

CRM-M-28059-2009 (O&M)

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

**CRM-M-28059-2009 (O&M).
Decided on: February 12, 2015.**

Balwant Singh and others

..... Petitioner(s)

Versus

State of Punjab and others

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Arvind Kashyap, Advocate,
for the petitioners.**

Mr.Mikhail Kad, AAG., Punjab.

**Mr.S.S.Siao, Advocate,
for respondent No.2.**

M.M.S. BEDI, J (ORAL)

Complainant-respondent had lodged an FIR against the petitioners alleging that pursuant to an agreement of sale possession was delivered but the petitioners made an attempt to take forcible possession.

Counsel for the petitioners has vehemently contended that the claim of the complainant that he was in actual physical possession of the property is demolished by the judgments of civil Court Annexures P2, P3 & P4, wherein it has been held that the complainant-respondent is not in possession of the property.

Counsel for the petitioners claims that in view of said circumstances, prima facie, the allegation of complainant being

CRM-M-28059-2009 (O&M)

in possession is false as such, the continuation of criminal proceedings will be an abuse of process of the Court.

During the course of arguments, it transpires that the charges have already been framed and now the case is fixed for evidence. It will not be appropriate for this Court, at this stage, to enter into the niceties of the trial to determine the authenticity of the averments. The claim of the complainant regarding possession is to be demolished by proving the fact that the complainant-respondent having obtained decree of specific performance would be entitled to symbolic possession only. Symbolic possession has been ordered to be delivered to the private respondent. The petitioners have admittedly received earnest money. It cannot be appreciated on the basis of the evidence produced whether the petitioners from the inception had an intention to cheat or it is a case of mere civil liability or a case where the petitioners deserve to be acquitted.

Interests of justice would be adequately met in case this petition is disposed of safeguarding the liberty of the petitioners without prejudicing the rights of the complainant or the prosecution agency.

This petition is disposed of with a direction to the trial Court to conclude the trial within a period of six months after the receipt of a certified copy of the order. It is ordered that in case an application for exemption from personal appearance is filed by the petitioners, the same would be allowed as per the provisions of

CRM-M-28059-2009 (O&M)

Section 273 Cr.P.C. subject to any conditions imposed by the trial Court. It will be open to the trial Court to record the evidence by exempting the personal appearance of the petitioners and in presence of their counsel. The trial Court shall count the period of six months w.e.f. 28.2.2015, the date fixed before the trial Court.

February 12, 2015.
rka

(M.M.S. BEDI)
JUDGE