

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

(1)

CRM-M No. 31184 of 2015 (O&M)

Date of Decision: 12.02.2016

Anita Dhir and another

..... Petitioners

Versus

State of Punjab and another

..... Respondents

AND

(2)

CRM-M No. 35241 of 2015 (O&M)

Ajay Chopra

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Prateek Gupta, Advocate
for the petitioners in CRM-M No. 31184 of 2015.

Mr. Balbir Singh Sewak, Advocate
for the petitioner in CRM-M No. 35241 of 2015.

Mz. Rimplejeet Kaur, AAG, Punjab
for respondent No. 1/State assisted by HC Jaswinder Singh
in both petitions.

Mr. H.S. Sanga, Advocate
for the complainant/respondent No. 2-Jasvir Singh
in both petitions.

JASWANT SINGH, J. (ORAL)

This common order shall dispose of the both aforementioned petitions under Section 482, Criminal Procedure Code, filed for quashing of FIR No. 41 dated 10.03.2015, for offences punishable under Sections 420, 120-B of the Indian Penal Code and all subsequent proceedings lodged at Police Station

Rupnagar by the complainant-Jasvir Singh (respondent No. 2 herein) against three accused-petitioners, namely, Anita Dhir (in CRM-M No. 31184 of 2015), Arun Chopra and Ajay Chopra (in CRM-M No. 35241 of 2015).

Undisputed facts are that Anita Dhir had inherited three shops in question earlier owned by her late father Shri Raj Kumar Chopra, on the basis of family settlement with her two other brothers, namely, Arun Chopra and Ajay Chopra. Anita Dhir entered into an agreement to sell dated 31.01.2011 (**Annexure P-3**) with the complainant-Jasvir Singh (respondent No. 2 herein) regarding sale of three shops, i.e. (a) Shop No. B-7-1716, at 2 Old Anaj Mandi, Rupnagar; (b) Shop No. B-7-1816, at 2 Old Aloo Market, Rupnagar; and (c) Shop No. B-7-1817, at 2 Old Aloo Market, Rupnagar, for total cumulative sale consideration of Rs. 1,05,00,000/- (One Crore Five Lacs only). An amount of Rs. 15,00,000/- (Fifteen Lacs only) was received by Anita Dhir as earnest money and the balance payment of Rs. 90,00,000/- (Ninety Lacs only) was to be made on the date of target of execution of sale deed dated 25.03.2011. The said agreement to sell dated 31.01.2011 (**P-3**) was witnessed by Arun Chopra and Ajay Chopra (brothers of Anita Dhir).

That due to some internal differences between three siblings, the sale deed could not executed as per schedule, leading to Jasvir Singh (respondent No. 2) instituting a civil suit for injunction on 21.03.2011, prior to the target date for execution of sale deed.

Thereafter, Jasvir Singh (respondent No. 2) lodged the aforesaid FIR against Anita Dhir and her two brothers Arun Chopra and Ajay Chopra.

It is further not in dispute that an amicable settlement was arrived at between the complainant-Jasvir Singh (respondent No. 2) and Anita Dhir, though not inked, leading to the execution of sale deeds dated 28.05.2015 qua the aforesaid three shops, which have been annexed at **Annexure P-5 (Colly)**.

It is also not in dispute that accused/petitioner-Anita Dhir was granted anticipatory bail and also, the same was confirmed vide order dated 18.08.2015 **(Annexure P-4)** on the acknowledgement of the counsel for complainant that pursuant to amicable settlement, three sale deeds had since been executed by Anita Dhir in favour of complainant-Jasvir Singh (respondent No. 2).

Thus, in view of the aforesaid background, the present petition was filed seeking quashing of the aforesaid FIR.

It has been urged that not only an amicable settlement has been arrived at, the dispute otherwise being of civil nature, no offence was made out, as concededly, Anita Dhir was the owner and there was no misrepresentation made either in agreement to sell or at any subsequent stage.

In view of the amicable settlement, the parties were directed to get their statements recorded before the Illaqa Magistrate, in pursuance of which a report/letter No. 690 dated 17.10.2015 **(Mark-A)** was received from the learned Chief Judicial Magistrate, Rupnagar wherein it is mentioned that the complainant-Jasvir Singh (respondent No. 2) had stated that a compromise has been effected only qua the withdrawal of the civil suit for injunction dated 21.03.2011 and not qua the proceedings pursuant to the present/aforesaid FIR.

Learned counsel for the parties have canvassed the arguments in light of their respective stand as aforesaid.

Learned State Counsel, assisted by HC Jaswinder Singh, submits that the challan was not filed in the light of the parties having conveyed to the investigation agencies regarding an amicable settlement.

In view of the facts of present case, it is absolute clear that the dispute was purely of civil nature and the ingredients of cheating are not made out, as it is not disputed that Anita Dhir was the owner of three shops for the sale of which the agreement to sell was executed. It is also not the case of the

complainant-Jasvir Singh (respondent No. 2) that any misrepresentation was made in the agreement to sell. Therefore, no offence qua Anita Dhir would be made out. In fact, it was for the complainant to file a suit for specific performance to seek the enforcement of agreement to sell, which concededly was never done and the period of limitation had expired on after three years of the expiry of the date of target date for execution of sale deed i.e. 25.03.2011. It also cannot be disputed that the cause of action for specific performance even in the pending suit for injunction was required to be urged by seeking amendment in the pending suit on the expiry of the target date. In fact, the complainant has used the tool of lodging of this FIR after the expiry of the limitation period for seeking the enforcement of the agreement to sell.

It is settled principle of law that where no offence is made out on the face value of the allegations, there is no legal impediment in quashing the FIR and all the subsequent proceedings arising therefrom. Moreso, accused-Arun Chopra and Ajay Chopra (brothers of Anita Dhir) are merely attesting witnesses of the agreement to sell dated 31.01.2011 (**P-3**) duly executed by the conceded owner-Anita Dhir and as such, no alleged offence qua them is also made out. It has been so authoritatively held by the decision of the Hon'ble Supreme Court rendered in ***State of Haryana and Others Versus Ch. Bhajan Lal and Others, 1991 (1) RCR (Criminal) 383***. In para No. 107 of the said judgment, after discussing the entire case law, the Hon'ble Supreme Court has laid down by way of illustration certain categories of cases wherein to prevent abuse of the process of any Court, the power under Section 482 Cr.P.C. for quashing the FIR should be exercised. The category No. 3 reads as under:-

“ 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and made out a case against the accused. ”

Specifically following the aforesaid judgment, the Hon'ble Supreme Court in a case reported as ***Devendra and Others Versus State of Uttar Pradesh and Another, (2009) 7 Supreme Court Cases 495***, in a case of similar nature as in the present case held that where a dispute is purely of civil nature, the Court should exercise jurisdiction under Section 482 Criminal Procedure Code and quashed the FIR on the subsequent proceedings.

Be that as it may, factually sale deeds have since been duly executed on 28.05.2015 (**P-5 colly**), the stand of complainant-Jasvir Singh (respondent No. 2) that the amicable settlement was only qua withdrawal of the suit for injunction is dishonest and, thus, to be deprecated. He has already through his counsel acknowledged the amicable settlement at the time of confirmation of anticipatory bail to the petitioner(s)/accused in the aforesaid FIR.

In view of above, this Court finds that this is a fit case wherein by invoking the jurisdiction under Section 482, Criminal Procedure Code, the aforesaid FIR and all subsequent proceedings arising therefrom are liable to be quashed.

Accordingly, both the aforementioned petitions are allowed. The aforesaid FIR and all subsequent proceedings arising therefrom, are quashed qua the present petitioner(s).

February 12, 2016

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(JASWANT SINGH)
JUDGE