S.S. Saron)
Judge

hsp