

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-No. 26372 of 2012

Date of Decision: 19.1.2015

Karam Chand and another

---Petitioners

versus

State of Haryana and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Arvind Singh, Advocate
for the petitioners**

**Mr. Rajesh Gaur, Addl. A.G. Haryana
for the respondent-State**

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

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

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure has been preferred for quashing criminal complaint titled “Ved Parkash vs. Karam Chand and another” (Annexure P-3), summoning order dated 25.4.2012 (Annexure P-5) and proceedings emanating therefrom.

Counsel for the petitioners contends that respondent No. 2 (complainant) purchased land measuring 02 kanals 05 marlas comprising

khasra No.23//22, vide sale deed dated 12.4.2004 executed by petitioner No. 1 being owner of the said land, on the basis of agreement to sell dated 9.7.2003 executed between the parties. Possession of the sold land was delivered in favour of the vendee at the time of sale. In the year 2009, respondent No. 2 filed a civil suit and criminal compliant, instituted on 3.9.2009, on the premise that out of land measuring 02 kanals 05 marlas sold in his favour, he has been deprived of 07 marlas of land and, therefore, accused No. 1 has cheated him of Rs. 63,000/- i.e value of 07 marlas of land at the rate of Rs. 9,000/- per marla. In the civil suit filed by the respondent, he claimed refund of money equal to value of 07 marlas of land or giving him another 07 marlas of land in lieu of land lost by him and sought specific performance of the contract, detailed in registered sale deed dated 12.4.2004. The civil suit and the criminal proceedings were initiated on the basis of demarcation conducted by Kanungo on 14.6.2009. During pendency of the proceedings before this Court, the civil suit has been decided by the Additional Sessions Judge (Senior Division), Kurukshetra vide judgment (Annexure P9) and the court has refused to rely upon the aforesaid demarcation report with the observations that no notice was given to the parties prior to conducting of demarcation by the concerned official. The suit filed by the complainant was dismissed though an appeal is pending against the judgment passed by the trial court.

The trial Magistrate summoned a report from the concerned police station under Section 202 of the Code of Criminal Procedure (in short “Cr.P.C.”) and SI Dharampal, Station House Officer, Jhansa submitted report dated 6.3.2012. In the said report, it was clearly mentioned that

according to jamabandi for the year 2000-2001, the respondent (Karam Chand) had sold land measuring 02 kanals 05 marlas to the complainant. As per jamabandis for the years 2005-2006 and 2010-2011, the complainant is owner in possession of land measuring 02 kanals 05 marlas and, therefore, no cognizable offence is made out and the allegations levelled in the complaint are found to be false. It is argued that the learned trial court altogether ignored the report submitted under Section 202 Cr.P.C. while issuing process for summoning the petitioners for committing offence of fraud and forgery. It is vehemently argued that as petitioner No. 1 is recorded to be owner in possession of the land sold by him vide sale deed dated 12.4.2004 and admittedly the respondent-complainant was delivered possession of land measuring 02 kanals 05 marlas sold in his favour and remained in possession of the said land upto the year 2009 as per version of the complainant, no offence under Section 420 of the Indian Penal Code (in short "IPC") is made out as the essential ingredients of offence of cheating are missing to prove that petitioner No. 1 had dishonest intention at the inception of the transaction which took place in the year 2004. It is further submitted that the complainant during civil proceedings has failed to establish his plea that he has been deprived of possession of land measuring 07 marlas out of sold land measuring 02 kanals 05 marlas. It is further argued that in the sale deed executed between the parties, there was a specific recital that in case any defect is found in the title of the vendor, the vendee shall be compensated for the same. The complainant/respondent took recourse to appropriate proceedings by filing a civil suit seeking possession in lieu of alleged 07 marlas of land taken away by owner of

adjoining land but he came out to be unsuccessful in the civil proceedings. It is further argued that the petitioners shall be bound by the decision of civil court but the criminal proceedings initiated by the respondent are nothing but an abuse and misuse of process of law and liable to be quashed. In support of his contention, he has relied upon judgment of the Hon'ble Supreme Court of India *S.K.Sinha, Chief Enforcement Officer vs. Videocon International Limited and others* 2008(2) R.C.R.(Criminal) 38. He has also cited judgment of this Court *Devi Ram and others vs. Maha Ram* 2009(4) R.C.R.(Criminal) 525.

Counsel for the contesting respondent, on the other hand, would submit that at one point of time, petitioner No. 1 agreed to compensate the respondent in regard to loss of 07 marlas of land by making payment of Rs. 63,000/- but later he backed out of the same. It is further argued that as petitioner No. 1 cheated the complainant of 07 marlas of land, the trial court has rightly issued process against the accused and disputed questions of fact are required to be left to be decided in trial proceedings on the basis of evidence to be adduced by the parties.

I have heard counsel for the parties and perused the records.

This is an undisputed position of the case that in the revenue record, Karam Chand petitioner No. 1 was recorded to be owner of land measuring 02 kanals 05 marlas which he agreed to sell to respondent No. 2 vide agreement dated 9.7.2003 at the rate of Rs. 9000/- per marla. In pursuance of said agreement, petitioner No. 1 executed and registered sale deed dated 12.4.2004 and possession of land measuring 02 kanals 05 marlas, subject matter of the sale deed was delivered in favour of the

vendee. As per allegations of the complainant, he has been deprived of possession of 07 marlas of land on the basis of demarcation conducted by a revenue official in June 2009.

Counsel for the respondent has not disputed that in the sale deed executed between the parties, one of the terms reads, quoted thus:-

“The possession of the land sold (02 kanals 05 marlas) is given to the purchasers at the spot. Now I or any of my legal heirs will have no right or title on the sold land now or in future. In case there is defect in title or the possession is taken from the purchaser of the land, I shall be liable personally and from my property to make good the loss to the purchasers.”

There is no denial that respondent alongwith others filed the civil suit seeking specific performance of contract, detailed in sale deed dated 12.4.2004, claimed money decree of Rs. 2,10,000/- with future interest at the rate of 18 % per annum or a direction to the defendant to get 07 marlas of land purchased nearby khasra No. 23//22 or a direction to the defendant to transfer land measuring 21 marlas from his other holding mentioned in Annexure 'A' attached with the plaint. After full-fledged trial, the suit filed by the complainant and others was dismissed vide judgment dated 30.10.2013 and the trial court refused to rely upon the demarcation report dated 14.6.2009, basis of civil and criminal proceedings. Counsel for the respondent has not disputed that no notice of said demarcation was given to petitioner No. 1 much less to the parties. Assuming that the complainant has lost some area out of the area sold in his favour, he has

already taken recourse to appropriate proceedings before the civil court in view of terms and conditions agreed between the parties vide transaction of sale, thus, no criminal offence can be said to be committed by the vendor.

In *Devi Ram and others' case (supra)*, the petitioners filed a civil suit that deficient area be made good by Maha Ram, seller of the land. The complaint was filed by the petitioner against Maha Ram on 4.11.2003 after a delay of 13 years. Maha Ram was summoned as accused vide order dated 17.9.2004 to stand trial for offence under Sections 420 and 506 IPC on the ground that the area was less than the area specified in the sale deed dated 10.7.1990. The summoning order passed by the trial Magistrate was set aside by the revisional court. The order passed by the revisional court was challenged in a petition filed under Section 482 Cr.P.C. It was held that sale deed was executed on 10.7.1990, civil suit was filed in the year 2002, the present complaint was filed in the year 2004, civil court is seized of the matter and the prayer made before the civil court is that deficient area be made good by accused Maha Ram., there is no infirmity or patent illegality in the order passed by the Additional Sessions Judge whereby summoning order has been set aside. Hence, the petition filed by Devi Ram and others was ordered to be dismissed.

In the case at hand, the complainant and others sought relief from the civil court for making up loss of deficient area which is statedly taken away from the vendees on the basis of demarcation but their claim was not accepted by the civil court. Though the judgment of the civil court has neither attained finality nor is otherwise binding upon the criminal court, but keeping in view the facts and circumstances of the present case, I

am of the considered opinion that criminal proceedings initiated by the respondent are nothing but an abuse and misuse of process of law.

In view of what has been discussed hereinabove, I am of the considered opinion that it is just and expedient that the criminal proceedings initiated against the petitioners are quashed.

For the foregoing reasons, the petition is allowed. As a result, the complaint bearing No.321 of 2009 titled “Ved Parkash vs. Karam Chand and another”, summoning order dated 25.4.2012(Annexure P-5) and proceedings emanating therefrom are quashed without prejudice to the rights of the parties in the civil litigation.

(REKHA MITTAL)
JUDGE

19.1.2015
PARAMJIT