

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.1196 of 2014 (O&M)
Date of Decision: 01.04.2015

Kusum Lata & anotherPetitioners

Vs

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Bains, Advocate
for the petitioners.

Mr. Pradeep Prakash Chahar, D.A.G. Haryana.

Mr. Aman Pal, Advocate
for complainant.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

Petitioner seeks grant of anticipatory bail under Section 438 of the Cr.P.C in case FIR No.470 dated 02.12.2013 registered under Sections 420, 406, 506 IPC (section 120-B IPC added lateron), Police Station City Sonapat.

2. FIR in question came to be registered at the instance of complainant Dharambir Singh. During the course of arguments, it was brought out before this Court that on 27.02.2013, an agreement to sell was executed between the petitioner No.1 and the complainant in respect of land measuring 31 square yard @

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₹15,00,000/-. An amount of ₹11,00,000/- is shown to have been paid towards earnest amount and target date for registration of sale deed was fixed as 24.03.2013. On 24.03.2013, it was Sunday and on 25.03.2013, vendor was present and one Asha was present on behalf of vendee and an amount of ₹4,80,000/- is alleged to have been paid to the party through Asha Rani.

3. The factual position was denied by the complainant and it was alleged that the agreement to sell was not honoured rather the sale was effected in favour of some other person who was not even assignee of the vendee.

4. Second agreement to sell in respect of second plot came into being on 04.09.2013 in respect of land measuring 166 square yards of land. Out of total sale consideration of ₹58,000,00/-, an amount of ₹21,00,000/- was shown to have been paid towards earnest amount and 01.11.2013 was fixed as target date and civil suit for specific performance is pending in respect of this transaction. On 01.10.2013, there was third agreement to sell in respect of house measuring 38 square yards of land. Total sale consideration was fixed as ₹17,00,000/-. Earnest amount of ₹13,00,000/- was paid. 01.11.2013 was fixed for execution of sale deed. In this context also civil suit was filed. On 28.11.2013, a police complaint was filed by petitioner No.2 against the complainant alleging extortion. On 02.12.2013, present FIR came to be registered. Petitioners have also taken plea of blank cheques being in possession of the complainant party.

5. This Court on 15.01.2014 passed the following order:-

“Counsel for the petitioners states that the petitioners had taken Rs.10 lacs as loan from complainant Dharmender which they had returned after sale of property in the presence of the complainant.

Notice of motion for 6.3.2014.

Meanwhile, the petitioners shall join the investigation and in the event of arrest of the petitioners by the arresting officer, they shall be released on interim bail subject to the conditions as specified under Section 438 (2) Cr.P.C.”

6. Thereafter, amicable settlement was arrived at between the parties and terms and conditions of settlement were also settled. For reference terms and conditions of settlement dated 11.04.2014 are reproduced as under:-

- “1. That the first party has agreed to pay a sum of Rs.37.5 lacs in full and final settlement of the claim to the second party. This amount shall be paid in two installments within a period of two months from today. Smt. Kusum Lata further stated that it is also possible that she will make the entire payment in one go. However, first installment of Rs.20 lacs shall be paid by the first party to the second party on or before 15.05.2014 and the balance payment shall be paid before 15.06.2014 that is amount to Rs.17.5 lacs.*
- 2. It has been informed by Sh. Anil Rathee- Advocate for the second party that there are number of litigations pending between the parties which shall be disposed of on the following terms:-*

- a) *That second party has filed two civil suits for specific performance for agreement to sell which are pending in the Court of Ms. Varsha Jain, Civil Judge, Jr.Divn, Sonapat, which is pending for 29.04.2014. The first party will move an application for vacation of stay before the learned trial Court within a week for allowing the first party to sell the plot measuring 166 Sq. Yard in dispute so that the payment can be made and second party will not oppose the application. However, it has been agreed that the suit shall not be withdrawn till the entire payment is made.*
- b) *Two complaints u/s 138 are also filed by the second party against the first party for a cheque amounting to Rs.17.5 lacs and 15 lacs which are pending in the Court of Sh. Hem Raj Verma, JMJC which are pending for 06.05.2014 shall also be withdrawn within one week after receiving the entire consideration as per the present settlement.*
3. *That the second party has further agreed that they will have no objection if the bail application is allowed subject to the receiving of entire payment by him in time and till then the same shall remain pending. Secondly it has also been agreed between the parties that Kusum Lata and her husband will file a quashing petition before this Hon'ble Court for quashing of FIR No.470 u/s 420/406/506/120-B IPC registered at Police Station City Sonapat (Haryana) after the payment has been received and second party will appear before this Hon'ble Court on receiving of notice of the quashing petition and will suffer a statement*

supported by an affidavit that he has no objection if the FIR is quashed qua the first party.

4. *That after receiving the entire payment, the second party who is plaintiff in suit for specific performance will move an application to get refund of full Court fee as per Section 16 of the Court Fee Act 1870, since the dispute between the parties have been settled through the process of mediation. Section 16 of the Court Fee Act is as follow:-*

“Where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in section 89 of the Code of Civil Procedure 1908 (5 of 1908), the plaintiff shall be entitled to a certificate from the Court authorizing him to receive back from the collector, the full amount of the fee paid in respect of such plaint”

5. *That the second party has stated and admitted that he is not having any other blank cheque or any other cheque given by Kusum Lata or her husband Sh. Hem Raj and if in case any complaint has been filed by the second party regarding any cheque lying with him the same will not have any binding effect on the first party as he has fairly stated that he has not having.*
6. *That by way of present settlement all the allegations leveled by both the parties against each other are hereby withdrawn subject to the condition of payment.*
7. *That both the parties have settled the dispute amicably out of their own free will without any coercion or misrepresentation.*

8. *That both the parties are bound by the terms and conditions of the settlement and will respect the same and in case of breach of any of the conditions by any of the party the other party will have every right to take recourse of law again.*
9. *That in case the first party backs out from the present settlement then in that case any payment made in pursuance of the present settlement shall be forfeited by the second party and he has every right to continue the litigations filed by him against the first party. Since it has been mutually agreed that all the litigations pending between the parties shall come to rest once the entire payment is made as agreed upon and the same shall be withdrawn. Since the cases are pending in the month of April and May, the second party shall take a date beyond 15.06.2014 so that he can receive the (----)*
10. *In case the second party backs out from the present settlement then the second party shall refund the double the money receives by him in pursuance of this settlement.*
11. *That it has been agreed between the parties the entire litigation between the parties shall remain pending till 15.06.2014 so that the main term of payment is honoured with.*
12. *That all the terms and conditions of the settlement are read over to both the parties in the vernacular language and after understanding the contents of the same, they have put in their signatures.”*

7. Learned counsel for the petitioner states that as per different agreements to sell, total earnest amount to the tune of

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₹45,00,000/- is alleged to have been paid towards earnest amount and the complainant has agreed to settle the entire controversy against ₹37.5 lacs which in itself suggest that real facts are something different and if the same are appreciated in the light of bank cheques available with the respondents, the *mala-fide* of the respondent/complainant would come to fore. Learned counsel further relies upon Para 5 of settlement to contend that there was no occasion to highlight the factum of blank cheque in this para as complainant wanted to foreclose his misdeeds under the garb of giving blank cheques to others for encashment and for filing criminal complaints. Such course is evident in view of two of the cheques bearing No.872974 and 872975 having been given to third party for encashment. Learned counsel for the petitioner further referred to the last portion of the settlement where only the signature of the petitioners appears and the counsel for petitioner is not signatory. It was effected in the absence of counsel for the petitioner and in the presence of counsel for the complainant.

8. This Court to that extent is not in agreement with the plea of petitioners because in the subsequent orders of this Court, the petitioners have shown their readiness and willingness to comply with the terms and conditions of the settlement. Ultimately, the petitioners resiled from the settlement and sought to argue the case on merits. The reason for not adhering to the settlement in question is the subject matter of contentions and rival contentions in the context of availability of blank cheques with the complainant.

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The petitioners have shown their apprehension that there is every likelihood of remaining cheques being misused to humiliate the petitioners. Learned counsel has made reference to cheques No.872974 and 872975 which have been misused by the third party in the sum of ₹5 lacs and 4 lacs respectively.

9. Looking to the facts and circumstances of the case particularly when qua two of the agreements, jurisdiction of civil Court has already been invoked. Cheques have also been made subject matter of litigation.

10. It would be in fitness of things if the petitioners are asked to pay 28.5 lacs of rupees to the complainant for the time being i.e. after deducting amount of ₹9 lacs of cheques No.872974 and 872975 without prejudice to rights of either of the party in appropriate proceedings, in order to give effect to the settlement and in the context of granting anticipatory bail. Parties would be at liberty to abide all the terms of settlement with such reduction with the rider as aforesaid.

11. Without dilating further on merits of the case, interim order dated 15.01.2015 is made absolute subject to payment of an amount of ₹28.5 lacs to the complainant without prejudice to rights of the parties in any other proceedings.

Petition is disposed of accordingly.

01.04.2015
sachin

[RAJ MOHAN SINGH]
JUDGE