

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

(i) CRM No.M-11898 of 2014 (O&M)

Anirudh Bhardwaj

...Petitioner

VERSUS

State of Haryana and others

...Respondents

(ii) CRM No.M-4483 of 2015 (O&M)

Harvinder Aggarwal

...Petitioner

VERSUS

State of Haryana

...Respondent

Date of Decision: September 01, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.P.S.Deol, Senior Advocate with
Mr.Kshitij Sharma, Advocate
for the petitioner (in CRM No.M-11898 of 2014).

Mr.A.P.S.Deol, Senior Advocate with
Mr.Ashish Gupta, Advocate for the petitioner
(in CRM No.M-4483 of 2015).

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

Mr.Vaibhav Sharma, Advocate
for respondent No.2 (in CRM No.M-11898 of 2014).

INDERJIT SINGH, J.

Both the above-mentioned cases are taken up together as the
same have arisen from same FIR.

for quashing FIR No.295 dated 22.10.2013 under Sections 406 and 420 IPC registered at Police Station Murthal, District Sonapat and all subsequent proceedings arising therefrom.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petitions.

Learned counsel for the petitioners argued that this case is of civil nature and no offence is made out. They further argued that, in no way, the offence under Sections 406 and 420 IPC are made out against the petitioners. Learned counsel for the petitioners also argued that registration of the FIR in the present case, is nothing but abuse of process of law and it has been got registered to put pressure upon the petitioners. The petitioners have done their work whatever possible and the building could not be completed, not due to the fault of the petitioners. Learned counsel for the petitioners, therefore, argued that FIR should be quashed.

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

The perusal of the FIR shows that it has been registered on the application/complaint moved by Daya Singh, complainant, who mainly stated that he along with Rajiv Tyagi is the owner of land measuring 15034.2 sq. yards. They got the land from the competent authority in the year 2010 for change of use for setting up a motel over the said land. They were granted permission subject to the condition that the construction of the motel will be completed within two years from allotment i.e. 18.10.2012 and they paid ₹98,15,602/- for the change of land use permission. It is further stated that Harvinder Singh approached them and introduced himself

showed all the documents and stated that he being the authorized Architect from the competent authority, can get their all works done with respect to approval/sanction of Map of the Motel. He also assured to get the drawings sanctioned from the competent authority. An agreement was entered with him on 08.06.2012. As per the initial agreement, ₹1,55,00,000/- was agreed to be paid for all above stated work. The construction work started and the complainant party having no knowledge of construction, started making payments as per the request of accused and till 24.09.2012, they paid ₹58,80,064/-. At that time, the complainant came to know that they were misled by the accused as no drawings were got approved by the accused from competent authority and they started the construction without getting any approval. It is further stated that the accused could not complete the construction within time i.e. 18.10.2012 and only plinth level was casted. The complainant asked for return of their money but the accused threatened them and in turn, demanded ₹2,18,93,400/- to restart the construction after approval of maps. It is further in the FIR that on 09.01.2013, fresh agreement was executed and complainant party agreed to pay ₹1,35,00,000/- excluding the previous amount of ₹58,80,084/- but till date, despite of the fact that they provided all materials and made payments of all the bills, the accused have not completed the work as agreed. The accused persons were negligent towards the performance of their obligations. Neither they nor their responsible agent had been supervising the work. It is also stated that the dead line for completing the construction work and getting the NOC from competent authorities i.e. 18.10.2013 expired on that day, while a lot of work was yet to be done and the accused again demanded

The perusal of the FIR shows that there is nothing which shows the intention to cheat the complainant by the petitioners from the very beginning. Rather, it looks that the first agreement was executed between the parties on 08.06.2012 and CLU was to expire on 18.10.2012. It is almost impossible to construct a motel within four months after getting the site plan etc. approved and even then, the petitioners started the work and had gone upto plinth level. The fresh agreement between the parties on 09.01.2013 also shows that there was no intention on the part of the petitioners to cheat the complainant from the very beginning. If it would have been so, then the question of entering into fresh agreement after about 7 months, does not arise.

As per learned counsel for the petitioners, they got building plan approved on 31.01.2013 and they got approved fire safety plan on 22.03.2013 and DPC certificate on 16.04.2013. Learned counsel for the petitioners further contended that the application was moved by the complainant to occupy on 08.10.2013 and this complaint was made on 22.10.2013, on the basis of which FIR in question was registered on 22.10.2013.

The perusal of the FIR itself shows that the dispute between the parties, at the most, can be held as breach of the agreement. There is nothing in the FIR to show that petitioners had an intention to cheat the complainant from the very beginning. The perusal of the record shows that the registration of the FIR in the present case is nothing but abuse of process of law and amounts to miscarriage of justice and the same has been got registered to put pressure upon the petitioners.

Therefore, finding merit in both the petitions, the same are

allowed. FIR No.295 dated 22.10.2013 under Sections 406 and 420 IPC registered at Police Station Murthal, District Sonapat and all subsequent proceedings arising therefrom are hereby quashed.

September 01, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No