

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

Crl.Misc.No.M-11984 of 2015(O&M)

Date of Decision : 09.07.2015

Nirbhai Singh

....Petitioners

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr. A.S.Rai, Advocate for the petitioner

Mr. P.J.S.Hundal, AAG, Punjab

MAHESH GROVER, J.

The petitioner prays for grant of pre-arrest bail in terms of Section 438 Cr.P.C in case FIR no.122 dated 8.10.2014 registered under Section 420 IPC at Police Station Badhni Kalan, District Moga.

The petitioner is accused of having agreed to sell land at the rate of Rs. 32 lacs. Written agreement to sell was executed in the presence of two persons who are also accused in the present FIR. Rs.15 lacs was given at the time of execution of the agreement to sell and thereafter sums of Rs. 5 lacs, 3 lacs, Rs. 8 lacs, 15 lacs were paid followed by more payments of an amount of Rs. 13.50 lacs, 3.50 lacs, Rs. 4 lacs, Rs. 4 lacs, Rs. 3 lacs on various dates. Thereafter the petitioner failed to execute the sale deed and even has not returned the amount to the complainant. It is now pleaded that it is a civil transaction and the complainant is free to approach civil Court for filing a suit for specific performance.

On due consideration of the matter, I am of the view that in such like matters the line dividing the civil and criminal liability becomes very blurred. The petitioner who has assured the execution of sale deed and

extracted Rs.51 lacs from the complainant cannot be permitted to take this plea of the matter being purely civil nature to force the petitioner into throes of the litigation while he continues to enjoy his land and money of the complainant. Obviously there is a clear intent to defraud and cheat the complainant.

During the course of the proceedings the petitioner was given opportunity to return the amount which he flatly refused. On account of this fact this Court does not find any ground to grant an equitable relief under Section 438 Cr.P.C to the petitioner when his intention leans towards the conduct manifesting the offence of cheating itself.

Hence, dismissed.

Nothing said herein shall be construed to be an expression on the merits of the case.

July 09, 2015
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(Mahesh Grover)
Judge