IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM–M-6189-2013(O&M)
Date of decision: 24.05.2016

Sumit Gupta and others
…..Petitioners
versus
State of Haryana and another
……Respondents

CRM-M 32705 -2013(O&M)

Amit Gupta and others
…..Petitioners
versus

State of Haryana and another
……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.R.S.Cheema,Senior Advocate with
Mr.J.S.Mehndiratta, Advocate for the petitioners
Mr.Pawan Gaur, DAG Haryana
Mr.R.S.Rai, Senior Advocate with
Mr.Karan Pathak, Advocate for the respondent No.2

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J.

By this single judgment, I shall dispose of CRM–M-6189-2013 and CRM-M-32705-2013 filed for quashing of complaint No.231 of 2011 dated 26.7.2011, pending in the Court of Chief Judicial Magistrate, Gurgaon along with protest petition dated 23.7.2011

(Annexure P3) filed by the respondent no.2-M/s Shiva Profins Private Limited in FIR No.279 dated 29.11.2010 under Sections 420, 463, 465, 468, 471, 120-B IPC registered at Police Station Kherki Dhaula, District Gurgaon and the order dated 18.12.2012 (Annexure P5), passed by learned Chief Judicial Magistrate, Gurgaon, whereby the petitioners have been summoned to face trial under Sections 420, 463, 465, 468, 471, 120-B IPC, along with the subsequent proceedings.

Facts are being extracted from CRM–M-6189-2013. It is stated that M/s Fortune Land & Housing Private Limited, M/s Orris Infrastructure Private Limited, M/s Salmon Land & Housing Private Limited, Gurgaon are incorporated and registered under the Companies Act, 1956. Amit Gupta, Jagdish Parsad Gupta, Mamta Gupta, Vijay Gupta, Sohan Lal Mittal, Lalit Mittal, Saurabh Jain, Kusum Gupta, Sumit Gupta, Sanjay Gupta and Jitinder Singh are Directors, office bearers and authorized persons of the said companies and are incharge and responsible for the conduct of the business of the said companies. In February 2010, the said accused and the companies approached complainant M/s Shiva Profins Private Limited and represented that the said companies were absolute and lawful owners of land bearing Rect. No.10, Killa No.24/2 (3-0), 25/1 (6-12), Rect. No.11, Killa No.23 (4-11), 4 (2-10), Rect. No.14, Killa No.4 (8-0), 5(7-11), 6(8-0), 7(8-10), 16/1 (5-6) and Rect. No.15, Killa Nos.3/2/2/2 (0-4), 3/3 (1-12), 4/1/1 (2-4), situated in the revenue estate of village Badha, Tehsil Manesar, District Gurgaon. They offered to sell the aforesaid land to the complainant company and represented that said land is absolutely free from all types of loan, liens, defect, acquisition, encumbrances, litigation, mortgage and lease etc. and that the title of the company is absolutely clear. Believing the representation of the said persons to be correct, the complainant company purchased the said land along with other land vide registered sale deeds bearing Vasika No.1473 dated 18.2.2010, Vasika No.1474 dated 18.2.2010, Vasika No.185, 186 and 188 all dated 4.5.2010 respectively for the huge sale consideration recited therein. Lacs of rupees were spent for purchase of stamp papers and registration expenses. Crores of rupees were paid for purchasing the said land believing the representation of said Amit Gupta etc. to be correct.

Later on the complainant came to know that the said land had been notified for acquisition under Section 4 of the Land Acquisition Act, 1894 (in short, ' the Act') vide notification dated 11.2.2010, followed by Award No.5 dated 14.6.2010 announced by the Land Acquisition Officer, Gurgaon. They also came to know that even compensation for the said acquired land, including the part of the land purchased by the complainant has been received by the said persons, claiming themselves to be complete owners to receive crores of rupees. According to the complainant, M/s Fortune Land & Housing Private Limited and their Directors and officials namely, Amit Gupta etc. mentioned above had hatched a criminal conspiracy to defraud and cheat the purchaser company and deliberately made false representations that the land is free from all types of encumbrances and defects etc. and received huge amount from the complainant. They also received the huge amount as compensation from the office of the Land Acquisition Collector, Gurgaon with mala fide intention. They deliberately created forged fabricated and used false documents with a view to obtain wrongful gain and caused wrongful loss to the purchasers.

On the basis of the said allegations, FIR No.279 dated 29.11.2010 under Sections 420, 463, 465, 468, 471, 120-B IPC was registered at Police Station Kherki Dhaula, District Gurgaon (Annexure P1).

It further comes out that after the investigation, final report (Annexure P2) was presented before the Court, wherein the police, after discussing the entire evidence, came to the conclusion that no cheating was done. Part of the compensation of the acquired land sold to the complainant company was received by mistake and when it came to the notice of the accused, the same was refunded with interest and deposited with the Land Acquisition Collector. It was reported that the said error occurred as the mutation No.2446 was not entered in the remarks column of the Jamabandi by the Patwari. As a result of which, the compensation was disbursed to the original owner, which has now been refunded along with interest. The compensation was received on 17.6.2010 and refunded back after six months on 1.12.2010 with interest.

In CRM–M-6189-2013, it is stated that Sumit Gupta, Kusum Gupta and Mamta Gupta were not Directors of the seller companies at the relevant time.

I have heard learned counsel for the parties and have also carefully gone through the file.

Admittedly, the complainant company as well as the seller companies are involved in real estate business. Therefore, they are aware about the intricacies of the sale and purchase. The following five sale deeds are alleged in this case:-

(1)Sale deed No.1473 and 1479 dated 18.2.2010 from M/s Fortune Land & Housing Private Limited and M/s Orris Infrastructure Private Limited and the second sale deed from M/s Elegant Land & Housing Private Limited respectively.

(2)Then the three sale deeds Nos.185, 186 and 188 are of dated 4.5.2010.

Through the first sale deed, total land measuring 73 kanal 1 marla was purchased out of which 23 kanal 4 marla was acquired by land acquisition officer Urban estate, Gurgaon vide award No.5 dated 14.6.2010. Through second sale deed dated 18.2.2010, 6 kanal 4 marla land was sold, out of which 17 marla was acquired vide the above noted award. From the third sale deed, no land was acquired. From the fourth sale deed, total land measuring 11 kanal 19 marla was sold, out of which 11 kanal 11 marla was acquired. Out of the fifth sale deed 4.5.2010, 2 kanal land was sold and same was acquired. Total land sold is thus 98 kanal 18 marla, out of which 37 kanal 12 marla was acquired by Land Acquisition Officer, Urban Estate, Gurgaon and payment of compensation amounting to Rs.3,57,89,703/- on account of acquisition of land measuring 37 kanal 12 marla was receivbed by Jitender Singh, authorized signatory of the companies of whom the petitioners are stated to be Managing Directors or Directors.

It is also not disputed that the notification under Section 4 of the Act was issued on 11.2.2010. Notification under Section 6 of the Act was issued on 19.2.2010 and Award No.5 was passed on 14.6.2010. In this way, first two sale deeds were executed just a week after the notification under Section 4 of the Act, whereas the three sale deeds dated 4.5.2010 were executed after little less than three months of the notification under Section 4 of the Act. However, all the sale deeds were executed before passing of the award.

The offence of the cheating and forgery is sought to be made on the following two grounds:-

1. Notification under Section 4 of the Act dated 11.2.2010 was concealed from the complainant purchaser company and thus the complainant was cheated.
2. It is alleged that Jitender Singh authorized signatory received the compensation amounting to Rs.3,57,89,703 on 17.6.2010 by misrepresenting before the Land Acquisition Authority that the said seller companies are still the owners of the said sold land. However, it is not disputed that when a notice was issued to the said companies, the compensation amount was returned with interest on 1.12.2010, amounting to Rs.3,92,04,209. In this way, seller companies of whom the petitioners are Managing Directors and Directors and authorized signatories, illegally retained the amount

for about little less than six months, which also amount to cheating as some declaration might have been furnished. Therefore, forgery is also committed.

Learned counsel for the petitioner has relied upon authority of Hon'ble Supreme Court in *Aneeta Hada vs. Godfather Travels and Tours Private Limited, (2012) 5 Supreme Court Cases 661* and has pressed that when offence is stated to have been committed by the company, its Managing Directors, Directors cannot be prosecuted without the company being arraigned as accused. It is argued that company is juristic person and it must be shown that person responsible for running its affairs in their personal capacity had some dishonest intention to commit the crime.

Reliance has also been placed on authority of Hon'ble Supreme Court in *Sharad Kumar Sanghi vs. Sangita Rane, (2015) 12 Supreme Court Cases 781.* It is further argued that in the similar circumstances, when the cancellation report was submitted and on the complaint, petitioners were summoned, this Court in *Om Parkash and others vs. State of Haryana and another* (CRM No.M-23648 of 2015), decided on 21.9.2015 quashed the said proceedings.

Learned counsel for the petitioner has further argued that the Magistrate was bound to consider the material produced by the police after the investigation while submitting the cancellation report.

Reliance has been placed on authority of this Court in *Dr.Neera Garg vs. State of Haryana and another* (CRM No.63512-M of 2005) decided on 10.1.2007. Further reliance has been placed on authority of this Court in *Kuldip Raj Mahajan vs. Hukam Chand 2008*

*(1) RCR (Criminal) 370, w*herein the effect of provisions of Sections 202, 203 and 210 Cr.P.C. were considered when the police presented the cancellation report and complaint is also filed. This Court had quashed the said proceedings.

Learned counsel for the respondent-complainant companies has vehemently argued that the land was purchased for development purpose and as a big chunk of the land was acquired the entire project failed. The complainant company had to incur the heavy expenses for purchase of stamp papers and payment of registration charges. The fact that notification under Section 4 of the Act has been issued on 11.2.2010 was within the notice of the seller companies, of whom the petitioners are the Managing Directors, Directors and authorized signatories. Therefore, cheating was committed.

First of all from background of the facts, it is culled out that both the parties are dealing in the real estate business. It is to be noted that notification under Section 4 of the Act was issued on 11.2.2010. The police in its final report submitted before the Court dealt with the said aspect in detail and noted that the notification was published in leading newspapers i.e. Dainik Jagran on 17.2.2010 and 23.2.2010 and English Newspaper Hindustan Times dated 18.2.2010 i.e. around the date of execution of first two sale deeds on 18.2.2010. It is not the alleged by the complainant that the accused companies and its Directors connived with the land acquisition authorities to sell the land. The notification under Section 4 of the Act was not issued in connivance with the accused companies or its Directors. Therefore, both the parties in the normal course will come to know about the notification under Section 4 of the Act at the same time. If it is assumed that for the first time notification was published on 17.2.2010 in Dainik Jagran and on the next day i.e. 18.2.2010 in Hindustan Times that would mean that both the parties came to know about the notification under Section 4 of the Act only on 17.2.2010 and 18.2.2010 when a public notice was issued, when the first two sale deeds were executed on 18.2.2010. That would mean that both the parties were aware about the notification when later on 4.5.2010 three more sale deeds were executed.

The cheating is defined in Section 415 IPC, which is reproduced as under:-

> ***415. Cheating.*** *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*
>
> *Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.*

Therefore, when the notification was in the notice of both the parties on 4.5.2010, when three subsequent sale deeds were executed, it cannot be said that there was any concealment of fact on the part of the seller companies or its Directors. It also cannot be said that misrepresentation was made by concealing the notification under Section 4 dated 11.2.2010, which was published subsequently on 17.2.2010, 18.2.2010 and 23.2.2010 in newspapers. Therefore, at the time of first two sale deeds dated 18.2.2010, either both the parties were aware about the notification issued under Section 4 of the Act or both the parties were not aware about the same. On 4.5.2010, both the parties are deemed to be aware about the notification under Section 4 and 6 of the Act. Therefore, the fact of acquisition is deemed to be known to both the parties. Therefore, a fact, which is known to both the parties, cannot be called misrepresentation with intention to cheat. It is likely that before the sale deeds were executed, some negotiations might be going on for sale/purchase of the land, when both the parties are unaware that government is contemplating to acquire the land. Therefore, it cannot be said that there was any fraudulent or dishonest intention on the part of the complainant company while executing the sale deeds. In this way, the final report presented before the Court (Annexure P2) is well reasoned.

Now coming to the second part. It comes out that the seller companies passed a resolution authorizing Mr.Jitender Singh to receive the compensation. It also comes out that the sold land was not the only land owned by the seller companies, rather they acquired much more land, part of which was also acquired.

The police came to the conclusion that the company authorized Jitender Singh to receive the compensation and that since the entry of the mutation No.2446 was not made in the remarks column of the Jamabandi by the Patwari, therefore, in the Jamabandi ownership of the acquired land, which included the land sold to the complainant, stood in the name of the sellers and Jitender Singh received the compensation for the said land as well as their land acquired by the land acquisition authorities. The said compensation was received on 17.6.2010 and when this mistake came to the notice of the seller companies, the said amount along with interest was re-deposited with the Collector on 1.12.2010. The amount mistakenly received by Jitender Singh authorized signatory was Rs.3,57,89,703 and the amount deposited back is Rs.3,92,04,209. The police also verified from the record of the Collector that the amount has been deposited back. Now the question would arise whether the amount of the compensation was mistakenly received by Jitender Singh on behalf of sellers or it was a deliberate dishonest act on the part of said Jitender Singh acting on behalf of the seller companies to receive the amount by filing a false affidavit?

I am of the view that some part of land of the sellers was also acquired and therefore, the total compensation was to be disbursed as per entries in the then existing Jamabandis. The entire compensation was disbursed to Jitender Singh on behalf of companies, which is apparently not done with dishonest intention to usurp Rs.3,57,89,703 which was otherwise to be given to the complainant company. The police has also dealt with this aspect in detail and had found that no criminal offence is made out and accordingly submitted the cancellation report.

After minutely going through the police report, I agree with the reasoning given by the police that no criminal offence is made out.

It also comes out that Vijay Gupta, Amit Gupta, Sumit Gupta and Kusam Gupta had resigned from M/s Salmon Land & Housing Private Limited on 14.5.2008 by submitting resignations i.e. before the execution of the sale deeds in the year 2010. It also comes out that Sumit Gupta resigned M/s Orris Infrastructure Private Limited on 3.10.2009. Vijay Gupta and Mamta Gupta resigned from M/s Elegant Land & Housing Private Limited on 13.5.2008 i.e. also before the year 2010 when the sale deeds were executed. Therefore, they cannot be held liable for the act of the company after their resignation.

It also comes out from the record that the land was acquired by the Land Acquisition Collector for the purpose of construction of the road. It would mean that the value of the land abutting the road will increase manifolds after the acquisition. Had the petitioners been any knowledge of the impending acquisition proceedings, they would not have sold the land as they are deprived of the benefit of manifold increase in price of adjoining land due to the acquisition of land by the Government for construction of road. It goes to show that there was no dishonest intention on the part of the petitioners while executing the sale deeds.

Now coming to the protest petition (Annexure P3). It comes out that in the said complaint, Amit Gupta, Mamta Gupta, Vijay Gupta, Sohan Lal Mittal, Lalit Mittal, Saurabh Jain, Kusum Gupta, Sumit Gupta, Sanjay Gupta and Jitender Singh are sought to be prosecuted for the said offence. Here the companies Fortune Land & Housing Private Limited, M/s Orris Infrastructure Private Limited, M/s Salmon Land & Housing Private Limited have not been made accused. It is stated that the said persons are the incharge and responsible for the conduct of the business of the said companies. It was on the basis of the said protest petition-cum-complaint that the Magistrate passed the impugned summoning order dated 18.12.2012 (Annexure P5), summoning all the said accused for the said offences. The Magistrate has not passed any order as to whether he accepted the cancellation report or that he take cognizance of the offences after disagreeing with police report under Section 173 Cr.P.C.. Accused were ordered to be summoned by separately registering the protest petition-cum-complaint as criminal complaint No.231 of 2011. In this way, no order on the cancellation report was passed. Under Section 210 Cr.P.C. when a investigation in the criminal case is pending, the Magistrate is bound to take into consideration the report submitted by the police, while dealing with the complaint filed by the complainant. The impugned order (Annexure P5) does not show that the police report and the documents attached therewith were ever considered. It was simply on the basis of the complaint that the summoning order was passed. In this way, the impugned order (Annexure P5) dated 18.12.2012 otherwise suffers from illegality. However, leaving aside everything, it comes out that cancellation report submitted by the police is well reasoned. Infact, from the entire evidence collected by the police and from the allegations leveled by the complainant, no criminal offence is made out. No mis-representation was made with dishonest intention to cheat and that the receipt of compensation was only a mistake which is sought to be expanded to make it a criminal offence. Immediately, when the sellers companies came to know about the mistake, they re-deposited the said compensation along with the interest.

Once, it is found that no criminal offence is made out, the cancellation report has to be accepted and consequently, the criminal complaint filed by the complainant along with the summoning order has to be quashed. As such, both the present petitions are allowed. FIR No.279 dated 29.11.2010 under Sections 420, 463, 465, 468, 471, 120-B IPC registered at Police Station Kherki Dhaula, District Gurgaon, protest petition dated 23.7.2011 (Annexure P3) and summoning order dated 18.12.2012 (Annexure P5) are hereby quashed.

Both the petitions are accordingly allowed.

24.05.2016 **(Kuldip Singh)**
gk **Judge**