

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

Crl.Misc.No.M-14874 of 2014(O&M)

Date of decision : 3.3.2015

Balraj

....Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

Present : Mr.KDS Hooda, Advocate
for the petitioner.

Mr. Pravindera Singh Chauhan, Addl.Advocate
General, Haryana.

Mr. Aman Priye Jain, Advocate
for the complainant.

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MAHESH GROVER, J.

This is a petition under Section 438 Cr.P.C. praying for release of the petitioner on bail in the event of his arrest in a case registered vide FIR No.33 dated 25.2.2014 under Sections 419, 420, 467, 468, 471, 120B IPC at Police Station Farrukh Nagar, District Gurgaon.

The FIR was registered at the behest of two sisters, namely Kavita and Sunita daughters of Mangat Ram residents of village Mubarikpur alleging that a sale deed bearing No.4334 dated 30.12.2013 has been registered fraudulently in favour of

Mahavir Goyal son of Banarsi Dass Goyal and witnessed by Gaurav Jain son of NK Jain and Billu alias Balraj Gulia (petitioner herein).

It was alleged that all these persons in connivance with each other and by impersonation got transferred the share of the complainants through the alleged sale deed. It was further stated by them that the petitioner had threatened the complainants with dire consequences and forcible possession in case the complainants did not sell their land to him.

With these bare facts the FIR was registered but on investigation more facts tumbled out and it was revealed that the brother of the complainants namely Janit had got the sale deed executed by impersonating the complainant through some other girls to sell off the ancestral property and the share of the complainants. One of the beneficiaries of the sale was Rajinder Goyal.

The petitioner pleading innocence had approached this Court by way of instant petition and at the time of motion hearing the court recorded the contentions raised by the learned counsel for the petitioner that the petitioner is neither the beneficiary of the deal nor a witness to the same. It was candidly conceded that the petitioner had facilitated the deal and besides this it was stated by the learned counsel for the petitioner that both the petitioner

and Mahavir Goyal are ready to return the property which was sold by the brother of the complainant who impersonated the girls (complainants).

Persuaded by these specific contentions regarding return of the property this Court issued notice of motion to stay the arrest of the petitioner as well subject to compliance of Section 438(2) Cr.P.C.

On 6.8.2014 it was given out to the court by the learned counsel for the State that even though the petitioner had joined the investigation but yet he was not cooperating as far as the recovery of amount of Rs.10 lakhs was concerned which amount he had received from the brother of the complainants at the time of execution of the sale. Similar was the position on 27.11.2014. The Court on both these occasions granted time to the petitioner to enable him to appear before the Investigating Officer to join the investigation.

On 9.1.2015, the learned counsel for the petitioner made a categorical statement before the court that the petitioner is willing to deposit the amount in question in Court. Appropriate directions were then given that the amount be deposited before the learned trial court within 7 days and in case the amount is not deposited the bail application would be deemed to have been dismissed. The petitioner then moved an application for placing

on record a document which is purported to be a sale deed executed by Rajinder Goyal in favour of the complainants.

Today when the matter was taken up, the court is confronted with the order dated 9.1.2015 which is extracted herebelow :-

“Learned counsel for the petitioner has submitted that petitioner is ready to deposit the amount in question in court. The said amount be deposited before the trial court within seven days and in case the amount is not deposited, the bail application would be deemed to have been dismissed.

Adjourned to 03.03.2015.

Interim order to continue.”

Evidently, the bail application did not survive in view of the aforesaid and for the reason that the petitioner never cared to deposit the amount of Rs.10 lacs as undertaken by him.

Be that as it may, since the matter has come before the court it has taken a holistic view of the situation and the facts indicate that the petitioner along with his co-accused who are the beneficiaries of the sale as also the brother of the complainants have created a web of deceit to defraud not only the complainants but also to hoodwink the court into granting them the benefit of equitable relief. Firstly, the sale deed was concededly a result of

fraud which was admitted by the petitioner when he filed this petition and contended as much. He, however, limited his role to a facilitator. In the considered view of this court the role of the petitioner as a facilitator in fraud can be no better than the actual fraudsters themselves. The situation is compounded further when it is given out to the court that Rajinder Goyal, the beneficiary of the sale deed pertaining to the share of the complainants has attempted to restore the property by way of another sale deed in which the complainants have not been associated at all. It is intriguing to note that the petitioner is falling back on a sale deed executed by him unilaterally to state restitution of the property. One would wonder that if a sale deed had been executed by fraud initially then it is inconceivable that a person who is not the owner of the property would be entitled to execute another sale deed by way of restitution. Evidently, the petitioner and all the persons involved are persons with dubious credentials to say the least. Apart from this the petitioner has not cared to abide by the undertaking given before this court.

Taking all the facts into consideration in their totality the court is of the considered view that the persons who have misled the court and have demonstrated with impunity such fraudulent intent manifested from their actions noticed above can hardly be recipients of the equitable relief under Section 438

Cr.P.C. It is settled proposition of law that such benefits are intended only for those persons who have been falsely implicated and have respect for law. Finding none of these conditions to be satisfied, I am of the view that the instant petition deserves dismissal. Ordered accordingly.

Issue notice of contempt to the petitioner for 20.4.2015.

Office is directed to list the contempt case as per roster on the date fixed before the bench bestowed with the subject roster of contempts.

3.3.2015

(MAHESH GROVER)
JUDGE

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