

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

(1) CRM No.M-2312 of 2013 (O&M)

Gurdas Bansal and others

...Petitioners

Versus

Manoj Jain, Director, M/s Blue Sea Sites Pvt. Ltd.

...Respondent

(2) CRM No.M-5376 of 2013 (O&M)

Ajit Singh and others

...Petitioners

Versus

Manoj Jain, Director, M/s Blue Sea Sites Pvt. Ltd.

...Respondent

(3) CRM No.M-22036 of 2013 (O&M)

Ishan Sharma

...Petitioner

Versus

Manoj Jain, Director, M/s Blue Sea Sites Pvt. Ltd.

...Respondent

(4) CRM No.M-22042 of 2013 (O&M)

R.K.Sharma and another

...Petitioners

Versus

Manoj Jain, Director, M/s Blue Sea Sites Pvt. Ltd.

...Respondent

Date of Decision: September 27, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.N.D.S.Mann, Advocate
for the petitioners (in CRM No.M-2312 of 2013).

Mr.Ankur Mittal, Advocate
for the petitioners (in CRM No.M-5376 of 2013).

Mr.Bhaskar Sharma, Advocate
for the petitioners (in CRM No.M-22036 of 2013 and
in CRM No.M-22042 of 2013).

Mr.R.K.Chugh, Advocate
for the respondent.

INDERJIT SINGH, J.

All the above-mentioned cases are taken up together as the same have arisen from same complaint.

Petitioners have filed these petitions under Section 482 Cr.P.C. against Manoj Jain, Director, M/s Blue Sea Sites Pvt. Ltd. for quashing of complaint bearing No.2 dated 31.01.2012 titled as 'Manoj Jain vs. State of Punjab and others' and consequent summoning order dated 29.11.2012 passed by learned Judicial Magistrate Ist Class, Kharar.

Notice of motion was issued in all the cases. Learned counsel for the respondent appeared and contested these petitions.

I have heard learned counsel for the parties and have gone through the record.

The perusal of the record shows that Manoj Jain, Director, M/s Blue Sea Sites Pvt. Ltd., complainant filed a complaint against State of Punjab, Senior Superintendent of Police, Mohali, Superintendent of Police, Mohali, Station House Officer, Police Station Economic Offences Wing, Mohali and against accused No.5 to 19 i.e. Gurdas Bansal and other accused, under Section 156(3) Cr.P.C. for registration of an FIR under Sections 406, 420, 320, 382 read with Section 120-B IPC and Section 34

and 506 IPC.

The brief facts of the complaint as noted down in the order dated 29.11.2012 passed by learned JMIC, Kharar, are as under:-

“2. The brief facts of the present complaint are that the complainant is a businessman of repute and is Director of M/s Blue Sea Sites Pvt. Ltd. SCO No.49, Second Floor, Sector 47-D, Chandigarh besides other Directors. Darshan Singh, Ex-Director of the complainant's company entered into an agreement to sell with accused no.12 Ajit Singh who was the GPOA/Agreement holder of accused No.5 to 7 and on behalf of company an agreement to sell was executed between Darshan Singh and Ajit Singh on 7.1.2006. The total consideration was Rs.15,50,00,000/- for the land measuring 29 kanal 16 marlas situated at village Badmajra and the sale deed was to be executed on or before 6.8.2006. Darshan Singh who was earlier Director of M/s Blue Sea Sites Pvt. Ltd. and he resigned from the post of Director of the company w.e.f 2.3.2006. A deal with regard to the property was executed and amount of ₹4,25,00,000/- was given in advance and a letter of consent was prepared by accused no.5 to 11 in favour of complainant company which was 22 days prior to the agreement to sell dated 07.01.2006. The advance token amount was paid on behalf of the resignation from the post of Directorship. The said amount of Rs.4,25,00,000/- was given the land owners i.e. accused no.11 and 12 in the presence of complainant. The complainant after taking over as Director vide form-32 of the company on 01.03.2006, in the interest of company applied for grant of special package of incentive to Mega Multiplex Project, M/s Blue Sea Sites Pvt. Ltd. and the same was granted by the department of Industries and Commerce. The sale deed was drawn and prepared on 06.08.2006 in the terms of the agreement to sell executed on 07.01.2006, but the General Power of Attorney/Agreement Holder Ajit Singh and owners of the land were not in position to execute the sale deed as two members of accused were unable to come to the office of Tehsildar owing personal difficulty. Therefore, a request was made by them orally for extending the date by one week to execute the sale deed. The original agreement to sell and letter for grant of extension in time as per the request of accused were sent to them for signatures, but instead of returning the original agreement to sell and extension letter, the accused resiled and backed out from bargain. They also refused to return back the agreement and extension letter despite various follow ups and reminders by the complainant reflecting their malafide intentions and ulterior motives of not wanting to sell the land as stipulated in the agreement to sell, solely, for the reasons that the price of the land had gone up. The original agreement to sell was handed over to one Mukesh

Kumar @ Billu on 03.08.2006 as desired by the accused and the said original documents were handed over to the accused. The complainant made several attempts seeking return of the original documents from the accused, but in vain and moreover, they have also threatened the complainant with dire complainant had also got a public notice dated 11.11.2006 general public against entering into any kind of transaction with the accused. All the accused No.5 to 9 in connivance of a criminal conspiracy sold the said land as stipulated in the agreement to accused No.13 R.K.Sharma and in furtherance to malafide intentions and ulterior motives, one Beant Singh accused No.16 was given General Power of Attorney of accused No.2. He again sold the land to R.K.Sharma accused No.13 vide sale deed dated 4.10.2006. Similarly, one Sewa Singh accused No.17, accused No.189 sold their portion of land to R.K.Sharma vide sale deed dated 05.03.2007 and 27.10.06. The complainant has filed a suit for Specific Performance of agreement to sell and suit for declaration and suit for grant of Permanent Injunction with regard to the property in question which is pending. Hence, the present complaint.”

Learned JMIC, Kharar, vide impugned order dated 29.11.2012, summoned all the accused to face trial under Sections 406, 420, 120-B, 506, 382 and 34 IPC.

All the above-mentioned petitions have been filed for quashing of the complaint as well as the summoning order dated 29.11.2012, vide which the petitioners have been summoned.

From perusal of the record, especially the impugned order dated 29.11.2012, it looks that the Court below has not applied its judicial mind to the facts of the case. It is settled law now that summoning of the accused is a serious matter and the Court should apply its judicial mind before passing the summoning order and the summoning order should not be passed in a routine manner. Learned Magistrate has summoned all the accused who were made respondents in the complaint including State of Punjab, SSP, Mohali, SP, Mohali, SHO, Economic Offences Wing, who were made party

in their official capacity and have nothing to do with the commission of the offence. Further, I find that an agreement to sell dated 07.01.2006 has been executed by Ajit Singh with M/s Blue Sea Sites Pvt. Ltd. through Director Darshan Singh.

The perusal of the record further shows and it is admitted fact that Gurdas Bansal, Lal Chand, Nisha Bansal, Surinder Bansal, Rakesh Bansal, Tarsem Chand etc. are the owners of the agricultural land and they have not entered into agreement to sell with complainant and they have not executed any Power of Attorney in favour of Ajit Singh nor Ajit Singh entered into agreement to sell on behalf of original owners. Ajit Singh is alleging some agreement to sell in his favour. As Gurdas Bansal etc. petitioners, who are owners, have not entered into agreement to sell with complainant or Darshan Singh, Director of complainant company, therefore, in no way, they have committed any offence of cheating etc. Gurdas Bansal etc. petitioners of petition CRM No.M-2312 of 2013, being owners have sold the property to R.K.Sharma, Manju Sharma and Ishan Sharma, therefore, all these purchasers (other petitioners in other petitions), are bonafide purchasers from the original owners and also have not committed any offence.

Furthermore, petitioner Ajit Singh relied upon the affidavit of Darshan Singh, which is stated to be executed before the Sub-Registrar, vide which Darshan Singh had received back an amount of ₹4,25,00,000/- from Ajit Singh, which he had paid as earnest money and he cancelled the agreement to sell.

Learned counsel for the petitioners argued that the complainant

420 IPC, copy of which is Annexure P-6. It is also argued that suit for Specific Performance has already been filed by M/s Blue Sea Sites Pvt. Ltd., as per Annexure P-8.

The perusal of the record shows that original owners Gurdas Bansal etc. and the purchasers R.K.Sharma, Manju Sharma and Ishan Sharma are, in no way, concerned with the commission of the offence. Even, they cannot be held liable under Section 120-B IPC as Darshan Singh has not been made a party in the complaint in question. If there is any dispute, that is between complainant company and its Director Darshan Singh. Darshan Singh on behalf of the company entered into agreement to sell with Ajit Singh and paid earnest money to him and as per affidavit, discussed above, Darshan Singh received back the earnest money and cancelled the agreement. The dispute between the parties is of civil nature and suit for Specific Performance is stated to have already been filed. No offence is made out against present petitioners and filing of the complaint is nothing but abuse of process of law and amounts to miscarriage of justice.

In view of the above discussion, I find merit in all the petitions and the same are allowed. The complaint bearing No.2 dated 31.01.2012 titled as 'Manoj Jain vs. State of Punjab and others', summoning order dated 29.11.2012 passed by learned Judicial Magistrate Ist Class, Kharar and all subsequent proceedings arising therefrom, are hereby quashed.

September 27, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No