

CRM-M-44040-2014

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

CRM-M-44040-2014 (O & M)

Date of Decision: 08.09.2016

Vivek Sawal

... Petitioner

Versus

Vaibhav Batra

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Hemant Bassi, Advocate,
for the petitioner.

Mr. Harish Goyal, Advocate,
for the respondent.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of complaint No.02 dated 22.01.2013 (Annexure P-4), under Sections 420 and 120-B IPC and order dated 15.10.2014 (Annexure P-5) passed by learned Chief Judicial Magistrate, S.A.S.Nagar Mohali whereby the petitioner has been summoned to face trial.

Notice of motion was issued in this case. Respondent put in appearance through his counsel and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that respondent-Vaibhav Batra filed a complaint against the present petitioner and Vishawdeep Kapoor, under Section 156 (3) Cr.P.C., for registration of FIR, under Sections 420 and

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120-B IPC.

The brief facts of the case, as noted down in the judgment passed by learned Chief Judicial Magistrate, SAS Nagar, Mohali, are as under:

“The brief facts of this complaint are that both the accused in July 2011 have approached the complainant to sell a residential plot measuring 150 square yards in Areo City, Urban Estate, District SAS Nagar, Mohali to be allotted by the GMADA against application form No.45504 and at that time, the accused had represented that the accused No.1 is the absolute owner of the said plot and the complainant believed the accused that the accused No.1 was the absolute owner of the said plot. The total sale consideration agreed upon was Rs.25,000/- per square yard as premium + already paid up amount to the GMADA. The agreement was entered into between the parties on 21.07.2011 and on the said day, the accused no.1 also received Rs.8 lacs as earnest money from the complainant in the presence of accused no.2 and other attesting witness to the agreement i.e. Rajeev Kumar and accused had represented that the accused no.1 was the owner of the aforesaid plot/form/LOI. The last date for completion of the bargain was fixed on 07.08.2011 but when on the said date, the complainant approached the accused no.1 with the balance amount of sale consideration, then accused no.1 showed his inability to transfer the said plot in the name of complainant as the accused no.1 was not the absolute owner of the plot in question and the accused promised that as and when the aforesaid plot is transferred in his name, he will inform the complainant and transfer the same in his name. Thereafter the complainant approached the accused number of times with balance sale consideration but the accused always put off the matter on one pretext or the other. The complainant served a

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legal notice dated 05.05.2012 upon the accused which was sent through post on 07.05.2012 to know the status of the plot. Thereafter, in May 2012, the complainant on inquiry from the GMADA office came to know that plot/LOI stood transferred in the name of accused no.1 on 15.09.2011 vide memo No.5379 dated 15.09.2011. Thereafter with an intention to cheat the complainant, the accused no.1 further transferred it in the name of accused no.2 on 20.09.2011 vide memo No.7063 dated 20.09.2011. The accused no.2 was the witness of the said agreement to sell entered into between the complainant and accused No.1. Both the accused have approached the complainant jointly to sell the aforesaid plot but their intention not to transfer the plot in the name of the complainant was very much there on the very first day i.e. on the date of agreement itself. The complainant has also moved an application to SSP Mohali in this regard immediately thereafter and the said application was marked to the EO Wing Mohali and both the parties were called. The accused No.1 had offered the complainant that he will arrange another plot from the market but it is the accused no.1 who has breached the contract, so there is no question for the complainant to buy another plot through accused no.1 but till date police has not taken any further action on the said application of the complainant. Hence, prayer is made accordingly for summoning the accused.”

Vide impugned order dated 15.10.2014, learned Chief Judicial Magistrate, SAS Nagar, Mohali after going through preliminary evidence summoned the present petitioner and accused-Vishawdeep Kapoor to face trial under Sections 420 and 120-B. Feeling aggrieved, the present petitioner has filed this petition for quashing of the complaint (Annexure P-4) and impugned order dated 15.10.2014 (Annexure P-5).

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Learned counsel for the petitioner mainly argued that neither any case is made out against the present petitioner nor he has committed any offence and has been implicated falsely in this case.

From the record, I find that agreement to sell was executed on 21.07.2011 in which accused No.1-Vishawdeep Kapoor represented as owner of the plot, being allotted by GMADA. As per the version of complainant, ₹8 lacs were paid as earnest money in presence of accused No.2, the present petitioner, being attesting witness to the agreement which is entered into between complainant and accused No.1. The sale deed was to be executed on 07.08.2011, but as accused No.1 was not owner on that day, therefore, sale deed could not be executed. As per the arguments, on 15.09.2011, accused No.1 became absolute owner of the property in dispute and on the very next date i.e. 16.09.2011, accused No.2, the present petitioner applied for transfer of the plot in his favour from accused No.1 which *prima facie* shows the *mala fide* intention to cheat the complainant. The ownership was changed in favour of accused No.2, the present petitioner, on 20.09.2011, as argued.

In view of all these facts, it cannot be held that filing of complaint is abuse of process of law or amounting to miscarriage of justice. At this stage, there is nothing to show that the present petitioner/accused has been falsely implicated in the complaint case. Further, at this stage, it cannot be held that no offence is made out against the present petitioner or it is a civil dispute.

Therefore, I find that the impugned order dated 15.10.2014

(Annexure P-5) passed by learned Chief Judicial Magistrate, SAS Nagar,

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Mohali is correct, as per evidence and law. No ground is made out for quashing the impugned complaint (Annexure P-4) and order dated 15.10.2014 (Annexure P-5).

Therefore, finding no merit in the present petition, the same is dismissed.

However, nothing stated above shall in any way constitute my opinion on the merits of the case.

08.09.2016
parveen kumar

(INDERJIT SINGH)
JUDGE

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No