

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-22336 of 2006

.....

Date of decision:11.2.2015

Gurmukh Singh and another

...Petitioners

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Jagdish Manchanda, Advocate for the petitioners.

Mr. Deepak Grewal, Deputy Advocate General, Haryana
for the respondent-State.

Mr. Rahul Jain, Advocate for complainant-respondents No.2.

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Inderjit Singh, J.

The petitioners have filed this petition under Section 482 Cr.P.C. for quashing of FIR No.33 dated 2.2.2006 (Annexure-P.1) registered for the offences under Sections 406, 420 and 120-B IPC at Police Station Pehowa, District Kurukshetra and all subsequent proceedings arising therefrom.

Notice of motion has been issued in this case.

Mr. Deepak Grewal, learned Deputy Advocate General, Haryana has put in appearance on behalf of the respondent-State and Mr. Rahul Jain, learned Advocate has appeared for complainant-respondent

No.2 and contested this petition.

I have heard learned counsel for the petitioners and learned Deputy Advocate General, Haryana appearing for the respondent-State as well as learned counsel for complainant-respondent No.2 and have gone through the record.

FIR No.33 dated 2.2.2006 was registered for the offences under Sections 406, 420 and 120-B IPC at Police Station Pehowa, District Kurukshetra, on the basis of application given to the Superintendent of Police, Kurukshetra for taking action against accused Gurnam Singh (accused No.1) and Gurmukh Singh (accused No.2). It is stated in the application that the applicants are the permanent residents of Village Narkatrari, Tehsil Pehowa, District Kurukshetra and they have purchased 15 Bighas, 613/3690 shares land in Khewat No.29, total Kitta 28, as per the mutation No.410, which was accepted on 15.6.2005 through an agreement to sell dated 15.9.2005 for ₹7,40,000/- per acre and ₹5 Lacs had already been paid as earnest money and the date for registration of sale deed was fixed on 15.11.2005. As per the FIR, the accused persons told the applicants that loan had not been paid and they sought two months time for the registry which was extended upto 5.1.2006. As per the FIR, the applicants came to know on 29.12.2005 that the accused had not paid the loan and they did not obtain the clearance and they also came to know that the accused persons had connived with each other and prepared an agreement dated 14.11.2005. It is stated that accused Gurmukh Singh had committed fraud with his brother accused Gurnam Singh and got prepared

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all the papers of the land in his name and now the above said accused Gurnam Singh was refusing to execute the registry in favour of the applicants and on their asking, he misbehaved with them and used filthy language. The aforesaid accused want to grab the earnest money of the applicants and at the time of writing and payment of earnest money, the accused had told that they would make the payment of the bank before registry and the registry would be executed in their favour and when they asked them regarding payment of the loan, then they did not reply anything, nor disclosed the name of the Bank to them.

A perusal of the FIR itself shows that no criminal offence is made out. For the offence of cheating, the prosecution is to show that from the very beginning the intention of the accused was to cheat the complainant. There is nothing in the FIR to show that there was any intention on the part of the accused persons to cheat the complainants. From the FIR, it is clear that the case is of civil nature and at the most, it can be held as breach of the terms of the agreement to sell for which specific civil remedy is available. The complainant had paid only ₹5 Lacs as earnest money to the petitioners and as per the complainant the accused had not repaid some loan, the particulars of which have not been mentioned in the FIR. The mere non-payment of the loan taken on the land does not amount to cheating or committing fraud. The amount of loan can easily be adjusted at the time of execution of sale deed from the sale consideration.

Learned counsel for the petitioners has argued that the petitioners never refused to execute the sale deed. He argued that the sale

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deed has already been executed in favour of the complainant which fact is not denied by learned counsel for complainant-respondent No.2.

Keeping in view the above discussion, I find that the filing of the present FIR is nothing, but misuse of the process of the law. Therefore, finding merit in the present petition, the same is accepted. FIR No.33 dated 2.2.2006 (Annexure-P.1) registered for the offences under Sections 406, 420 and 120-B IPC at Police Station Pehowa, District Kurukshetra and all subsequent proceedings arising out of the same are hereby quashed.

February 11, 2015.

(Inderjit Singh)
Judge

hsp