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DILBAG RAI

v.

THE STATE OF HARYANA & ORS.

(Criminal Appeal No. 1509 of 2018)

DECEMBER 03, 2018

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**[DR. DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

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Code of Criminal Procedure, 1973: s.482 – Quashing of FIR/ criminal proceedings under – On facts, proceedings arising out of F.I.R. registered u/ss. 406, 420, 467, 468, 471 and 506 IPC – Quashed by the High Court on the ground that the complainant had failed to make out any criminal intent on the part of the accused – Justification of – Held: High Court was not justified in taking recourse to its power u/s. 482 to quash the proceedings – High Court lost sight of crucial aspects which emerged during the course of the investigation – It was complainant’s case that though the accused did not have title to the property, she had dealt with the property and it was on that basis that the complainant was induced to part with valuable consideration – Furthermore, the correctness of these allegations is a matter of trial – Thus, the order of the High Court is set aside.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1509 of 2018.

From the Judgment and Order dated 11.02.2016 of the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 35679 of 2014.

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Dr. Sukhdev Sharma, J. B. Mudgil, Dr. Shivani, Rameshwar Prasad Goyal Advs. for the Appellant.

Vishwa Pal Singh, Vijay Kumar, Dr. Monika Gusain, Manpreet K. Bhallu, Advs. for the Respondents.

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The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. This appeal arises from a judgment and order dated 11.2.2016 passed by the High Court of Punjab and Haryana. By the impugned judgment, the High Court has quashed the proceedings arising out of

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F.I.R. No. 210 dated 21.6.2014 registered under Sections 406, 420, 467, 468, 471 and 506 of the Indian Penal Code, 1860 (“the Penal Code”) at Police Station Shahabad, District Kurukshetra. A

3. The complainant is in appeal in these proceedings. The case of the appellant is that on 1.12.2011, the accused, who is impleaded as respondent No. 2, entered into an agreement to sell a property admeasuring 8 marlas situated at Patti Jhabran, behind Lucky Colony, Shahabad, District Kurukshetra. An amount of Rs. 10 lakhs is said to have been paid at the time of execution of the agreement to sell. The complaint states that though the agreement recites that possession of the property was handed over, as a matter of fact, the possession was not transferred. B
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4. Since the accused did not proceed to complete the transaction, the appellant on 30.1.2014 filed an application before the Superintendent of Police, District Kurukshetra for registration of a complaint and for taking action against respondent No. 2 and her husband Gurcharan Singh.

5. The case was referred to the Economic Crime Cell, Kurukshetra. On enquiry, the Economic Crime Cell submitted its report dated 4.3.2014 concluding that the dispute was of a civil nature. D

6. The appellant thereafter filed an application under Section 156(3) of the Code of Criminal Procedure (“the CrPC”) and on the direction of the Illaqa/Duty Magistrate, Kurukshetra, F.I.R. No. 210 was registered on 21.6.2014 at the Police Station, Shahabad Markanda, District Kurukshetra. E

7. The accused filed an application being CRM-M No. 35679 of 14 before the High Court for quashing the FIR on the ground that the dispute was of a civil nature. During the course of the investigation, the statement of the owner of the plot was recorded on 27.10.2014 to the effect that the plot in fact belongs to his wife Sushila. F

8. Eventually after investigation, a chargesheet under Section 173 CrPC was submitted by the Investigating Officer on 20.11.2014 for offences under Sections 406 and 420 of the Penal Code.

9. Charges have been framed on 11.12.2014. The trial commenced and five prosecution witnesses were examined. G

10. The High Court by its impugned order dated 11.2.2016, quashed the proceedings arising out of the F.I.R. on the ground that on a plain reading of the FIR, the complainant had failed to make out any criminal intent on the part of the accused. H

A 11. Assailing the judgment of the High Court, it has been submitted on behalf of the appellant that the High Court had manifestly erred in exercising its jurisdiction under Section 482 CrPc at this stage particularly when after due investigation, the chargesheet has been filed and charges have been framed. Moreover, it has also been submitted that a criminal intent emerges from the fact that though the property did not stand in the name of the accused it was sought to be sold and in pursuance of the transaction, the appellant was made to part with valuable consideration.

B 12. On 29.6.2016, notice was issued in these proceedings. The office report indicates that service of notice is complete on respondent No. 2. Despite service, none has appeared for respondent No. 2.

C 13. The High Court was persuaded to quash the criminal proceedings purely on the basis that the F.I.R. indicated that the vendor had refused to execute the sale deed. On this basis, the High Court held that there is no element of cheating and on reading of the F.I.R., the complainant had failed to make out any criminal intent on the part of the accused.

D 14. In arriving at this conclusion, the High Court, as would appear from the narration of facts earlier, has lost sight of crucial aspects which have emerged during the course of the investigation. The case of the complainant, it must be noted, is that though the accused did not have title to the property, she had dealt with the property and it was on that basis that the complainant was induced to part with valuable consideration.

E 15. Whether these allegations are true or otherwise is a matter of trial.

F 16. The High Court, in our view, was not justified in taking recourse to its power under Section 482 CrPC to quash the proceedings.

G 17. For these reasons, we allow the appeal and set aside the impugned order of the High Court dated 11.2.2016. However, we clarify that we have expressed no opinion on the merits of the accusation which is a subject matter of the criminal trial.

18. The appeal is, accordingly, disposed of.

19. Pending applications, if any, shall also stand disposed of.