

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

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Crl. Misc. No. M 7161 of 2012

Date of decision: 20.02.2015

Musa and others

..... Petitioners

Versus

State of Haryana and others

.....Respondent(s)

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Karan Pathak, Advocate
for the petitioners

Mr. Rajesh Gaur, Additional A G Haryana
for respondent No. 1

Ms Vandana Sharma, Advocate for
Ms Manisha Lamba, Advocate
for respondent No. 2

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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 (in short, 'Cr.P.C') has been preferred seeking quashing of FIR No. 468 dated 28.09.2011 for offence punishable under Sections 406 and 420 of the Indian Penal Code (in short, 'IPC') registered in Police Station Sector 55, Faridabad and proceedings emanating therefrom.

Hassan Mohammad, complainant/respondent No. 2 has launched the criminal proceedings on the allegations that on 20.01.2011, the

accused entered into an agreement to sell land measuring 11 kanals 2 marlas for a sale consideration of Rs.23,58,750.00 @ Rs.17,00,000.00 per acre. The amount of Rs.3,00,000.00 was paid at the time of agreement and the balance payment was to be paid at the time of execution of the sale deed on 05.08.2011. It was also agreed between the parties that vendor will get land free from mortgage prior to registration of sale deed on 05.08.2014. The accused neither got the land free from mortgage nor came to Tehsil office Ferozepur Jhirka on the stipulated date for getting the sale deed executed in compliance with the terms and conditions of the agreement to sell.

Counsel for the petitioners would contend that the petitioners had gone to Tehsil office on 05.08.2011 to perform their part of the agreement but it is the respondent/complainant who has committed breach of the terms and conditions of the agreement. It is further argued that the land stands already redeemed from mortgage on 16.09.2011 vide rapt no. 16191, prior to registration of the FIR. It is argued with vehemence that even if the allegations of the respondent set up in the FIR are taken on its face value, the same, at best gives rise to civil dispute but the respondent has launched the criminal proceedings with an intent to put pressure upon the petitioner to agree to his terms and conditions. It is further argued that the impugned FIR and proceedings emanating therefrom 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 judgments of Hon'ble the Supreme Court ***Badri Lal v. Chandan Singh and others, 2005 (2) R.C.R 31, New India Insurance Company Limited v. Sadanand Mukhi, 2009(1) R.C.R. (Civil) 817 and Uma Shankar Gopalika v. State of Bihar, 2005 (10) SCC 336.***

Counsel for respondent No. 2, on the contrary, has submitted that disputed questions of fact are not amenable to adjudication in proceedings under Section 482 Cr.P.C., therefore, question of culpability of the petitioners needs to be decided by the trial Court on the basis of evidence to be adduced by the parties. It is further argued that as the petitioners neither got the land redeemed from mortgage nor came forward to execute sale deed in compliance with the terms and conditions agreed between the parties, it prime facie proves that they had dishonest intention from inception of the transaction, inviting their trial for the offence charged against them.

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

There is no allegation against the petitioners that they were not competent to enter into agreement to sell the land in question. There is no denial that the petitioners got the land redeemed though subsequent to the date stipulated for execution of the sale deed. Even if the petitioners have committed breach of the terms and conditions of the agreement in question, the same gives rise to civil dispute and the respondent was competent to seek specific performance of the agreement by taking recourse to appropriate proceedings before the Court of law. I would hasten to add that this Court is alive that the same set of facts may give rise to civil and criminal dispute. Nevertheless, keeping in view the allegations set up in the FIR, when examined in the light of the observations made in the judgments relied upon by counsel for the petitioners, I am of the considered opinion that civil dispute between the parties has been sought to be given the colour of criminality with an intent to adpote a short cut method to compel the

opposite party to compromise the civil dispute. In this view of the matter, I have no hesitation to conclude that the criminal proceedings initiated by the respondent are nothing short of an abuse and misuse of process of law and cannot be allowed to continue.

For the reasons aforesaid, the petition is allowed. FIR No. 468 dated 28.09.2011 for offence punishable under Sections 406 and 420 IPC registered in Police Station Sector 55, Faridabad and proceedings emanating therefrom are ordered to be quashed. No order as to costs.

(Rekha Mittal)
Judge

20.02.2015
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