

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Date of Decision: January 27, 2016

1. CRM M-2305 of 2015

Amrik Kaur and another

.....Petitioners

Vs.

State of Punjab

.....Respondent

2. CRM M-9051 of 2015

Major Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

3. CRM M-9453 of 2015

Amrik Kaur and another

.....Petitioners

Vs.

State of Punjab

.....Respondent

4. CRM M-11515 of 2015

Major Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

5.

CRM M-18424 of 2015

Jagtar Singh and ors.

.....Petitioners

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Veneet Sharma, Advocate
for the petitioners in all cases.

Ms.H.K. Athwal, DAG, Punjab.

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M.M.S. BEDI, J. (ORAL)

Petitioners in CRM M- 18424 of 2015 seek quashing of FIR which was registered at the instance of Ashok Kumar Chauhan, Additional Civil Judge (Sr. Division), Baba Bakala, alleging that petitioners No.2 to 4 in connivance with petitioner No.1 had forged agreement of sale for the purpose of cheating and a sale deed dated April 29, 2005 was executed by Jagtar Singh in favour of Mohinder Singh, which was produced in a civil suit.

Counsel for the petitioners submits that all the petitioners are members of the family. They had entered into an agreement of sale dated April 29, 2005 with one Mohinder Singh. The said Mohinder Singh had filed a suit for specific performance of agreement of sale dated April 29, 2005 against the petitioners which was decreed in his favour on July 28, 2005, however, Jagtar Singh was proceeded against ex-parte. Said Jagtar Singh had approached the Apex Court. The Apex Court had set aside the decree qua Jagtar Singh directing the Civil Court to decide application under Order 9 Rule 13 CPC filed by Jagtar Singh. During the course of proceedings in the civil Court, it transpired that Jagtar Singh's thumb impression was smudged. Attributing culpability, the FIR was registered at the instance of the Court.

During the course of investigation, Amrik Kaur and Palwinder Kaur were declared proclaimed offender despite the fact that they had executed the sale deed pursuant to the decree passed against them for specific performance in favour of Mohinder Singh.

This order will dispose of all the five petitions bearing CRM M-2305, 9051, 9453, 11515 and 18424 of 2015.

Petitioners sought quashing of FIR in CRM M-18424 of 2015 on the ground that the petitioners have not committed any offence as they had already executed the sale deed in favour of Mohinder Singh pursuant to the civil Court decree except by petitioner No.1 Jagtar Singh, whose litigation is still pending.

Petition bearing CRM M-11515 of 2015 has been filed by Major Singh challenging the order annexure P-3 dated October 20, 2014, declaring him a proclaimed offender. Another petition bearing CRM M-9453 of 2015 has been filed by Amrik Kaur and Palwinder Kaur seeking quashing of an order annexure P-3 dated October 20, 2014, declaring them as proclaimed offenders having not responded to the proclamation. CRM M-9051 of 2015 has been filed by Major Singh under Section 438 Cr.P.C. seeking concession of pre-arrest bail whereas Amrik Kaur and Palwinder Kaur have filed CRM M-2305 of 2015 for grant of pre-arrest bail.

Since all the five petitions are inter-connected, I propose to dispose of all the petitions simultaneously.

So far as petition for quashing bearing CRM M-18424 of 2015 is concerned, State counsel on the instructions of HC Shamsheer Singh informs that the challan has already been presented in the present case and charges stand framed only against Jagtar Singh, since the other accused having been declared proclaimed offenders.

I have considered all the facts and circumstances of CRM M-18424 of 2015. In view of civil litigation in the FIR having been initiated by Mohinder Singh for specific performance of agreement of sale dated April 29, 2015 against all the accused named in the FIR and the defendants having suffered a decree except for Jagtar Singh for specific performance; the decree having already been passed qua all the defendants, except Jagtar Singh; and the civil litigation being pending only qua Jagtar Singh regarding

specific performance of agreement of sale on the basis of agreement of sale dated April 29, 2005, it is apparent that petitioners No.2 to 4 in CRM M-18424 of 2015 do not have any claim left in the property as they have already executed the sale in favour of Mohinder Singh.

It appears that on the basis of the decree for specific performance and on account of proceedings under Order 9 Rule 13 CPC pending qua Jagtar Singh, there is a controversy regarding delivery of possession. The role of Major Singh, Amrik Kaur and Palwinder Kaur in the transactions mentioned hereinabove has to be determined by the trial Court and to arrive at a conclusion regarding their culpability, as the challan has already been presented and the charges framed qua Jagtar Singh; Amrik Kaur, Palwinder Kaur and Major Singh being proclaimed offenders, I do not find any ground to quash the FIR.

The petition bearing **CRM M-18424 of 2015 for quashing of FIR is hereby dismissed** without prejudice to the rights of the petitioners therein to seek redressal during the course of trial.

So far as CRM M-11515 of 2015 and CRM M-9453 of 2015 filed by Major Singh, Amrik Kaur and Palwinder Kaur are concerned, it is apparent on the record that they having lost interest in the property and proclamation under Section 82 Cr.P.C. having been issued qua them, they were declared proclaimed offenders on October 20, 2014. The proceedings under Section 82 Cr.P.C. were initiated against them on September 16, 2014. On October 18, 2014, the proceedings for securing their presence were

adjourned to October 20, 2014 to await the period of 30 days and they were declared proclaimed offenders on October 20, 2014.

From the interim order annexure P-3 placed on record, it is apparent that no attempt had been made to issue non-bailable warrants against Major Singh, Amrik Kaur and Palwinder Kaur for securing their presence before launching proceedings under Section 82 Cr.P.C. A casual approach has been adopted by the Magistrate while declaring the petitioners as proclaimed offenders.

Since the challan has been presented against the petitioners in their absence, they are required to be given a fair opportunity to defend their rights and seek their right of fair trial. In the interest of justice, the order annexure P-3 dated October 20, 2014, declaring petitioners, Major Singh, Amrik Kaur and Palwinder Kaur as proclaimed offenders is hereby set aside.

Petitions bearing CRM M-11515 of 2015 and CRM M-9453 of 2015 are allowed in the aforesaid terms.

I have considered the rights of petitioners Amrik Kaur, Palwinder Kaur and Major Singh in the petitions bearing CRM M-9051 of 2015 and 2305 of 2015, for grant of pre-arrest bail.

Since it has been held by this Court that the process of declaring them proclaimed offenders was not in consonance with the rules of natural justice and the statutory provisions under Section 82 Cr.P.C., the constitutional rights of the petitioners for liberty under Articles 21 of the Constitution of India has been violated casually. The orders declaring

petitioners, Major Singh, Amrik Kaur and Palwinder Kaur as proclaimed offenders having been found to be improper, the order declaring them proclaimed offenders has been set aside. The petitioners have been given an opportunity by a Coordinate Bench by passing an order to join investigation. Petitioners Major Singh, Amrik Kaur and Palwinder Kaur have joined investigation as per the information supplied by the State counsel, **the petitions bearing CRM M-2305 of 2015 and CRM M-9051 of 2015 are thus allowed** and it is ordered that the petitioners in the event of their arrest will be released on bail on their furnishing bail bonds/ surety bonds to the satisfaction of the arresting officer. This order will remain operative on their putting in appearance before the trial Court along with Jagtar Singh who is facing trial. It will be open to the prosecution agency to present supplementary challan/ challans against the petitioners. Nothing said in this order will prejudice the rights of petitioners Amrik Kaur, Palwinder Kaur and Major Singh to raise arguments at the time of consideration of charges qua them on presentation of supplementary challan (s).

At this stage, counsel for the petitioners has submitted that ladies having no interest in the property, they may be exempted from personal appearance.

This claim can always be raised by the petitioners by moving an application before the competent Court of law.

January 27, 2016
sanjay

(M.M.S.BEDI)
JUDGE