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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.15781-2018 (O&M)

Date of Decision: 20.02.2024

Rajinder Singh Bhullar

...Petitioner

Versus

Ranjit Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Preetinder Singh Ahluwalia, Advocate
for the petitioner

Mr. Naresh Kaushal, Advocate
for the respondent

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of summoning order dated 09.03.2017 (Annexure P-2) passed by learned Additional Chief Judicial Magistrate, SAS Nagar (Mohali) in criminal complaint No. 36 dated 27.09.2012 filed under Sections 420 and 120-B of the IPC as well as order dated 03.02.2018 (Annexure P-4) passed by learned Additional Sessions Judge, SAS Nagar (Mohali) vide which revision petition filed against the same has been dismissed.

2. Briefly, the facts are that the Joginder Singh, father of the respondent-complainant and his cousin sisters namely Karnail Kaur, Bhupinder Kaur and Amarjit Kaur jointly owned land measuring 10 kanals and 8 marlas bearing Khewat Khatoni no. 9/18-19 Khasra No. 15//11/1/1(0-9), 11/2/3 (5-0), 12/1(4-19), Kite 3 (hereinafter referred to as 'first plot') and another piece of land measuring 6 marlas bearing Khewat Khatoni No.9/18-19 Khasra No. 89 (0-2), 93(0-2),

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15//24/1/1 (0-2) (hereinafter referred to as 'second plot') situated in Village Shahimajra, Tehsil Kharar, District Mohali. The land was equally divided between Joginder Singh and his sisters thereby making him owner of 5 kanals and 4 marlas in the former and 3 marlas in the latter. Joginder Singh along with his cousin sisters sold a total of 10 kanals of the land vide four sale deeds dated 25.05.19 (Annexure P-5), 20.06.1989 (Annexure P-6), 20.06.1989 (Annexure P-7) and 09.08.1989 (Annexure P-8).

3. Thereafter, Joginder Singh and his cousin sisters executed a general power of attorney in favour of the petitioner for management of the remaining land. Taking advantage of the same, the petitioner sold 2 kanals of land to Devidas Agnihotri vide registered sale deed dated 13.08.1989 out of the first plot, while only 14 marlas was remaining under ownership of Joginder Singh and his cousin sisters. The petitioner also sold 6 marlas of the first plot to Inderjit Kaur vide registered sale deed dated 16.10.1990, while no land remained under their ownership.

4. The father of the respondent-Joginder Singh died on 07.08.1992, however, the petitioner sold 3 ½ marlas out of the second plot to Manjit Kaur by tampering with the revenue records, in connivance with the Halqa Patwari and Tehsildar by deducting 2 marlas from the share of the father of the respondent and reflecting the same to be falling in the share of his cousin sisters vide mutation no. 558. Succinctly put, in furtherance of a criminal conspiracy hatched with the Halqa Patwari and the Tehsildar, the petitioner sold 12 marlas of excess land by meddling with the revenue records and converting the share of Joginder Singh favour of his cousin sisters.

5. On finding a *prima facie* case against the petitioner, the learned trial Court issued summoning order dated 09.03.2017 against him. Aggrieved by the

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same, the petitioner filed a revision before the learned lower Appellate Court which was dismissed vide order dated 03.02.2018.

6. Learned counsel for the petitioner *inter alia* contends that the alleged sale deeds were executed in the year 1989 and 1990 and the petitioner has been summoned to face trial as an accused vide order dated 09.03.2017 i.e. after a period of 27 years, which is an infringement of speedy trial vested under Article 21 of the Constitution of India. The complainant has adopted an arm twisting tactic by filing the criminal complaint in question in the year 2012 as the alleged sale deeds executed in the year 1989 and 1990 could not be challenged in the Civil Court being barred by limitation. It is purely a civil dispute, which is given a colour of criminal prosecution. It is further contended that in fact, the father of complainant and his cousin sisters had sold their shares vide various sale deeds and the petitioner, being a power of attorney, was entitled to sell only 2 kanals and 14 marlas of land, out of which, he sold 2 kanals to Devidass Agnihotri and 6 marlas of land to Inderjit Kaur. After execution of the aforesaid two sale deeds, the land left behind was 8 marlas and therefore, the allegation that the excess land was sold, was factually incorrect. It is also contended that ingredients of Section 420 IPC are not made out in the facts and circumstances of the present case, as the complaint *sans* any specific allegation that there was dishonest intention on the part of the petitioner from the very inception to cheat the respondent-complainant. In support of his contentions, he relies upon the following judgments of Hon'ble Supreme Court as well as this Court:-

<i>Sirajul and others Vs. The State of U.P. and another (2015) 9 SCC 201</i>	Complaint filed under Section 307 IPC after a delay of 16 years was quashed.
Pankaj Kumar Vs. State of Maharashtra and others, Criminal Appeal No.1067 of 2008 decided on 11.07.2008.	Criminal proceedings under Sections 409, 471 IPC were quashed as there was delay of 4 years in investigation and 8 years in trial.
Md. Ibrahim and others Vs. State of Bihar and another, Criminal	In the case of accused selling the property of complainant (owner), it is the purchaser

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Appeal No.1695 of 2009 decided on 04.09.2009.	who was cheated and not the owner, therefore, complaint filed by the owner under Section 420 IPC was quashed.
Thermax Limited and others Vs. K.M. Johny and others (2011) 13 SCC 412	If there is huge delay and in order to avoid period of limitation in civil law, criminal proceedings cannot be resorted to. In the case before the Hon'ble Supreme Court, complaint was filed in the year 2002 while alleged dispute pertained to the period from 1993 to 1995.
Deepak Gaba and others Vs. State of Uttar Pradesh and another, Criminal Appeal No.2328 of 2022 decided on	In order to apply Section 420 IPC namely cheating and dishonestly inducing delivery of property, the ingredients of Section 415 IPC have to be satisfied. Absence of elements of 'dishonesty', 'fraudulence' or 'intentional inducement' debase the offence of cheating.
P. Ramachandra Rao Vs. State of Karnataka 2002 (2) RCR (Criminal) 553	Power under Section 482 Cr.P.C. can certainly be exercised for quashing criminal proceedings if they remain pending for too long and found to be oppressive and unwarranted.
Sucha Singh Mann and another Vs. State of Punjab and others 2023 (3) RCR (Criminal) 36.	FIR lodged in the year 2019 for the alleged occurrence of the year 2004 and its consequential proceedings were quashed on the ground of inordinate delay of a large number of years, which affected the right of speedy trial of the accused.
Kawaljit Kaur and another Vs. State of Punjab and others, CRM-M No.2019 of 2016 decided on 26.02.2020.	Civil dispute relating to agreement to sell was given colour of criminal litigation – FIR quashed.

7. Per contra, learned counsel appearing for the respondent supports the impugned summoning order dated 09.03.2017 by contending that the petitioner had misused the power of attorney executed in his favour in connivance with the revenue officials and sold the excess land by converting the same in favour of cousin sisters of father of the complainant. Therefore, the petitioner had committed a fraud upon the complainant and thus, ingredients of Section 420 IPC are made out. It is further contended that no limitation is provided under Section Section 468 Cr.P.C. for offence committed under Section 420 IPC and therefore, the complaint is not barred by limitation. Under Section 473 Cr.P.C., Court has

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power to extend the period of limitation. Furthermore, the limitation starts only after acquiring knowledge of commission of offence and on acquiring said knowledge, the respondent-complainant promptly filed complaint against the petitioner and therefore, the learned trial Court has rightly taken cognizance of the complaint filed by the respondent-complainant and there is no infirmity in the summoning order dated 09.03.2017, which is subject of challenge before this Court.

8. I have heard learned counsel for the parties and perused the record of the case with their able assistance as well as the case laws cited.

9. Admittedly, the sale deeds in controversy were executed in the years 1989 and 1990 and the present complaint was filed in the year 2012 i.e. after a period of almost 22 years and the impugned order for summoning the petitioner as an accused to face trial was passed 5 years thereafter in the year 2017, in total 27 years have elapsed since execution of the alleged sale deeds. Article 21 of the Constitution vests a right in the accused to be tried speedily, which includes all stages, starting from investigation to trial and appeal. However, where the speedy trial is alleged to have been infringed, the question which is required to be answered is; who is responsible for the said delay, whether it is the complainant or the accused. In the case at hand, the complainant has failed to give a plausible explanation as to what prevented him from lodging a complaint against the petitioner for almost 22 years. Though there is no bar of limitation provided under Section 468 Cr.P.C. for complaint under Section 420 Cr.P.C., the same can be quashed in exercise of jurisdiction under Section 482 Cr.P.C. on the ground of delay, as the proceedings initiated after an unexplained inordinate delay would amount to abuse of the process of the Court. A two Judge Bench of the Hon'ble Supreme Court in *Chanchalpati Das Vs. State of West Bengal and another 2023*

SCC OnLine SC 650 speaking through Justice Bela M. Trivedi has held as under:-

“15. In State of A.P. v. Golconda Linga Swamy this Court had observed that the Court would be justified to quash the proceedings if it finds that initiation or continuance of such proceedings would amount to abuse of the process of Court.

16. As regards inordinate delay in filing the complaint it has been recently observed by this Court in Hasmukhlal D. Vora v. State of Tamil Nadu that though inordinate delay in itself may not be a ground for quashing of a criminal complaint, however unexplained inordinate delay must be taken into consideration as a very crucial factor and ground for quashing a criminal complaint.

17. In the light of afore-stated legal position, if the facts of the case are appreciated, there remains no shadow of doubt that the complaint filed by the respondent-complainant after an inordinate unexplained delay of eight years was nothing but sheer misuse and abuse of the process of law to settle the personal scores with the appellants, and that continuation of such malicious prosecution would also be further abuse and misuse of process of law, more particularly when neither the allegations made in the complaint nor in the chargesheet, disclose any prima facie case against the appellants. The allegations made against the appellants are so absurd and improbable that no prudent person can ever reach to a conclusion that there is a sufficient ground for proceeding against the appellants-accused.”

10. A two Judge Bench of the Hon’ble Supreme Court in **Sirajul’s case** (supra) speaking through Justice Adarsh Kumar Goel has quashed a complaint filed under Section 307 IPC after 16 years of incident. Following was observed:-

“17. It is thus clear from the above observations that mere delay in completion of proceedings may not be by itself a ground to quash proceedings where offences are serious, but the court having regard to the conduct of the parties, nature of offence and the extent of delay in the facts and circumstances of a given case, quash the proceedings in exercise of jurisdiction under Section 482 CrPC in the interest of justice and to prevent abuse of process of the court.

18. In the present case, the conduct of the complainant can certainly be taken into account. Admittedly, the complainant stood convicted in a cross-case. At least for ten years after commencement of the trial, the complainant did not even bother to seek simultaneous trial of the cross-case, the step which was taken for the first time in the year 2005 which could certainly have been taken in the year 1995 itself when the trial against Respondent 2 commenced. Having regard to the nature of allegations and entirety of circumstances, it will be unfair and unjust to permit Respondent 2 to proceed with a complaint filed 16 years after the incident against the appellants.”

11. The Hon’ble Supreme Court by a line of judicial precedents has emphasised time and again that speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 of the Constitution. This Court in **Parminder Singh @ Dimpy Vs. State of Punjab and another**, CRM-M No.46017 of 2019 decided on 17.11.2023 while quashing the FIR filed under Section 436, 120-B IPC (Sections 435, 457, 456, 427 IPC added later on) wherein the investigation was pending for last more than 15 years, has held as under:-

“5.....It is no longer *res integra* that the fundamental concept of the criminal jurisprudence is to ensure speedy trial. The Hon’ble Supreme Court has repeatedly reiterated that the right to speedy trial is enshrined in Article 21 of the Constitution of India. The speedy trial would cover in its sweep investigation, trial, appeal etc. i.e. everything starting with the accusation and expiring with the final verdict of the last Court. No citizen can be deprived of his liberty under a procedure which is not reasonable, fair or just, such deprivation would be violative of Article 21 of the Constitution of India. The Seven Judges Bench of Hon’ble Supreme Court in *Menka Gandhi Vs. Union of India and Another* 1978(1) SCC 248 has articulated the protection enshrined under Article 21 of the Constitution of India and has held that Article 21 confers a fundamental right on every citizen and not to be deprived of his life or liberty except according to the procedure established by law and such procedure is not merely some semblance of procedure but such

procedure must be reasonable, fair. The right to speedy trial undoubtedly flow from this concept of fairness. It was observed that any procedure which does not ensure a reasonably quick trial, it would fall foul of Article 21 and the right to speedy trial is an integral and essential part of fundamental right to life and liberty enshrined in Article 21 of the Constitution of India.”

12. A larger Bench of Seven Judges of the Hon’ble Supreme Court in **P. Ramchandra Rao (supra)** per majority has held as under:-

“No person shall be deprived of his life or his personal liberty except according to procedure established by law declares Article 21 of the Constitution. Life and liberty, the words employed in shaping Article 21, by the Founding Fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the Preamble, deriving strength from the Directive Principles of State Policy and alive to their constitutional obligation, the Courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and re-trial in short everything commencing with an accusation and expiring with the final verdict the two being respectively the terminus a quo and terminus ad quem of the journey which an accused must necessarily undertake once faced with an implication.”

13. The ingredients of constituting an offence of cheating under Section 420 IPC are defined under Section 415 IPC and the same is reproduced as under:-

“415. Cheating. - *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to*

any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation. – A dishonest concealment of facts is a deception within the meaning of this section.”

14. The essential ingredients for commission of offence of cheating are deception and inducement to deliver any property to any person or to consent that any person shall retain any property. There must be an intention to induce a person to do or omit to do anything which he would not do or omit if he were not so deceived, and the act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. There is nothing on record to show that the petitioner had a dishonest intention from the very inception and he deceived any person fraudulently or dishonestly to deliver any property to any person. In the case at hand, it is an admitted fact that the petitioner was given a General Power of Attorney for managing the land of the father of the complainant and the allegations against him are that he sold excess land than the share of his father in connivance with revenue officials to one Devidas Agnihotri and Inderjit Kaur vide sale deeds dated 13.09.1989 and 16.10.1990. The father of the respondent-complainant died on 07.08.1992 i.e. after execution of the aforesaid sale deeds and he nowhere in the complaint levelled any allegation that the petitioner is in any way was beneficiary of the sale consideration of the aforesaid sale deeds. Rather the allegation is that while selling the land in dispute, the petitioner has committed a fraud upon the vendees Devidas and Inderjit Kaur. In that eventuality, it is the vendees Devidas and Inderjit Kaur, who had to file a complaint of fraud against the petitioner. The relevant lines of the complaint

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(Annexure P-1) are reproduced as under:-

“6...And as such, the accused Rajinder Singh has played a fraud with Devedas and Smt. Inderjit Kaur to whom he has sold 12M land excess vide registrered sale deed 13.09.89 and 16.10.90 respectively with the connivance of Halqa Patwari, who has given the clear jamabandi by showing the 12M land as stand in the name of father of the applicant and his cousin sisters whereas, no any balance land was left of the cousin sisters of the father of the applicant.

15. A two Judges Bench of the Hon'ble Supreme Court in ***Md. Ibrahim's case*** (supra) speaking through Justice R.V. Raveendran has held as under:-

“14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.”

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16. The argument raised by the respondent-complainant that the limitation can be extended under Section 473 Cr.P.C. has no force, as there is no material brought on record that he filed an application before the learned trial Court for extension of any such limitation nor any order of the learned trial Court to that effect has seen the light of the day.

17. A perusal of the record of the case reveals that the complainant has tried to give colour of criminal prosecution to the dispute, which is purely of civil nature and never resorted to civil remedies for the reasons best known to him. The complaint (supra) was instituted 22 years after the alleged occurrence. Initiating criminal proceedings for a purely civil dispute, after a lapse of almost three decades appears to merely be an instrument for harassment. The atrociously delayed trial casts serious doubts with respect to the integrity of the cause of action and continuation of such proceedings would only promote the cause of private vendetta, not justice. Not only does this approach directly violate the right of the accused for fair trial but also causes undue harm to his reputation and self-esteem, making the entire exercise antithetical to the concept of justice and fair play. The prosecution cannot be allowed to take undue benefit of the available legal remedies merely to further its own malicious agenda. A two Judge bench of the Hon'ble Supreme Court in ***Kailash Vijayvargiya v. Rajlakshmi Chaudhuri and others*** 2023 Cri.L.R.(SC) 874, speaking through Justice M.R. Shah has observed as follows:

“9. Article 21 of the Constitution protects lives and personal liberties of both the victim and those accused of having committed an offence. For this reason, the procedure established by law should be construed in the manner that the text of the statute ensures right to seek investigation to redress injustice and uncover crime by recourse to expeditious, fair and impartial

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procedure. Concomitantly, the law in application should protect blameless against those informants who levels false allegations and abuse the law causing distress, humiliation and damage to reputation.”

18. Therefore, tested on the touchstone of the broad principles enumerated above, this Court is convinced that in the present case petitioner’s constitutional right as recognised under Article 21 of the Constitution stands violated.

19. Resultantly, the summoning order dated 09.03.2017 (Annexure P-2) passed by the learned Additional Chief Judicial Magistrate, SAS Nagar (Mohali), and order dated 03.02.2018 (Annexure P-4) passed by the learned Revisional Court in complaint no. 36 dated 27.09.2012 under Sections 420, 120-B IPC, are quashed. The instant petition stands allowed in above terms.

(HARPREET SINGH BRAR)
JUDGE

February 20, 2024

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No