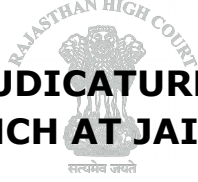


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 4489/2013

Durga Lal Verma S/o Late Shri Kanhaiya Lal Verma aged 62 years R/o Plot No.29, Dhuleshwar Garden, Jaipur, Rajasthan

-----Petitioner

Versus

1. State of Rajasthan through PP
2. Ratanlal Agarwal S/o Late Shri Tuhiram Agarwal R/o House No.170, Ram Gali No.3, Adarsh Nagar, Jaipur, Rajasthan (Now Deceased)

-----Respondents

For Petitioner(s) : Mr. Pranava Sharma
For Respondent(s) : Mr. Suresh Kumar, PP
Mr. L.L. Gupta

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

RESERVED ON
PRONOUNCED ON
BY THE COURT

March 28th 2024
April, 16th, 2024

1. Accused-petitioner has filed instant criminal misc. petition under Section 482 Cr.PC, seeking to quash FIR No.1097/2013 registered at Police Station JDA, Jaipur for offences under Sections 420, 406 and 120-B IPC along with entire proceedings of investigation in the impugned FIR.
2. Learned counsel for petitioner has vehemently argued that the FIR in question has been lodged by the complainant Mr. Ratanlal Agarwal (non-petitioner No.2 herein), feeling aggrieved by non performance of an agreement to sale dated 04.04.2013 by the petitioner. But after lodging the impugned FIR, the complainant himself filed a civil suit for specific performance on the basis of same agreement, bearing Civil Suit No.36/2014: Ratanlal Agarwal Vs. Durga Lal Verma & Ors., which has finally

been decreed in favour of complainant vide judgment dated 25.05.2023 by the Court of Additional District Judge No.3, Jaipur Metropolitan Ist. A copy of judgment dated 25.05.2023 has been placed on record. Learned counsel submits that in the judgment dated 25.05.2023, it has been held by the civil Court that petitioner agreed to sell his share in Plot No.47 (264 Sq. Yards) situated at Neelkanth Colony, Jaipur to complainant (plaintiff in civil suit) against sale consideration of Rs.75 lacs, out of which Rs.10 lacs (Rs.4 lacs cash and Rs.6 lacs by way of cheque) has been received by the petitioner and direction has been issued against the petitioner to perform the agreement dated 04.04.2013 in favour of plaintiff on receipt of balance sale consideration of Rs.65 lacs. Thus, counsel for petitioner submits that the grievance of complainant, as put forth in the FIR, has been resolved by the civil Court and in that view, the impugned FIR along with with investigation thereupon be quashed against the petitioner.

3. The contention of counsel for petitioner is that otherwise bare perusal of contents of the FIR itself, give rise to dispute of civil nature between parties and lodging of FIR to settle such civil dispute by way of putting the criminal law in motion, is abuse of process of law, therefore, on this count as well, the impugned FIR and investigation thereupon is liable to be quashed.

4. Counsel for petitioner has made an attempt to impress upon before this Court the factual aspect stating *inter alia* that in fact the deal to sell the plot in question was held against Rs.1.5 Crore and not against Rs.75 lacs, but the complainant acted with the petitioner in a conspirational manner and citing pretext of income

tax issue, got executed two separate agreements to sale for Rs.75 lacs each, one is of 18.03.2013 in favour of his nephew namely Vijay Agarwal and another agreement dated 04.04.2013 in his favour. It has been contended that indeed complainant make assurance to pay full amount of Rs. 1.5 Crore to petitioner as also to settle the dispute with brothers of petitioner, by making payment to them separately, but later on, malice intention crept in mind of complainant and he sought to get extraneous advantage of his agreement dated 04.04.2013 and issued a notice dated 13.05.2013 to purchase the plot of petitioner only against Rs.75 lacs, that too after adjustment of Rs.10 lacs allegedly paid in advance, as incorporated in the agreement dated 04.04.2013. Indeed, deal to sale was held against Rs.1.5 Crore and only Rs.6 lacs vide cheque was given to the petitioner, therefore, petitioner, vide replied notice dated 18.05.2013, cancelled the agreement of complainant dated 04.04.2013 as also the agreement with complainant's nephew Vijay Agarwal dated 18.03.2013 and forfeited the advance amount of Rs.6 lacs. It has been alleged that thereafter only, the complainant lodged the impugned FIR on 05.10.2013 and later on, filed a Civil Suit No.36/2014 on 18.02.2014 for specific performance of agreement dated 04.04.2013.

Narrating such backdrop of factual matrix, behind lodging of the impugned FIR, counsel for petitioner submits that registration of impugned FIR is malicious as well as in sheer misuse of process of law, hence to secure ends of justice, such FIR and investigation thereupon, if any, should be quashed by the High Court in exercise

of its jurisdiction under Section 482 Cr.PC. Reliance has been placed on a judgment of the Hon'ble Supreme Court in case of **Paramjeet Batra Vs. State of Uttarakhand [(2013) 11 SC 673]**, to contend that when dispute between parties is essentially of civil nature, and if a civil remedy is available, more over civil remedy has been exhausted by the complainant, the High Court should not hesitate to quash the criminal proceedings on the impugned FIR, in order to prevent abuse of process of Court. Learned counsel for petitioner, finally, prayed to allow this petition.

5. Learned Public Prosecutor, on the contrary argued that even if a dispute between parties arising out of agreement dated 04.04.2013, may emanate a civil wrong, but simultaneously elements of committing criminal offence also there, hence, merely availability or availing of civil remedy by the complainant itself cannot be a ground to quash the criminal proceedings. He submits that in the present case, allegations against the petitioner as made in the FIR, constitute a cognizable offence for investigation, therefore, during course of investigation of allegations, made against the petitioner in the impugned FIR, the High Court may not exercise its inherent jurisdiction to quash the FIR, thus he prayed to reject the prayer of petitioner.

6. Learned counsel appeared on behalf of non-petitioner No.2/complainant, sought to oppose the petition on his behalf, yet in view of subsequent development of facts, due to death of complainant Mr. Ratanlal Agarwal, whose legal representatives have not been brought on record, submitted that the Court may

decide this petition in accordance with law and as per material available on record.

7. Heard. Considered.

8. The parameters of governing the exercise of jurisdiction, bestowed upon the High Court by virtue of Section 482 Cr.PC, are well settled and have been reiterated time and again in umpteen number of judgments. In recent judgment of the Apex Court in case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra [2021 SCC OnLine SC 315]**, the parameters laid down in cases of **R.P. Kapur Vs. State of Punjab [AIR 1960 SC 866]** & **State of Haryana Vs. Choudhary Bhajan Lal [1992 Supp.(1) SCC 335]**, have been reiterated and it has been held that though powers of High Court are of wide amplitude, nevertheless such powers should be exercised sparingly with circumspection and in rarest of rare cases. The High Court is not required to enter into merits of allegations or trench upon powers of the Investigation Agency, to investigate the correctness & truthfulness of allegations. It is well settled that while exercising jurisdiction under Section 482 of the Code of Criminal Procedure, the High Court would not ordinarily embark upon an inquiry whether the evidence in question is reliable or not, or whether on a reasonable appreciation of evidence, accusation would not be sustained. The High Court must exercise inherent powers to quash FIR, complaint or criminal proceedings, where same is required to prevent abuse of process of any Court or otherwise to secure ends of justice.

9. It is also well settled that where allegations made in the FIR, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused even for justifying an investigation by Police or it is established that FIR/complaint has been made malafidely, either to wreck vengeance or personal vendetta, powers may be exercised to quash the FIR. The illustrative categories as set out by the Apex Court in case of **Choudhary Bhajan Lal** (*Supra*) may be taken as guidelines to invoke the inherent powers by the High Court to quash the FIR or criminal proceedings.

10. From perusal of contents of the impugned FIR, it appears that allegations against the petitioner is to enter into an agreement to sell his Plot No.47 to the complainant against Rs.75 lacs and to receive Rs.10 lacs from the complainant, giving a fake assurance that the property is undisputed, petitioner is the sole owner and would hand over the possession as well as title documents at the time of registry, for which date was agreed to be by or before 18.05.2013. It is contended in the FIR that complainant came to know about dishonest & fraudulent intention of petitioner, when he received reply notice dated 18.05.2013 of petitioner, wherein he disclosed to the complainant that he is not capable to sell the property, there is dispute about this property between petitioner and his two brothers and a civil suit is pending, wherein interim injunction order is operating. The allegation against the petitioner is that he received and mis-appropriate amount of Rs.10 lacs of the complainant, keeping him in dark and

breaching his trust and thereby, petitioner has not only cheated the complainant but also committed criminal breach of trust and misappropriated an amount of Rs.10 lacs, having collusion/conspiracy with other persons, through executing the agreement with complainant, narrating incorrect, false and fictitious assurances. Thus, on the basis of such allegations, case under Sections 420, 406 and 120-B IPC has been registered.

11. Having considered allegations made in the FIR as a whole, it is apparent on record that dispute between parties erupted out of the agreement dated 04.04.2013, which is indeed an admitted and undisputed document between the parties, but such dispute also involves allegations of cheating and criminal breach of trust, side by side while giving rise to a dispute of civil nature as well. It is well settled proposition of law that in a given case, civil proceedings and criminal proceedings can proceed simultaneously.

In case of **Vesa Holdings Pvt. Ltd. Vs. State of Kerala [(2015) 8 SCC 293]**, the Hon'ble Supreme Court observed that *"It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not."*

12. In case of **Paramjeet Batra (Supra)**, on which counsel for petitioner has placed reliance, the nature of dispute was found to be essentially about profit of the hotel business and its ownership for which a civil suit was pending between parties, therefore, in

that context, the Apex court quashed criminal proceedings, however, the principle of law which has been enunciated hereinabove, was also affirmed. For ready reference Para 12 of this judgment is being reproduced hereunder:-

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

(Emphasis Supplied)

It would not be out of place to mention here that similar ratio of law has been reiterated and expounded by the Apex Court in recent judgment delivered on 12th March 2024 in **Naresh Kumar Vs. State of Karnatka: Special Leave Petition (Criminal) No.1570/2021.**

13. In view of above referred settled proposition of law, if allegations against the petitioner in the present FIR are examined, it is difficult to held that allegations do not contain the element of criminality, more particularly in respect of commission of an offence of cheating and criminal breach of trust by the petitioner. The contention of counsel for petitioner that the grievance of complainant in respect of non performance of the agreement dated 04.04.2013 has been resolved by the civil Court by passing the judgment dated 25.05.2023 in his favour, may not be accepted for quashing allegations of cheating and criminal breach

of trust levelled against the petitioner in the impugned FIR, which are to be analyzed by the Investigation Agency. Merely on account of the fact that complainant had a civil remedy as also has availed that remedy, the initiation of criminal motion against the petitioner may not be allowed to quash at the nascent stage of investigation in the impugned FIR, more particularly when the correctness and genuineness of questions of facts as narrated by the counsel for petitioner, in respect of executing another agreement dated 18.03.2013 apart from execution of agreement dated 04.04.2013 and the actual deal of the plot was against Rs.1.5 Crore and not against Rs.75 lacs, are also to be looked into by the Investigation Agency and cannot be assessed by this Court in exercise of its inherent jurisdiction. Similarly, the issues whether petitioner had dishonest intention to cheat the complainant, since beginning or the complainant has put the criminal law in motion, just to harass the petitioner or exert pressure upon him malafidely or for wrecking vengeance, would also come to the picture and unearth only after completion of investigation about entirety of facts related to present case. Therefore, for such reasons also, it would be in the fitness of things, allowing to complete the investigation on the impugned FIR.

14. It is needless to amplify the proposition of law that it is expected from the Investigation Agency to conduct the investigation fairly, impartially and thoroughly, taking into consideration all the connected and relevant facts in entirety, in order to reveal the true nature of dispute between parties, to unearth the hidden intention of parties. The Investigation Agency

may also consider the stand taken by the parties during civil proceedings.

15. For the aforesaid reasons and discussions, this Court does not find the present case to be fall within the category of rarest of rare cases, so as to exercise inherent jurisdiction by this Court under Section 482 Cr.PC, to quash the impugned FIR and investigation thereupon at the stage of investigation. Merely, availing civil remedy as well in addition to lodging impugned FIR by the complainant, may not be taken as exceptional circumstances in the factual background of present case, since there are disputed, unclear and hazy facts from both sides. However, it is hereby directed that investigation in the impugned FIR shall be completed expeditiously and if possible within a period of sixty days, from the receipt of certified copy of this Judgment.

16. Hence, without quashing the impugned FIR and investigation thereupon, instant criminal misc. petition is hereby dismissed with the aforesaid direction.

17. All pending application(s), if any, stand(s) disposed of.

18. Since it has been submitted that Police Station JDA, Jaipur, has been abolished and investigation of the impugned FIR has been transferred to Police Station Shyam Nagar, Jaipur, therefore, Registrar (Judicial) is directed to send a copy of this judgment to the concerned SHO/Investigating Officer, Police Station Shyam Nagar, Jaipur for compliance.

(SUDESH BANSAL), J