

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

CRL. MISC. No.M-25436 OF 2014 (O&M)
DATE OF DECISION : 12th MAY, 2015

Raj Kumar & another

.... Petitioners

Versus

State of Haryana & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

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Present : Mr. Manoj Kaushik, Advocate for the petitioners.

Mr. P. S. Sullar, Additional Advocate General, Haryana.

Mr. Gaurav Singla, Advocate for respondent No.2.

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SURINDER GUPTA, J. (ORAL)

CRM No.24280-2014

The application is allowed and Annexure P-8 is taken on record, subject to all just exceptions.

CRL. MISC. No.M-25436 OF 2014

Heard.

The FIR in this case was registered on the complaint of Ashwani Kumar Sharma-respondent No.2 alleging therein that vide agreement dated 26.06.2012 Raj Kumar-petitioner No.1 had agreed to sell plot measuring 817 square yard bearing Khatauni No.157 Muraba No.130/114 Killa No.25/1 Khasra No.24 measuring 4 Kanals situated in village Sehatpur. On 16.01.2013 the complainant came to know that the land agreed to be sold by Raj Kumar had already been leased out by Jagdish and Lachman in connivance with petitioner No.1-Raj Kumar who

had entered into an agreement only to grab the earnest money paid by complainant and that the land was already on lease with M/s. Krishna Education Society, Sehatpur for a period of 30 years.

After investigation police presented challan against the petitioners while Jagdish was found to be innocent.

Learned counsel for the petitioners while referring to the lease deed dated 30.09.2003 (Annexure P- 3) has argued that the land leased in favour of M/s. Krishna Education Society, Sehatpur, was bearing Khasra No.24 Killa No.14 and 17 measuring 16 Kanal which was not the land of that find mention in the agreement to sell dated 26.06.2012 executed by petitioner No.1-Raj Kumar. The civil suit was also filed by Raj Kumar, challenging the agreement to sell dated 26.06.2012 wherein he had alleged that a sum of ₹17,00,000/- was deposited in his bank account without his knowledge and that amount was returned during the proceedings in CRM No.11125 of 2013 relating to the anticipatory bail sought by petitioner No.1-Raj Kumar.

Learned State counsel and counsel for the complainant could not refute the fact that the land of agreement and lease deed in favour of M/s. Krishna Education Society, Sehatpur, is different, still the police while filing challan, on examination of documents erringly observed that the land which Raj Kumar agreed to sell vide agreement (Annexure P- 2), had already been leased for 30 years to M/s. Krishna Education Society, Sehatpur.

The perusal of the documents placed on record shows the callous attitude of the investigating agency which failed to even look into the documentary evidence before presentation of the challan. The challan was presented for offences under Sections 406, 420 and 506 read with Section 34 IPC without looking into this aspect as to whether the allegation levelled by the complainant in FIR divulge a prima facie case against the accused who have been challaned. Even if the entire version, as put forth by the complainant be believed, the remedy available with the complainant is to seek the specific performance of the agreement. His plea that the land mentioned in the agreement dated 26.06.2012 had already been leased out, is prima facie not made out. On the perusal of the document on record, this can be safely concluded that this FIR is on the face of it a misuse of process of law and the police of Police Station Sarai Khawaja, Faridabad had either not tried to look into the documents produced by parties or just presented the challan believing the allegations levelled in the FIR as true without any verification.

Keeping in view the above facts and circumstances, this petition has merits and is allowed. Consequently, the FIR No.67 dated 25.03.2013 registered at Police Station Sarai Khawaja, District Faridabad is quashed along with all consequential proceedings thereon, including the challan presented in Court.

12th May, 2015
'raj'

(SURINDER GUPTA)
JUDGE