

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

**CRM No. M-15191 of 2016
DECIDED ON: NOVEMBER 08, 2016**

VIKAS GUPTA

.....PETITIONER

VERSUS

STATE OF PUNJAB & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Harsh Aggarwal, Advocate
for the petitioner.

JASPAL SINGH, J

By virtue of instant petition preferred under Section 482 Cr.P.C., petitioner has sought the quashing of FIR No. 15, dated January 15, 2013 (Annexure P-3) registered under Sections 447, 448, 511, 406, 420 and 120-B IPC at Police Station Jodhewal, Ludhiana as well orders dated May 06, 2015 (Annexure P-7), June 11, 2015 (Annexure P-8) and November 21, 2015 (Annexure P-10) and all subsequent proceedings arising, therefrom.

Briefly, stated the allegations unfolded by the complainant/Pannu Ram are that there were exchange of house of complainant between him and accused regarding which an agreement dated December 29, 2006 was executed. Petitioner got the sale deed executed in respect of plot measuring 173 sq. yards from the complainant but neither he got executed the sale deed of 680 sq. yards

in favour of the complainant nor returned the amount to the tune of ₹1,48,000/-. He backed out from his part of the agreement dated December 29, 2006 and committed breach of trust and cheated the complainant. On the basis of complaint lodged by the complainant in this regard the FIR in question was put into black and white and investigation was put into motion.

The contention of learned counsel for the petitioner is that a perusal of FIR would show that the dispute in between the parties is purely of civil nature which has been given the colour of criminal proceedings by the complainant in order to harass the petitioner. Moreover, complainant/respondent No.2 has already filed a suit for specific performance of agreement/exchange deed dated December 29, 2006. Though the said suit was contested by the petitioner on the ground that no such agreement/exchange was ever executed by him in favour of the complainant. Yet the suit was decreed by learned trial Court vide judgment and decree dated December 13, 2015. However, an appeal preferred against the said judgment and decree is pending before the lower Appellate Court. The registration of FIR during the pendency of civil suit is nothing but a novel device adopted by respondent No.2 to harass the petitioner. Otherwise also when the Civil Court is already seized of the matter the criminal proceedings cannot be proceeded. Especially, in the circumstances that the judgment and decree passed by civil court shall be binding upon the criminal court.

Learned counsel for the petitioner further contends that even from the bare perusal of the contents of FIR no cognizable offence is made out. While concluding his arguments, it has been submitted by learned counsel for the petitioner that since the matter in controversy is purely of civil nature and

further that civil court is already seized of the matter and complaint has been filed with an evil design to harass the petitioner, FIR deserves to be quashed.

This Court has given an anxious thought to the various submissions made by learned counsel for the petitioner but find the same to be without legal or factual substance.

Undoubtedly, it is *prima-facie* established on record that the petitioner entered into an agreement to sell/exchange dated December 29, 2006 but he has failed to execute and registered the sale deed as per the terms and conditions contained in the aforesaid agreement/exchange dated December 29, 2006. However, he has got the sale deed executed in respect of plot measuring 173 sq. yards belongs to the complainant on December 28, 2006. Even, he has also repaid the amount to the tune of ₹1,48,000/- as agreed between the parties. No doubt the agreement to sell/exchange deed dated December 29, 2016 has been denied by the petitioner but the said plea has not been ignored by the learned trial Court while decreeing the suit filed by respondent No.2/complainant for specific performance. Mere pendency of an appeal against the said judgment and decree is not suffice to hold that he did not execute the agreement to sell/exchange deed dated December 29, 2006.

Moreover, it is well settled proposition of law that when after the completion of investigation a report under Section 173 Cr.P.C. has already been presented and the charges have also been framed and further that the revision petition preferred against framing of charge has already been dismissed, there is no ground to quash the FIR. Moreover, there are disputable questions of fact, which cannot be gone into while exercising the discretionary powers conferred under Section 482 Cr.P.C. Otherwise also, powers enshrined under Section 482

Cr.P.C. has to be exercised sparingly, carefully and cautiously and only when such exercise is justified.

Adverting to the facts and circumstances of the case in hand, as has also been discussed above the execution of agreement to sell/exchange deed dated December 29, 2006 is *prima-facie* established. The petitioner did not execute and register the sale deed as per the terms and conditions of the afore-said agreement and committed breach of trust. He not only executed and registered the sale deed but also did not repay a sum of ₹1,48,000/- as agreed between the parties. Moreover, since the challan has also been presented and the petitioner is facing the trial in which above-referred FIR for the *prima-facie* commission of various offences, the instant petition for quashing the FIR is not legally maintainable.

In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such it stands dismissed.

NOVEMBER 08, 2016
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>