

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-10092 of 2017 (O&M)

Date of Decision: 01.08.2017

H.L. Kathuria and others

....Petitioners

VERSUS

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.V. Sharma, Advocate
for the petitioners.

Mr. Ashish Yadav, Addl. AG, Haryana.

Mr. Gaurav Mohunta, Advocate
for the complainant.

SURINDER GUPTA, J.(Oral)

CRM-23127-2017

Application is allowed as prayed for and replication on behalf of petitioners alongwith certified copies of documents Annexure P-10 (colly) and Annexure P-11 (colly) are taken on record subject to all just exceptions.

CRM-M-10092-2017

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No. 474 dated 23.09.2016 registered for offences punishable under Sections 406 and 420 read with Section 34 of Indian Penal Code (for short 'IPC'), at Police Station Manesar, District Gurugram.

The dispute in this case pertains to agreement to sell dated 31.12.2014 executed between complainant and Smt. Harish Mohini

Kathuria, Director of M/s GOC Fashion Pvt. Ltd. Under this agreement M/s

GOC Fashion Pvt. Ltd. agreed to sell its plot situated in Industrial Estate known as IMT Manehsar to M/s Loyalty Exim Pvt. Ltd. for a total sale consideration of ₹16 crores. The details of total sale consideration were mentioned in the agreement as follows:-

“Outstanding loan of HFC ₹5,50,00,000/- (balance as 1st Dec. 2014).
HSI IDC enhancement cost ₹2,25,00,000/- (balance as of 1st Dec. 2014).
Advance amount received by 2nd party ₹4,53,00,000/-.
Balance payable to 2nd party ₹3,72,00,000/-.”

It was agreed that amount payable to HFC and HSI IDC will be paid in full by second party, which will include additional interest charged by above authorities. However, balance sale consideration payable to vendor will remain as ₹3,72,00,000/-.

FIR was got registered by Prashant Sethi, who was also Director and authorized signatory of M/s Loyalty Exim. Pvt. Ltd. As per allegations in FIR, complainant had entered into an agreement to purchase industrial plot of vendor M/s GOC Fashion Pvt. Ltd. for a sale consideration of ₹16 crores. The complainant alleged that initially he was informed that the plot agreed to be sold is free from all incumbrances, charges, Court litigation and from any lien or advance claims. Later he came to know that said property is under lien and they have liability of ₹7.5 crores towards Haryana Financial Corporation and Haryana State Industrial Development Corporation. This disturbed him but the vendor apologized and asked him to pay their liability on the property and adjust the same towards sale consideration. An agreement was executed on 31.12.2014 where all the terms settled were recorded. From June, 2014 till the date of registration of FIR i.e. 23.09.2016, the entire sale consideration of ₹16 crores was paid.

Thereafter, vendor started showing their true colour and demanded

additional payment of ₹5 crores to complete the sale agreement and rented out the property agreed to be sold to different tenants from whom they were getting ₹9 lacs per month as rent. They have threatened that until and unless ₹5 crores is not paid, they will not execute the sale deed and thereby played fraud with complainant.

I have heard learned counsel of parties and perused the paper-book with their assistance.

Learned counsel for complainant while referring to copy of ledger account of M/s GOC Fashion Pvt. Ltd., placed on record as Annexure R-3/1, has argued that payment of ₹15,69,47,803/- has so far been made to vendor. The payments were made through different cheques, which are duly reflected in statement supplied by Axis Bank. He submits that petitioner instead of executing the sale deed filed a complaint against complainant thereby denying the agreement and taking the plea that it was the result of fraud played on them because of business transaction with complainant. The payment of loan amount as per agreement was also made to HFC and HSIIDC, who have issued no due certificate, still the petitioner has not come forward to execute the sale deed.

The moot question in this case is execution of agreement dated 31.12.2014 by Director of M/s GOC Fashion Pvt. Ltd., Smt. Harish Mohini Kathuria, who has since died. Petitioners have been arrayed as accused in their capacity as other Directors of M/s GOC Fashion Pvt. Ltd. The complainant has alleged that he has paid ₹4,53,00,000/- as earnest money and then cleared loan of HFC and HSIIDC, which was due on the plot, agreed to be purchased by him and now petitioners have backed out and are not executing the agreement to sell.

The plea raised by petitioners if taken at face value discloses a civil liability of petitioners to execute the sale deed under agreement dated 31.12.2014. Allegations in the FIR that at the time of execution of agreement some misrepresentation about incumbrances on the plot in question were made which came to notice of complainant at later stage, is not supported by averments in agreement, wherein outstanding loan on plot find mention. The complainant has alleged that he intended to purchase this plot in 2012 and had talks with petitioners and bargain was settled for ₹16 crores. There is no documentary evidence to show as to on what terms the transaction to buy said plot has taken place. In the absence of any other evidence to this effect, only terms mentioned in agreement dated 31.12.2014 appear to be binding between parties.

Keeping in view above facts and that entire case is based on documentary evidence, I am of the considered opinion that custodial interrogation of petitioners by police is not required. This petition is allowed and petitioners are directed to surrender before the police and join investigation within a period of two weeks. In the event of their arrest being required, they shall be released on interim bail on their furnishing bonds to the satisfaction of Arresting Officer, subject to following terms:-

- (i) that petitioners shall make themselves available for interrogation by the police as and when required;
- (ii) that petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) that petitioners shall not leave India without the prior permission of the Court.

(iv) that petitioners will seek regular bail on the presentation of challan in Court.

It is, however, made clear that nothing observed herein will be treated as opinion on merit of any of the plea raised by the parties or have any bearing at the time of disposal of case on merit.

August 01, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No