

112 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7964-2024 (O&M)

KULDEEPAK MITTAL

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

Present: Mr. R.K. Jaswal, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

Mr. Bipan Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Advocate,
Mr. J.S. Dhaliwal, Advocate and
Mr. P.S. Bindra, Advocate
for respondents No.4 to 6.

CRM-38744-2024

Prayer in the present application is for issuance of necessary directions to the trial Court to conclude the trial in the complaint case bearing No. COMI-41-2024 (earlier numbered as CRM-73-2017) (Annexure P-1) filed by the applicant/petitioner, within a period of three months with further direction to official respondents to register an FIR against accused persons for commissioning of offence of cheating and fraud with the applicant/petitioner to the tune of Rs.2.5 Crores in the year 2012, which is the subject matter of the afore-said complaint.

Notice of the present application to the non-applicants.

This court cannot shut its eyes to the fact that "Speedy trial" to a person/accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right

of fair trial. The factors concerning the accused's right to speedy trial have to be weighed vis-a-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appeal court is confronted with the question whether or not retrial of an accused should be ordered."

Further reliance can be placed upon the dictum of Apex court in ***Anokhilal v. State of Madhya Pradesh CRA-62-63 OF 2014 SC*** wherein it has been held that "Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice".

In the instant case the afore-said ratio of *Mutatis Mutandi* would apply keeping in view the exigencies in the matter involved in the form of

monetary loss caused to hundreds of home-buyers wherein large number of complainants are aggrieved on account of omission or commission of an act of committing fraud, cheating and causing wrongful to them by respondent No.4. In various cases even the investigation has not been completed for more than six years and even some of the cases noticeable period of more than a decade has been lapsed without any progress in the investigation what to talk of bringing the accused-respondent No.4 to book.

Delay in trial proceedings in the instant case wherein peculiar circumstances are prevailing in the light of inordinate delay already caused by the investigating agency, as discussed above, resultantly is causing severe prejudice to the complainants in particular who is giving space to the accused-respondent No.4, as is apparent from the fact that according to the list of bank account details not much liquid cash is available, as savings as has been informed by Mr. Ghai, learned Senior Counsel for respondent No.4 today, during the course of hearing when he was questioned as to why the amount available in those bank accounts has been withheld.

It is apposite and rather incumbent upon this Court to ensure the fulfilment of principle of criminal jurisprudence that 'justice not only has to be done but it should look to have done and therefore, this Court feels it expedient for expediting the proceedings before the trial Court. Hence, it is hereby, directed to the trial Court that in the instant complaint i.e. COMI-41-2024 proceedings shall be completed positively within a period of four months from the date of receipt of certified copy of this order.

CRM-38745-2024

Prayer in the present application is for placing on record the details of cases pending against respondent No.4-Jarnail Singh Bajwa and his

firm Bajwa Developers Ltd. at District Court, Mohali as well as before the District Consumer Disputes Redressal Forums, as Annexures A-1 to A-3.

Application is allowed, as prayed for.

Annexures A-1 to A-3 are taken on record subject to all just exceptions.

Respondent-State seeks time to verify the facts. It may do so and file status report qua the action taken in these cases, on the next date of hearing.

CRM-38777-2024

Prayer in the present application is for directing the concerned Tehsildar, Kharar/Mohali, to attach the properties of respondents No.4 to 6 (as mentioned in Para No.4 & 6 of the application) including the land measuring 25 acres, situated in Village Harlarpur, Sector 124, Kharar, District Mohali, comprised Khasra Nos. 17, 18, 20, 21, 22, 20, which is subject matter of the main complaint (Annexure P-1).

Notice of the application to the non-applicants.

On the asking of Court, Mr. Jaspal Singh Guru, AAG, Punjab accepts notice on behalf of respondent-State whereas, Mr. Bipan Ghai, Senior Advocate accepts notice on behalf of respondent No.4.

Learned Senior Counsel appearing for respondent No.4 seeks time to file reply to the present application.

CRM-M-7964-2024

Today, the list of immovable assets owned by respondent No.4 individual as well as M/s Bajwa Developers Ltd. has been provided apart from moveable properties, which includes 9 vehicles along-with their registration numbers and cash to the tune of Rs.10,00,000/- in hand apart from the bank

accounts details of of M/s Bajwa Developers Limited, his individual accounts which are 52 total in number, though the amount available in those bank accounts has not been mentioned.

On a query put to Mr. Bipan Ghai, learned Senior Counsel for respondent No.4 that as to why the amount in the afore-said bank accounts has been withheld, he would submit that there is hardly any amount left in those accounts therefore, there is no occasion to mention about the same.

To counter the afore-said information, Mr. Jaswal, learned counsel for the petitioner has produced a photocopy of a demand draft for an amount of Rs.50,00,000/- bearing No. 001336 drawn on Axix Bank Limited, IFSC Code UTIB0002386, dated 24.09.2024 in favour of the petitioner stating that respondent No.4 is ready to settle the present dispute. Though the said account pertains to Bajwa Land Developers and Promoters Private Limited but the same has not been mentioned in the list of 34 bank accounts owned by M/s Bajwa Developers Limited and 18 bank accounts owned by respondent No.4- Jarnail Singh Bajwa. A copy of same is taken on record as Document 'A'.

This Court is being tested by respondent No.4 of its patience for not initiating any coercive directions so far but the conduct on his part is still continuing to be that of hard core criminal wherein despite the issuance of specific directions by this Court to supply bank account details owned by him or any of his firms/company, he is still withholding the material information from the Court, which is sufficient for this Court to infer that he is not complying to the directions issued by this Court in letter and spirit.

Initially, Mr. Ghai, had been denying the role of respondent No.4 in any manner in that firm and the bank account from which the settlement offer was made but once the petitioner further divulged the details after

checking the records of online information stating that respondent No.4 himself is a Director, Bajwa Developer Limited he could not controvert the same, accepting the same has no explanation with him as to why the details of this bank account has been withheld in the list of details of bank accounts, which has been furnished before this Court in two attempts i.e earlier by way of an application and today by of an affidavit of respondent No.4.

This Court being sanguine of the casual approach adopted by respondent No.4 deems it appropriate to direct the attachment of all the bank accounts as detailed in the affidavit filed today in Court, owned by M/s Bajwa Developers Limited, Bajwa Land Developers and Promoters Private Limited and in the name of Jarnail Singh Bajwa-respondent No.4, forthwith.

Chief Judicial Magistrate, SAS Nagar (Mohali) is directed to ensure the implementation of the afore-said direction issued by this Court tomorrow by 12.00 Noon.

In case respondent No.4 make any attempt to withdraw the amount from the bank accounts, details of which have been furnished in his affidavit dated 25.09.2024 and 20.09.2024 including Bajwa Land Developers and Promoters Private Limited, from now onwards, he will be further liable for initiation of proceedings under the Contempt of Courts Act in addition to earlier show cause notice issued by this Court on 05.08.2024.

At this stage, Mr. Ghai, in the light of the fact that respondent No.4 is not divulging true and correct facts even to him for assistance of this Court, has requested for withdrawing his Power of Attorney.

Prayer is accepted.

Mr. Bipan Ghai, Senior Advocate is permitted to do so and will not be appeared on behalf of respondent No.4.

Mr. Deepak Pareek, IPS, Senior Superintendent of Police, SAS Nagar, Mohali is directed to interrogate and investigate respondent No.4, who is in judicial custody, qua the list provided by him today in Court relating to moveable, immoveable assets and if anything is left out, should inform this Court by way of an affidavit, as an outcome of that interrogation.

Now, respondent No.4 is unrepresented by any counsel, ex-parte contempt proceedings be initiated against him.

Partly heard and adjourned to 01.10.2024 for further hearing.

SEPTEMBER 25, 2024
sham

(SANDEEP MOUDGIL)
JUDGE