

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-26232 of 2015

Date of decision : 25.08.2015

Jagan Nath @ Ram Sahara

..... Petitioner

versus

State of Haryana

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

**Present: Mr. J.S. Bedi, Sr. Advocate with
Mr. Sunil Sihag, Advocate
for the petitioner**

Mr. Deepak K. Grewal, DAG Haryana

**Mr. R.S. Rai, Sr. Advocate with
Mr. Gautam Dutt, Advocate
for the complainant**

ANITA CHAUDHRY, J.

The petitioner is seeking anticipatory bail in FIR No. 35 dated 24.01.2015 registered at Police Station Gharaunda, District Karnal under Sections 406/420/467/468/471/472/506/34/120-B IPC.

Notice of motion was issued. Complainant side has also appeared.

The facts though lengthy need to be narrated. The petitioner had entered into an agreement with the complainant for selling his land measuring 118 kanals 18 marlas for a sum of ₹ 1,18,50,000/-. The property was disputed and a Regular Second Appeal was pending in the High Court. A suit had been instituted by

Subhash. Jagan Nath - petitioner had got this property through Will from Chameli. Subhash had challenged the Will and had filed a suit which was dismissed on 31.08.2009. The Will was upheld. Subhash filed an appeal which too was dismissed by the first Appellate Court. A regular second appeal was filed in 2005. The petitioner admits that he had executed an agreement to sell in favour of the complainant. He admits to have received the entire consideration. He also admits that the complainant was put in possession of the property.

The dispute arose when the complainant approached the Sub Registrar for execution of the sale deed. Jagannath had executed a GPA. Subhash who had filed the RSA had presented himself before the Sub Registrar, the complainant was also there but the petitioner claimed that since there was a status quo in the appeal, therefore, the sale deed could not be executed. Later he cancelled the GPA. The Sub Registrar, Gharaunda vide order dated 22.10.2014 (Annexure P-14) had refused to register the sale deed. An appeal was carried by Sushil being the GPA of Jagan Nath and clarified that there was no injunction qua alienation but the appeal filed under Section 72 of the Registration Act, 1908 was dismissed on 18.02.2015. The GPA by then had been cancelled by the petitioner. The complainant then approached the police and got the FIR registered.

I have heard both the sides.

Learned counsel for the petitioner contends that the petitioner does not dispute that an agreement to sell was executed and petitioner had received the entire sale consideration and that the

complainant had been put in possession of the property, he urges that there was a condition in the agreement that sale deed would be executed after the final decision by the Court and there was order of status quo and the sale deed could not be executed as it would be a case of contempt. It was urged that fraud had been played with the petitioner as Naresh had set up an agreement dated 31.7.2002 said to have been executed by the petitioner in favour of Swatantar Sehgal. Naresh claimed that a Will had been executed in his favour. It was urged that when the petitioner came to know of the development, he made an enquiry and found that Swatantar Sehgal had disappeared in 2006. An application under the RTI Act was moved by the petitioner and he learnt that Swatantar Sehgal was missing for a number of years. It was urged that the petitioner also found out that Naresh had made a statement (Annexure P-9) to the police and he had disclosed about the agreement with Swatantar Sehgal. It was urged that perhaps Naresh had been called by the police as they were suspecting his hand in the disappearance. It was urged that the Will was executed by Swatantar Sehgal as Annexure P-8 which refer to the property in dispute. It was urged that Naresh filed a suit for specific performance and impleaded the petitioner as a party. It was urged that the petitioner filed a complaint under Section 420, 467, 468 at Police Station Gharaunda as the police failed to take action on his complaint. It was urged that Naresh was petitioner's son's, brother- in-law being his daughter in law's brother. It was urged that Subhash had filed the appeal and if that appeal could be withdrawn, the matter could be settled. It was urged that it

was the petitioner who had been cheated by Naresh and the only hurdle in execution of the sale deed was the stay order by the High Court.

The counsel representing the complainant has urged that the story has been weaved and the petitioner is presenting himself as the person duped but he was hand in glove with Naresh. It was urged that there was no stay order and the order that was passed in 2008 at the time of admission had been reproduced in para 3 of the petition and copy of stay order was not enclosed with the petition.

Learned counsel for the petitioner was asked to refer to the order of status quo. Counsel refers to the order passed in 2005. I find that there is a faint reference to the status quo order in para 6 of the petition.

Continuing with the argument, the counsel representing the complainant strenuously urged that after having received the entire consideration and after putting the complainant in possession the petitioner still wants a hold on the property and he has set a story and is making every effort that the sale deed is not executed. It was urged that there was no reason for the petitioner to cancel the GPA as the order of status quo was not extended when the appeal was admitted for hearing and the petitioner wrongly claims that he could be hauled up for contempt. It was urged that the complainant was not a party in the litigation and the petitioner had nothing to fear and when Subhash was coming forward to execute the sale deed there was no reason for the petitioner to create hurdles. It was urged that the petitioner admits that he had signed the agreement to sell in

favour of Swatantar Sehgal but claims that his signatures might have been taken by Naresh. The counsel then referred to order Annexure P-1. It was urged that the complaint was filed only after the registration of the FIR.

Learned State counsel submits that custodial interrogation would be necessary to unearth the nexus between the petitioner and Naresh and the allegation are serious.

The petitioner admits to have entered into agreement to sell the huge chunk of land to the complainant in 2011. The entire consideration of ₹ 1,18,50,00,000/- has been received by him four years ago. The petitioner had executed a General Power of Attorney. The sale deed was to be executed after the civil litigation had attained finality. The suit had been filed by Subhash who was disputing the will set up by the petitioner. Subhash lost the suit before the lower Court and the first Appellate Court as is evident from the order reproduced by the petitioner. An appeal was filed in 2005. Initially order of status quo was passed but no order of stay was passed in the appeal that was admitted for hearing on 07.01.2008. The petitioner had nothing to lose when Subhash was ready to execute the sale deed in favour of the complainant. The petitioner stalled the execution of the sale deed. Simultaneously the petitioner's daughter-in-law's brother set up an agreement to sell prior in point of time and it is said to have been executed by the petitioner. He had filed a suit for specific performance. The petitioner does not dispute the signatures on the agreement to sell dated 31.07.2002 before the Additional Sessions Judge. He had

taken a plea that Naresh could have taken his thumb impression on blank papers which had been misutilized. The petitioner did not report the matter to the police. It appears that it was greed which made him cancel the sale deed and a story has been weaved and he is acting naive. The petitioner has pocketed the entire sale consideration but does not want to pass on the title to complainant and is placing fetters on the way. There appears to be nexus between him and Naresh. Custodial interrogation would be necessary. It appears from the record produced by the petitioner that Swatantar Sehgal has a shady background who is stated to be missing. It is not a case where the discretion should be exercised or any protection should be granted to petitioner. Fetters can not be placed in the investigators way. They will have to interrogate the petitioner and there should be no restrictions.

The petition is dismissed.

August 25, 2015

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**(ANITA CHAUDHRY)
JUDGE**