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

CRM-M-6585-2016
Date of Decision : 26.05.2016

Santosh Dhingra ....Petitioner

versus

State of Punjab ....Respondent

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

Present: Mr. Aakash Singla, Advocate
for the petitioner.

Ms. Simsi Dhir Malhotra, DAG, Punjab.

Mr. P.S. Ahluwalia, Advocate
for the complainant.

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

Petitioner claims that she is a lady and has been falsely implicated in an FIR registered against the petitioner and her son - Sahil Kumar, at the instance of complainant Megh Nath alleging that petitioner and her son had entered into an agreement of sale dated 21.04.2015 for selling their house for Rs.85 lacs. A sum of Rs.20 lacs was paid by the complainant as earnest money and, thereafter, possession was handed over to the complainant. The petitioner in connivance with her son kept on extending the date of registration of the sale deed on one pretext or the other and received a sum of Rs.45 lacs more from the complainant with an assurance that sale deed would be registered in favour of the complainant after few days. The complainant, on inquiry, came to learn that the house purchased by the complainant, stood mortgaged by petitioner and her son with ICICI Bank, though it was assured to the complainant that it was free from all encumbrances.

Learned counsel for the complainant has intervened to oppose the application for pre-arrest bail contending that the factum of property in dispute being mortgaged was kept concealed intentionally for a long duration to dupe the complainant. The mortgage created by the petitioner and her son with bank in January, 2015 was not incorporated in the revenue record in January, 2015 whereas the agreement of sale with the complainant has entered into on 21.04.2015 when the property already stood mortgaged.

Learned counsel for the complainant has submitted that since the complainant has been duped, complainant is ready to give up the possession on receiving a sum of Rs. 65 lacs paid by him and is also ready and willing to pay balance of Rs. 20 lacs to the petitioner to get executed the sale deed in his favour subject to discharging the liability *qua* the bank at petitioners' own level.

I have considered the facts and circumstances of the case. The facts are not disputed that when the complainant entered into agreement of sale, there was no entry in the revenue record regarding the property being mortgaged. Pursuaded by the clear record regarding the property, the complainant entered into the transaction of sale and paid major part of the consideration. The petitioner being unable to discharge the civil liability towards the complainant and having obtained dual benefit against the same property *prima facie* has caused wrongful loss to the complainant. No ground is made out to grant concession of bail to the petitioner, at this stage.

Dismissed.

Interim order vacated.

It will be open to the petitioner to approach this Court again, in case matter is resolved between the complainant and the petitioner.

(M.M.S. BEDI)
JUDGE

26.05.2016
Neha