

M.Cr.C.No.7418/2010
(Haji Nanhe Khan & Ors. v. State of M.P. & Ano.)

06/01/2017

Shri Sarvesh Sharma, learned Counsel for the Petitioners.

Shri Girdhari Singh Chouhan, learned Public Prosecutor for the State.

Heard finally.

This petition has been filed by the Petitioners under Section 482 of Cr.P.C. for quashing the order dated 26-5-2010 passed by 3rd Additional Sessions Judge, Vidisha in Sessions Trial No. 131/2009 by which charges were framed against the Petitioners for offences punishable under Sections 420,467,468 and 471 of I.P.C.

The necessary facts for the disposal of the present petition in short are that a written complaint was made by respondent no. 2 Mithlesh Soni alleging interalia that the Petitioners entered into an agreement to sell certain lands to the complainant for a total consideration of Rs. 1,10,00,000/- out of which the petitioners have received Rs. 20 lacs by way of advance. An agreement to sell was executed on a Stamp Paper of Rs. 100/-. At the time of the agreement, the Petitioners had agreed that they would execute the sale deed after getting their names mutated in the revenue records. However, the Petitioners neither got their names mutated in the revenue records nor they executed the sale deed by the agreed date. Therefore, it was pleaded that from the day one, the intention of the

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Petitioners was to cheat the complainant.

An enquiry on the basis of the complaint was conducted. During enquiry, notices were issued to the Petitioners but they did not appear before the Investigating Officer, therefore, their statements could not be recorded. The Investigating Officers recorded the statements of Ramvilas Sharma, Amol Singh Lodhi, Bharat Singh Lodhi, Kamal Singh Lodhi, Mobat Singh Lodhi, Sodan Singh Lodhi, Vinod Kumar Jain, Kashi Bai Lodhi, Notary H.A. Jilani, Storekeeper R.B. Soni. After enquiry it was found that the petitioners had entered into an agreement to sell certain lands of which the Petitioners were neither the title holder nor there was any agreement in their favor. Thus, a F.I.R. was lodged by the police against the Petitioners for offences punishable under Sections 420,467,471 of I.P.C.

The Police after completing the investigation filed the charge sheet against the Petitioners for offences punishable under Sections 420,467,471 of I.P.C.

The Trial Court by the impugned order dated 26-5-2010 framed charges under Sections 420,467,471 of I.P.C.

Being aggrieved by the order framing charges, the present Petition under Section 482 of Cr.P.C. has been filed.

It is submitted by the Counsel for the Petitioners, that even if the entire allegations are

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considered, then it would be a case of Civil in nature and the complainant has an alternative and efficacious remedy of filing the suit for specific performance of Contract and in order to adopt a short cut, a complaint was made by the complainant. It is further submitted that the parties have compromised their dispute and an application I.A. No. 10828/2016 has been filed for quashing of the proceedings on the basis of the compromise.

Per contra, the Counsel for the State submitted that the fact that in the agreement to sell, the Petitioners had included even those lands which are owned by others would clearly means that the intention of the Petitioners from the very inception was to cheat the complainant, otherwise, the Petitioners would not have included the lands which belong to others. It is further submitted by the Counsel for the State that the Trial has reached to an advance stage and therefore, in view of the judgment of the Supreme Court in the case of **Narinder Singh Vs. State of Punjab** reported in **(2014) 6 SCC 466**, the proceedings may not be quashed on the basis of compromise.

Heard the learned Counsel for the Parties and perused the copy of the charge sheet.

The first contention raised by the Petitioners, at the first instance appears to be very attractive, however, on deeper scrutiny of the allegations, the argument of the Counsel for the Petitioners that the

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dispute is predominantly of civil in nature is found to be misconceived.

The undisputed fact is that the Petitioners had entered into an agreement to sell certain pieces of land. In the said agreement, the Petitioners had included the lands of Vinod, Kashi bai, Sodan Singh, Mobat Singh, Bharat Singh, Kamal Singh, Ramvilas Verma, Amol Singh, Mithlesh Kumar Soni. Vinod Kumar, Kashi bai, Sodan Singh, Mobat Singh, in their case diary statements have stated that they had neither entered into agreement to sell the land in favor of the petitioners, nor they have ever sold the land to the petitioners. It was further stated by them, that they have never executed any power of attorney in favor of the Petitioners. Bharat Singh and Kamal Singh have stated that although they had agreed to sell their land to the petitioners, but as some consideration amount has not been paid by the Petitioners, therefore, the sale deeds have not been executed.

The Complainant, Mithlesh Kumar Soni, has stated that at the time of agreement, the Petitioners had shown the power of attorney executed in respect of lands belonging to Amol Singh, Mobat Singh, Kashi, Sodan Singh, Vinod Kumar, Bharat Singh, Kashibai and Ramlal. He had agreed to purchase the entire land i.e., 100 bigha of land for a consideration of Rs. 1,10,00,000 out of which he had paid Rs. 20 lacs by way of advance. He had

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requested the respondents to execute the sale deed, but they were avoiding. On 25-6-2008, he waited in the Registrar Office for the entire day, but the petitioners did not come for executing the sale deed. When the complainant contacted them on mobile, then they assured that they are coming, but when they did not turn up in the office of Registrar, then the complainant talked to Nanhe Khan, who in his turn flatly refused to execute the sale deed. The statement of Harish Thukral is also of the same effect.

The Counsel for the petitioners in order buttress his contention that the case is predominantly of civil in nature and therefore, criminal proceedings should not be allowed to continue, relied upon the judgments of the Supreme Court in the case of **U.Dhar and another Vs. State of Jharkhand and others (AIR 2003 SC 974)**, **M/s Indian Oil Corporation Vs. M/s NEPC India Ltd. and others (AIR 2006 SC 2780)**, **Inder Mohan Goswami Vs. State of Uttaranchal and others (AIR 2008 SC 251)**, **Dalip Kaur and others Vs. Jagnar Singh and another (AIR 2009 SC 3191)**, **Chandran Ratnaswami Vs. K.C. Palaniswami (AIR 2013 SC 1952)**, **All Carbo Movers India (P) Ltd. Vs. Dhanesh Badarmal Jain ((2007) 14 SCC 776)**, **Sharon Michael Vs. State of Tamilnadu ((2009) 3 SCC 375)**, **Rajib Ranjan and others Vs. R. Vijay Kumar ((2015)**

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1 SCC 513), submitted that the tendency of converting the civil cases into criminal cases should be discouraged and therefore, considering the fact that the present case is merely a case of breach of contract, the criminal proceedings are liable to be quashed.

Considered the contentions of the Counsel for the Petitioners. In order to find out that whether the allegations made by the complainant are predominantly of civil nature or it involves the criminal ingredients also, the facts of each case are required to be considered.

The Supreme Court in the case of **Amit Kapoor Vs. Ramesh Chander** reported in **(2012) 9 SCC 460** has held as under :

“27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of

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the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific

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protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a

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criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under

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Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

Thus, while considering the allegations made in the F.I.R., not only the personal freedom of a person against whom the allegations have been made is to be kept in mind, but at the same time, the right of the complainant to prosecute the offender is also to be kept in mind. If the facts of this case are considered in the light of the well settled principle of law, then it cannot be said that the allegations made against the Petitioners were predominantly of Civil in Nature and there was no criminality on the part of the Petitioners. From the plain reading of the F.I.R. and the case diary statements of the witnesses, it would be clear that the Petitioners while entering into an agreement to sell, had misrepresented that apart from their own land, they are also competent to sell the lands of other persons on the strength of the Power of Attorney, whereas the witnesses have specifically stated that neither they had ever agreed to sell their lands to the petitioners, nor they had ever executed any Power of Attorney in favor of the Petitioners. Thus, prima facie it appears that not

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only the Petitioners tried to sell the lands belonging to others without any authority of law but also misrepresented to the complainant that they have been authorized by the other owners to sell their lands. If the intentions of the petitioners were clear from the very inception, then instead of misrepresenting to the complainant about their competence to sell the land of others, they could have obtained the consent of the other land owners by making them party to the agreement to sell. If the Petitioners had entered into an agreement to sell their lands only, and subsequently, failure on their part to execute the sale deed might have been a case of civil in nature. But where fraud was played by the Petitioners at the time of entering into an agreement to sell by including the lands of the other land owners without their knowledge and consent, then it cannot be said that right from the very inception, there was no intention on the part of the Petitioners to cheat the complainant. The act of the Petitioners cannot be said to be an Act which does not involve the ingredients of criminal law. Thus, the contention of the learned Counsel for the Petitioners, that the allegations made against the Petitioners are predominantly of civil nature cannot be accepted and hence, the same is rejected.

Now, the question arises, that whether the proceedings can be quashed on the ground that the parties have settled their disputes and have filed an

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application for quashing of the proceedings on the ground of compromise.

The Supreme Court in the case of **Narinder Singh Vs. State of Punjab** reported in **(2014) 6 SCC 466** has held as under :

“29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/ investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties

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would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

Thus, it is clear that where the prosecution evidence is almost over, then, normally High Court should not quash the proceedings on the ground of Compromise. A report with regard to the status of the Trial was called from the Trial Court. The Trial Court by its letter dated 27-5-2016 had informed that evidence of 15 witnesses has already been recorded and one witness Vikram Dubey is yet to be cross examined. Thus, it is clear that out of the list of 20 witnesses, 16 witnesses have already been examined and thus, it is clear that the Trial has reached to an advance stage. Therefore, in the light of the judgment passed by the Supreme Court in the case of Narinder Singh (Supra), the proceedings cannot be quashed on the ground of compromise.

Apart from the advanced stage of Trial, there is another aspect of the matter which cannot be lost sight of, while deciding the application for quashing the proceedings on the ground of compromise. It is true that the complaint was made by Respondent no.2, but the allegations are that the Petitioners while cheating the respondent no.2, had also included the lands of other persons who had never

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entered into any sort of transaction with the Petitioners and who had never executed any Power of Attorney. Thus, it cannot be said that only respondent no.2 was cheated, but by making an attempt to sell the lands of others, the Petitioners had tried to cheat the other persons who have been cited as witnesses. Thus, without there being any compromise, between the said witnesses and the Petitioners, the entire proceedings cannot be quashed merely on the ground that the First Informant has settled his dispute with the Petitioners. Accordingly, I.A. No. 10828/2016 for quashing the entire proceedings on the ground of compromise is rejected.

Consequently, this petition under Section 482 of Cr.P.C. fails and is hereby dismissed. As the Trial has already reached to an advance stage and the matter is pending since 2010, therefore, the Trial Court is directed to decide the Trial as early as possible, presumably within a period of six months from today.

Let a copy of this order be send to the Trial Court for necessary information and compliance.

(ra)

(G.S.Ahluwalia)
Judge