

CRM-M-33436 of 2016 (O&M)

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

**CRM-M-33436 of 2016 (O&M).
Date of Decision: October 17, 2016.**

Sardool Singh and others

.. Petitioner(s)

VERSUS

State of Haryana and another

.. Respondent(s)

*** * ***

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

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**PRESENT Mr.A.P.S.Deol, Sr. Advocate, with
Mr.Vishal Lamba, Advocate,
for the petitioner.**

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

Petitioners seek quashing of FIR which was registered at the instance of Wazir Singh alleging that he had entered into an agreement of sale on 17.12.2012, with Iqbal Singh and others to purchase 30 acres of land on payment of huge earnest money of Rs.1.65 crore but the sale deed was not executed in his favour nor the money was returned.

So far as petitioners are concerned, they are original owners of the land. Gulzar Singh and others had entered into an agreement of sale of the same land with the petitioners on 14.3.2012

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prior to the above said agreement of sale. Despite best efforts having been made by the petitioners for enforcement of legal rights, the purchasers Gulzar Singh and others did not come forward to execute the sale deed as such earnest money of Rs.1.65 crore was forfeited. Now, the FIR has been registered by Wazir Singh who did not have privity of contract with the petitioners. He had never entered into any agreement of sale with the petitioners nor the petitioners have played any fraud with the complainant nor there is any allegation of petitioners having cheated the complainant Wazir Singh.

It has been argued that so far as the petitioners are concerned, it is Gulzar Singh etc. who can have any grievance but said Gulzar Singh etc. having not opted till date to enforce the legal rights on the basis of agreement to sell dated 14.3.2012, petitioners cannot be said to have committed any offence qua the complainant.

It is not out of place to observe that Gulzar Singh and others are also accused in the present case.

Counsel for the petitioners has made available a copy of the challan in order to submit that in view of above circumstances, there being no evidence against the petitioners, they are liable to be discharged.

Counsel for the petitioners submits that at the most, it is a case of civil liability which can be enforced by complainant Wazir Singh against Gulzar Singh and others. It is only Gulzar Singh and others who could have been aggrieved against the petitioners but they

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have neither filed any civil suit nor made any attempt to enforce the agreement of sale dated 14.3.2012, by filing a suit for specific performance. It is claimed that mere filing of suit for permanent injunction by Gulzar Singh is not sufficient enough to arrive at a conclusion regarding the liability of the petitioners.

The culpability of the petitioners on the basis of the above said circumstances, can be better appreciated by the Court which has to frame charges. It is always open to the trial Court to opt to drop the criminal proceedings against any person against whom there is no material available on the record.

Counsel for the petitioners has submitted that no offence is made out against the petitioners on the basis of complaint of Wazir Singh complainant.

I have considered the said contention and I am of the opinion that a fair opportunity deserves to be given to the petitioners to establish before the trial Court that even from the material forming part of report under Section 173 (2) Cr.P.C., no offence is made out and on the basis of material forming part of report under Section 173 (2) Cr.P.C., the trial Court can pass an order of discharge so far as the petitioners are concerned as they claim that no offence is made out qua them.

This petition is disposed of as pre-mature, at this stage, observing that all the pleas raised by the petitioners in this petition will be open to be raised before the trial Court at the time of

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consideration of charges. In case the material which has been collected by the prosecution agency in the shape of statements under Section 161 Cr.P.C. and the documents, no offence is made out against the petitioners, it will be open to the trial Court to pass an order for discharge of the petitioners. It is observed that the pleas raised by the petitioners shall be considered by the trial Court at the time of consideration of charges in context to the material forming part of report under Section 173 (2) Cr.P.C.

(M.M.S. BEDI)
JUDGE

October 17, 2016.
rka

Whether speaking / reasoned
Whether Reportable:

Yes / No
Yes / No