



Saudagar Singh v. State of Haryana and another (P&H)
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PUNJAB AND HARYANA HIGH COURT

Before: Rajbir Sehrawat, J.

CRM-M No.42452 of 2007 (O&M)

Decided on: 26.07.2023

Saudagar Singh - Petitioner

Versus

State of Haryana and another - Respondents

Present:

Mr. Ashish Aggarwal, Senior Advocate with Ms. Aashna Aggarwal, Mr. Vishal Pundir, Advocates, Ms. Vibhuti Narania and Mr. Ashok Verma, Advocates, for the petitioner.

Mr. Krishan K.Chahal, Addl. Advocate General, Haryana with SI Prem Singh.

Mr. Ankush Singla, Advocate, for respondent No.2.

A. Indian Penal Code, 1860 (45 of 1860), Section 420, 467, 468, 471, 120-B, 218 – Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Quashing of FIR -- Cheating and forgery – Challan presented -- Mutation in favour of the petitioner is relating to only that land, which was validly allotted and he had made the complete payment -- If the revenue official had initially entered a deficient mutation and the same is corrected subsequently; either on the application of the petitioner or otherwise, no fault could be found with that – Any other fact, regarding some DDR entry or some order or absence of any other order passed by any Authority is only ancillary fact; which cannot be raised to the level of introducing criminality -- FIR and all consequent proceedings, quashed.

(Para 4-6)

B. Indian Penal Code, 1860 (45 of 1860), Section 420, 467, 468, 471, 120-B, 218 – Code of Criminal Procedure, 1973 (2 of 1974), Section 173, 482 -- Cheating and forgery – Challan presented -- Quashing of FIR – Permissibility of -- Submission that challan has been filed, therefore, the FIR cannot be quashed -- Court not found any substance in the said argument -- Once, the complaint itself is baseless, then merely because some witnesses have repeated the *ipse dixit* of the complaint which is based on non-existent facts or the facts against the undisputed record, before the Investigating Officer; that does not lend any legal or jurisprudential support to the report filed by the Investigating Officer -- FIR can be quashed even after filing of report u/s 173 Cr.P.C. before the trial Court -- FIR and all consequent proceedings, quashed.

(Para 5, 6)

Cases referred:

1. Rubabbuddin Sheikh Versus State of Gujarat and Others, (2010) 2 SCC 200.
2. Anand Kumar Mohatta and another Versus State (Govt. of NCT of Delhi), Department of Home and another, Criminal Appeal No.1395 of 2018 (SLP (Crl.) No.3730 of 2016), decided on 15.11.2018.

RAJBIR SEHRAWAT, J. (ORAL) –

1. The present petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure for quashing of FIR No.67 dated 28.03.2007 registered under Sections 420, 467, 468, 471, 120-B and 218 of the Indian Penal Code (for short 'the IPC') at Police Station Ellenabad Mandi, District Sirsa and all consequential proceedings arising therefrom.

2. It is submitted by learned Senior counsel for the petitioner that the case against the petitioner is totally concocted and absurd. The petitioner was allotted total land measuring 39 Kanals 8 Marlas vide order dated 16.03.1981 passed by the Allotment Authority, Sirsa. However, while entering mutation qua that allotment land, the revenue official entered mutation only qua land measuring 16 Kanals 5 Marlas. Since, the initial allotment of land was subject to complete payment of allotment money; in installment, therefore, on making the complete payment, the petitioner brought it to the notice of the Authorities that the mutation is wrongly entered for a less quantity of land. Accordingly, the mutation has been corrected by the revenue official to bring the same in commensurance with the allotment order dated 16.03.1981. Since, the petitioner is the allottee of the land and through the mutation he has not been given any land more than the allotted land or the land other than the land mentioned in the order dated 16.03.1981, therefore, there is no question of any offence being involved in the case. Learned Senior counsel for the petitioner has further submitted that the complainant who claimed to be a tenant on the land; had even filed the civil suit challenging the said mutation. However, the said civil suit stands dismissed by the Civil Court. Not only that, even the appeal filed by the complainant already stands dismissed. Accordingly, the judgment and decree passed by the Civil Court had also attained finality in favour of the petitioner. Hence, the FIR and the proceedings against the petitioner are totally baseless and the same deserve to be set aside.

3. On the other hand, learned State counsel, being assisted by learned counsel for the complainant and being instructed by SI Prem Singh, has submitted that the initial mutation was entered only qua the land measuring 16 Kanals 5 Marlas. Though, subsequent mutation has been entered, allegedly, based on the order dated 17.12.1988, however, there is no such order available on record. Therefore, there is fabrication of record involved in entering the mutation of the land other than 16 Kanals 5 Marlas. The said mutation was got entered by the petitioner in connivance with the concerned revenue official. Even, the Investigating Officer has filed the challan against the petitioner before the trial Court. Therefore, the FIR cannot be quashed at this stage. However, it is not disputed by learned counsel for the complainant that the original allotment of land to the petitioner was for 39 Kanals 8 Marlas comprised in the khasra numbers mentioned in the allotment order. It is also not disputed that the complainant had filed civil suit challenging the amended mutation qua the land and that the said civil suit has been dismissed and further, the judgment and decree passed by the Civil Court has been upheld even in appeal.

4. Having heard learned counsel for the parties and having perused the case file, this Court finds sufficient substance in the arguments raised by learned Senior counsel for the petitioner. It is not even in dispute between the parties that the petitioner was allotted land measuring 39 Kanals 8 Marlas comprised in khasra number 239//1 Min (4-7), 10(8-0), 11/4(7-17), 20/2(7-19), 21 Min (6-11), 240//5 Min (4-14). It is not even the allegation of the prosecution/complainant that the petitioner has

got the land more than the above said land; or in the khasra number other than the khasra number mentioned above through the mutation in question. Therefore, the mutation in favour of the petitioner is relating to only that land, which was validly allotted by the Allotment Authority vide order dated 16.03.1981. It is also not in dispute that the petitioner had made the complete payment pursuant to the above said order. Hence, nothing wrong can be attributed to the petitioner in the entire transactions. If the revenue official had initially entered a deficient mutation and the same is corrected subsequently; either on the application of the petitioner or otherwise, no fault could be found with that, if the said mutation transfers the land in favour of the petitioner only to the extent and with the identity mentioned in the order dated 16.03.1981 passed by the Allotment Authority, Sirsa. Any other fact, regarding some DDR entry or some order or absence of any other order passed by any Authority is only ancillary fact; which cannot be raised to the level of introducing criminality in the transaction of transfer of property in favour of the petitioner.

5. Although, learned State counsel and learned counsel for the complainant has submitted that since the challan has been filed, therefore, the FIR cannot be quashed, however, this Court does not find any substance in the said argument. Once, the complaint itself is baseless, then merely because some witnesses have repeated the *ipse dixit* of the complaint which is based on non-existent facts or the facts against the undisputed record, before the Investigating Officer; that does not lend any legal or jurisprudential support to the report filed by the Investigating Officer. Otherwise also, Hon'ble the Supreme Court in the cases of ***Rubabbuddin Sheikh Versus State of Gujarat and Others (2010) 2 SCC 200*** and ***Anand Kumar Mohatta and another Versus State (Govt. of NCT of Delhi), Department of Home and another, Criminal Appeal No.1395 of 2018 (SLP (Crl.) No.3730 of 2016), decided on 15.11.2018***, has held that in an appropriate case the FIR can be quashed even after filing of report under Section 173 Cr.P.C. before the trial Court.

6. In view of the above, the present petition is allowed. FIR No.67 dated 28.03.2007 registered under Sections 420, 467, 468, 471, 120-B and 218 of the IPC at Police Station Ellenabad Mandi, District Sirsa and all further proceedings consequent thereon, are hereby quashed.

7. The pending miscellaneous application, if any, is also disposed of; as such.

Petition allowed.

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