

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-8809 of 2013 (O&M)

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Date of decision:10.9.2015

Jaswant Singh Dhanoa and another

.....Petitioners

v.

State of Punjab and another

.....Respondents

....

Present: Mr. Ashish Aggarwal, Senior Advocate with Ms. Ritu Pathak,
Advocate for the petitioners.

Mr. B.S. Bhullar, Assistant Advocate General, Punjab
for the respondent-State.

Mr. R.P.S. Cheema, Advocate for Mr. D.S. Channan, Advocate
for complainant-respondent No.2.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.54 dated 20.6.2012 (Annexure-P.5) registered for the offences under Sections 406 and 420 IPC at Police Station Bhogpur, Jalandhar City and all subsequent proceedings arising therefrom as illegal, ultra-vires, void and without jurisdiction.

Notice of motion has been issued in this case. Mr. B.S. Bhullar, learned Assistant Advocate General, Punjab has put in appearance on behalf of the respondent-State and Mr. R.P.S. Cheema, learned Advocate has appeared on behalf of the complainant-respondent No.2 and contested this petition.

Learned counsel for the petitioners has argued that from the

perusal of the FIR itself no offence is made out. The dispute between the parties is of civil nature. Therefore, the FIR in question is liable to be quashed.

On the other hand, learned State counsel as well as learned counsel for the private respondent No.2 argued that it is not a dispute of civil nature and the petitioners have cheated private respondent No.2.

After hearing learned counsel for the parties and after going through the record, I find that the FIR in the present case has been registered on the basis of complaint filed by Manjinder Singh Dhillon against Jaswant Singh Dhanoa and Karamjit Singh Dhanoa.

As per facts given in the FIR, Manjinder Singh Dhillon entered into sale agreement with the present petitioners on 5.1.2008 for land measuring about 7 Kanals at the value of ₹85,000/- per Marla and the accused (present petitioners) took ₹15 Lacs as earnest money out of total consideration amount. It is also in the FIR that he verified the record of the Patwari and satisfied himself. As per the aforesaid sale agreement, the complainant was responsible to pay the amount of ₹40 Lacs on 5.4.2008 to the accused and after taking that money, he was to execute the sale deed. The above named accused told him that as they were NRIs and they required the permission from RBI for sale and purchase of land in India, so let them to get the permission from RBI to sell the land. The accused never came to take the due amount of ₹40 Lacs. When the complainant contacted the accused to execute the sale deed, they told him that let them to take permission from the RBI to sell the land, but the accused neither came to

take the amount of ₹40 Lacs nor they gave him any attorney of Harmesh Kaur nor they brought the Registry on the fixed date whereas the complainant got marked his presence before the Sub Registrar. The above named accused deceived him of ₹15 Lacs and they are not executing the sale deed in favour of the complainant.

A perusal of the averments made in the FIR, itself shows that the dispute between the parties is regarding breach of agreement to sell. It is admitted fact between the parties at the time of arguments that civil suits were already filed by the parties and decided and RSAs filed by both the parties are pending before this Court. It is also admitted fact that earlier suit for permanent injunction was filed in the year 2008, which was later on in the year 2012 amended it for specific performance of the contract. A perusal of the FIR no where alleges or shows that the present petitioners have any intention of cheating respondent No.2-complainant. It is necessary ingredient of Section 420 IPC that the accused with the intention of cheating induced the complainant to deliver the money etc., but there are no such allegations in the present case.

Learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court in Inder Mohan Goswami and another v. State of Uttaranchal & others, 2007 (4) R.C.R. (Cr.) 548, in which it is held that agreement to sell land was entered into between the accused and the complainant. Accused have received earnest money from the complainant. The complainant failed to pay the balance amount despite notice. The accused cancelled the sale agreement under notice to the

complainant and thereafter sold a part of the land to another party, no criminal offence under Sections 420 and 467 IPC made out.

Learned counsel for the petitioners further placed reliance on the judgment of Hon'ble Supreme Court in Hridaya Ranjan Prasad Verma and others v. State of Bihar and another, 2000 (2) R.C.R. (Cr.) 484, wherein it was held that power of quashing of criminal proceedings should be exercised very sparingly with circumspection and that too in rarest of rare cases. The Supreme Court summed-up the law with regard to quashing of criminal proceedings. It is held that where the allegations made in the first information report or the complaint even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, it should be quashed. In this case, the Supreme Court also held that the distinction between the breach of contract and offence of cheating is a fine one. For offence of cheating dishonest intention should be shown right at the time of making the promise. Mere failure to keep up promises-culpable intention right at the beginning cannot be presumed. In the present case also, even after perusing the averments made in the FIR, on the basis of it, no culpable intention was there at the time of entering into agreement to sell. Therefore, from the averments made in the FIR, it is a breach of the contract and it does not amount to cheating by the petitioners and no offence is made out.

Therefore, in view of the above, I find that no offence is made out even after perusing the FIR, hence, this FIR and all subsequent proceedings are liable to be quashed.

Therefore, from the above discussion, I find merit in the present petition. The filing of this FIR is nothing but an abuse and misuse of the process of the law. Consequently, this petition is allowed and FIR No.54 dated 20.6.2012 (Annexure-P.5) registered for the offences under Sections 406 and 420 IPC at Police Station Bhogpur, Jalandhar City and all subsequent proceedings arising out of the same are hereby quashed.

September 10, 2015.

(Inderjit Singh)
Judge

hsp