

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

211 (1)

CRM-M-3376-2016

Date of Decision: March 30, 2016

KAMLESH DEVI

VERSUS

.....PETITIONER

STATE OF PUNJAB

.....RESPONDENT

(2)

CRM-M-5236-2016

SANJEEV KUMAR

VERSUS

.....PETITIONER

STATE OF PUNJAB

.....RESPONDENT

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

Present: Mr.Sandeep Arora, Advocate for the petitioner in both the petitions

Mr.Jashan Preet Singh, AAG, Punjab.

Mr.Munish Puri, Advocate for respondent No.2 in CRM-M-3376-2016

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

This order will dispose of two applications, one filed by Kamlesh Devi (CRM-M-3376-2016) and other filed by Sanjeev Kumar (CRM-M-5236-2016) for pre-arrest bail.

As per the allegations of complainant Pankaj Saini, he had agreed to purchase two shops from petitioner Kamlesh Devi and paid a sum of Rs.30 lacs as earnest money to her. The shops were on rent with tenants prior to the agreement. Thereafter the complainant allegedly paid Rs.12 lacs to the tenants and get the shops vacated and entered into possession. The allegation against the petitioners is that the petitioners after receiving money, in connivance with each other, tried to take possession of the shops by breaking a wall from the backside and also refused to get the sale deed registered in favour of the complainant.

Counsel for the complainant intervened to oppose the

application of pre-arrest bail of Kamlesh Devi contending that petitioner Kamlesh Devi claiming herself exclusive owner has entered into the agreement of sale with the complainant but later on she entered into another agreement of sale with Akshay Mahajan and Satpal Bhasin.

After hearing counsel for the petitioners, counsel for complainant, State counsel and after going through the police record, it transpires that petitioner Kamlesh Devi had issued three cheques for a total sum of Rs.30 lacs in order to return the earnest money out of which one cheque of Rs.10 lacs was cleared and other two cheques were dishonoured.

The complainant claims that he was in actual physical possession of the shops whereas counsel for the petitioners claims that the possession had not been delivered to the complainant on the basis of agreement of sale. The liability of petitioner No.1 appears to be combination of civil liability as well as criminal liability for which complainant has got a right to enforce the legal rights by approaching civil Court as well as by launching prosecution as per the law laid down by the Apex Court in **Lee Kun Hee & Ors. V/s State of U.P. & ors., 2012(1) RCR(Cr.) 884**

The act of petitioner Kamlesh Devi having issued three cheques for returning the earnest money out of which two having been dishonoured is indicative of the intention of Kamlesh Devi. To effect the enforcement of his legal rights even the complainant has not taken any steps. Claim of the complainant that he paid some amount to the tenants is immaterial so far as the role attributed to the petitioners is

concerned.

The petitioners have joined investigation but merely joining the investigation pursuant to the interim order ipso-facto does not confer any right on the petitioners of pre-arrest bail. The conduct of Kamlesh Devi is indicative of cheating having been committed by her. So far as Sanjeev Kumar petitioner is concerned, he is alleged to have connived with his mother Kamlesh Devi in the aforesaid act of cheating.

No extra-ordinary circumstances exist to grant pre-arrest bail to petitioner Kamlesh Devi. Her petition for pre-arrest bail is dismissed.

So far as petitioner Sanjeev Kumar is concerned, his petition is allowed. It is ordered that in case of arrest of Sanjeev Kumar petitioner, he shall be released on bail to the satisfaction of the arresting officer subject to the condition that he will join the investigation as and when required.

This order will not be read as precedent and anything said in this order is not meant to prejudice the adjudication of the civil rights of the parties. It will be open to the parties to avail the legal remedies available to them so far as the payment or refund of money or for enforcement of legal rights in accordance with law.

March 30, 2016
TSG

(M.M.S.BEDI)
JUDGE