

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 122

Criminal Miscellaneous No.M-37769 of 2016 (O & M)
Date of Decision: October 21, 2016

Harinder Singh Dhall & others

..... PETITIONERS

VERSUS

State of Punjab & another

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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PRESENT: - Mr. G.S. Verma, Advocate, for the petitioners.

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Jaspal Singh, J

1. By virtue of instant petition preferred under Section 482 Cr.P.C., petitioners have sought quashing of FIR No.143 dated October 12, 2016 under Sections 409, 420, 120-B IPC registered at Police Station, Division No.2, Ludhiana, as well as all subsequent proceedings arising therefrom.

2. The submission of learned counsel for the petitioners is that on the basis of statement of respondent No.2 – Sanjay Maini, FIR, referred to above, was registered against the petitioners by concealing the material facts. Infact, petitioner No.2 Davinderpal Singh filed a civil suit against Vinod Kumar, who is real brother-in-law of respondent No.2, regarding suit for possession of house constructed on

land measuring 1018 square yards comprising in Khasra No.85/25 Khata No.116/143 as per Jamabandi for the year 1967-68, by way of specific performance of agreement to sell dated August 21, 1998. During pendency of the suit, it revealed that Vinod Kumar purchased the said house and agreed to sell the same to petitioner No.2 for a sum of ₹ 1,50,000/-. Accordingly, he executed an agreement to sell dated September 21, 1998 on receipt of a sum of ₹ 50,000/- as earnest money while promising to execute the sale deed in his favour on or before May 25, 2000. Since, Vinod Kumar refused to execute the sale deed, he filed a suit for possession by way of specific performance which was decreed in favour of petitioner No.2 with direction to Vinod Kumar to execute the sale deed within a period of two months on receipt of balance sale consideration vide judgment & decree dated October 17, 2003, and Vinod Kumar filed applications time and again for setting aside ex-parte decree dated October 17, 2003 which have been dismissed by the first appellate court. However, this Court has allowed him (Vinod Kumar) to raise all issues and directed the court below to decide the matter afresh and now the matter is still subjudice in the courts below. Moreover, respondent No.2 is brother-in-law of Vinod Kumar who had purchased the said property under Section 13(4) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') by concealing the material facts despite the fact that he was made aware of the litigation about the property. Since the civil court is already ceased

of the matter, criminal proceedings cannot proceed and as such, FIR in question is liable to be quashed.

3. This court has given anxious thought to the aforesaid submissions made by learned counsel for the petitioners but find the same to be without any legal and factual substance.

4. Undoubtedly, property measuring 1018 square yards comprising in Khasra No.85/25 Khata No.116/143 as per Jamabandi for the year 1967-68 was mortgaged with the bank while obtaining financial assistance and the original title deed thereof bearing Wasika No.4664 dated June 07, 1982 was deposited with the bank as collateral security. The petitioners did not adhere to the terms & conditions of the loan transactions. Accordingly, the account of M/s Azad Silicate @ Chemical Works was declared as NPA by the bank and the bank had taken over the said mortgaged property under the SARFAESI Act. Subsequently, while resorting to the provisions under Section 13 read with Rule 8 of the Security Interest (Enforcement) Rules, 2002, SBI sold the said property to respondent No.2 – Sanjay Maini and the original title deeds were handed over to him. Infact, it has emerged that petitioner No.1 -Harinder Singh Dhall, father of petitioner No.2 – Davinderpal Singh, earlier remained posted as Field Officer in SBI Branch, Miller Ganj, Ludhiana and the bank, at his instance, provided some papers to Vinod Kumar from the office file of the bank. So, there are clear-cut allegations with regard to conspiracy. At this stage, from the allegations contained in the FIR, it cannot be said that no cognizable offence is made out or that in view of pendency of the civil

suit/ litigation, criminal proceedings cannot proceed. It is well settled proposition of law that criminal as well as civil proceedings can be initiated and proceeded with simultaneously. Thus, this court is of the considered view that no ground is made out for quashing the FIR.

5. Dismissed.

October 21, 2016
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No