

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

(1) CRM No.M-17225 of 2016 (O&M)

MGF Developments Ltd. and others

...Petitioners

Versus

State of Haryana and others

...Respondents

(2) CRM No.M-18441 of 2016 (O&M)

Arun Mitter

...Petitioner

Versus

State of Haryana and others

...Respondents

Date of Decision: January 11, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Cheema, Senior Advocate with
Mr.Sanjeev Sharma and Mr.Shekhar Verma, Advocates
for the petitioners.

Mr.Siddharth Sanwara, Deputy Advocate General, Haryana
for the respondent-State.

Mr.M.L.Sarin, Senior Advocate with
Mr.Saurabh Gautam, Advocate
for respondent No.3

INDERJIT SINGH, J.

Petitioners have filed these petitions under Section 482 Cr.P.C.

read with Article 21 and 19(g) of the Constitution of India for quashing of

criminal complaint No.173 dated 20.12.2014 titled as “Rajender sharma vs.

MGF Developments Limited and others”, summoning order dated 11.01.2016 passed by learned JMIC, Gurgaon and judgment dated 02.05.2016 passed by learned Addl. Sessions Judge, Gurgaon, vide which the summoning order was modified and all the subsequent proceedings.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.3 appeared and contested the petitions.

At the time of arguments, learned counsel for the petitioners argued that the complainant was Legal Head of the accused company and was working with the company and was knowing all the facts, terms and conditions of the contract. He next argued that Flat No.VP-C/102, 1st Floor, Tower-C in the project named “The Villas”, Sector-25 DLF, Phase-II, Gurgaon was allotted to one Sanjiv Dhawan at a tentative price of ₹2,10,21,950/- on 24.05.2006. He further argued that the complainant-respondent No.3 purchased the said flat on 18.07.2008 as subsequent buyer and he gave undertaking to be governed by original buyer's agreement. Learned counsel for the petitioners next contended that as respondent No.3 made default in payment of four installments due from 26.02.2009 to 14.07.2011, therefore, he was informed about cancellation of allotment and forfeiture of earnest money. After 18 months of cancellation of allotment, respondent No.3 made request for restoration vide letters dated 06.02.2013, 13.02.2013 and 18.02.2013 which are placed on the record. On 26.02.2013, account statement was provided to complainant and construction was completed.

Learned counsel for the petitioners further contended that in February 2013, the company acceded to the request of the complainant and allotment was restored. On 07.03.2013, respondent No.3 further sold the

flat to Dr.Anmol Sethi for a total sale consideration of ₹3,29,41,546/- and he retained ₹1,28,74,391/- making profit of ₹39 lakhs. It is further argued that on 20.12.2014, after passage of one year nine months of the transfer of the flat, the present complaint was filed by complainant-respondent No.3. It is also argued that report under Section 202 Cr.P.C. was called from the police and the police gave the report that no case is made out. Learned counsel for the petitioners next argued that no offence is made out from the perusal of the complaint itself. There is no embezzlement by the public servant etc. and no offence under Section 409 IPC is made out. Similarly, there are no averments regarding forgery of any document. He also argued that there are no particulars in the complaint as to how the offence under Section 384 and 477-A IPC are made out, though the revisional Court in the revision petition filed by the present petitioners, also added these offences, which the complainant did not ask for, to summon the accused in the complaint. It is next argued by learned counsel for the petitioners that it is mere dispute of civil nature as respondent No.3 did not comply with the conditions of the buyer's agreement and made default in payment and therefore, allotment was cancelled and when the complainant made compassionate requests to the company time and again, the allotment was restored by the company. He further contended in the request letters which were given in February 2013 etc., the complainant has also requested not to impose the penalty, which means that the complainant was knowing that this is condition in the buyer's agreement to recover interest @ 15% per annum in case of default and further to impose penalty of 3% interest .

Learned counsel for the petitioners also argued that separate calculation was

allotment. Therefore, by asking for interest and the penalty, in no way, it can be held that documents have been forged or fabricated. It is also argued that there is no concept of vicarious liability in criminal law unless specifically provided by the Statute. In the present case, all the offences are under IPC. Therefore, concept of vicarious liability will not be applicable. He next argued that perusal of the complaint itself shows that nothing has been attributed to the Directors specifically as to how they have committed offence. Only general allegations are levelled and even from those averments, he argued that no offence is made out.

On the other hand, learned counsel for complainant-respondent No.3 argued that first of all, the petitioners while obtaining the order of notice of motion, have given wrong statement by stating that respondent No.3 paid only ₹90,000/- instead of ₹90,00,000/- and also by stating that respondent No.3 sold the property after getting profit of ₹39 lakhs, which is wrong and only on this ground, relief under Section 482 Cr.P.C. should be denied to the petitioners. He further argued that complainant has suffered loss and has to make distress sale and he has not earned any profit. Learned counsel for respondent No.3 next argued that the construction was to be completed within 36 months and it was the fault of the petitioners that they have not completed the building in time and furthermore, the payment was construction-linked payment and there is nothing as to when the construction was completed and when the complainant was to make the payments. It is also argued that there is tripartite agreement, copy of which is Annexure R-3/1, which was executed in the month of July 2008 and as per that agreement, the petitioners can raise the demand from the bank

regarding installments. If they have not raised any demand, then it is not the

fault of the complainant. He further contended that both the Courts below have applied its mind and have found prima facie case for summoning the petitioners. No illegality has been committed and this petition under Section 482 Cr.P.C. is nothing but can be treated as second revision, which is not maintainable. Therefore, he argued that the present petition is liable to be dismissed.

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

From the arguments of learned counsel for the parties, I find that first of all, if at the time of issuance of notice of motion, learned counsel for the petitioners has inadvertently stated that ₹90,000/- has been paid by respondent No.3 instead of ₹90,00,000/-, in no way, the petition can be dismissed on this ground. It is settled law that Court is to do substantial justice between the parties as far as possible and not to go into the technicalities of law. Furthermore, it is not the fault of the petitioners because in the petition, specifically it is written that ₹90 lacs has been paid by respondent No.3 to the petitioners and respondent No.3 has earned profit of ₹39 lacs which means that if there was an inadvertent mistake, it was only of learned counsel for the petitioners. Otherwise also, it is not the material fact. The material argument for issuance of notice of motion was recovery of the interest and penalty by the accused cannot be held as extortion and forgery of document. Other aspect is also there that it could be a clerical mistake while typing the order but it is appreciable that learned counsel for the petitioners has taken it upon him that he might have inadvertently stated so. Therefore, argument of learned counsel for

respondent No.3 has no merit and this fact, in no way, amounts to

misleading the Court or giving wrong facts to the Court and on this ground alone, the petitions are not liable to be dismissed.

Now, coming to the main arguments, I find that the main facts regarding allotment of flat to Sanjiv Dhawan and then purchasing of that flat by respondent No.3 by giving undertaking to be governed by original buyer's agreement and further the fact that respondent No.3 committed default in payment of the installments, are admitted one. The letter written by the accused-developers regarding the forfeiture of earnest money and cancellation of the allotment of flat as per original buyer's agreement and further, sending of letters by respondent No.3-complainant on compassionate ground requesting to restore the allotment of flat, are also admitted facts.

I have gone through the averments of the complaint. There is nothing to show as to how much amount has been embezzled and by whom. No offence under Section 409 IPC is made out. Similarly, I have gone through the documents placed on the record showing that two statements have been given regarding the amount due at two different times showing some amount. Another calculation is given regarding recovery of interest @ 15% and 3% penalty. Learned counsel for the petitioners has shown the original buyer's agreement having terms and conditions and these terms and conditions are also admitted one. Therefore, asking of the interest as well as penalty as per the buyer's agreement, in no way, amounts to extortion nor amounts to forgery of documents. From the averments of the complaint, no offence is made out.

As regarding the payment schedule, which is also placed on the record, plan of installments has been mentioned as to when these are to be

made i.e. on the completion of 3rd floor, 6th floor, 9th floor etc. In the calculation, where the default has been shown by the petitioners to the complainant that he has committed default, the detailed calculation has been giving showing the completion of 3rd floor, 6th floor, 9th floor etc. The fact that there was a tripartite agreement and the petitioners can ask for the amount from the bank and they have not asked for the same, also will not amount to commission of any offence.

Furthermore, there is no concept of vicarious liability in the criminal law unless specifically provided under the Statute. For the commission of the offence under the IPC, where the offence is committed by the company, the Directors are not liable. Though, in the present case, even from the record, no offence has been committed by anybody and there is nothing in the complaint showing specifically as to which document has been forged and how the offence of extortion etc. is made out. Asking for interest and penalty by the petitioners as per buyer's agreement, does not constitute any offence. At the most, the dispute can be of civil nature, as the police has stated so in the report under Section 202 Cr.P.C.

Learned Magistrate as well as learned Addl. Sessions Judge while passing the impugned order and judgment, have not discussed in detail as to how the offences are made out. From the averments of the complaint as well as from the preliminary evidence, there is no ground to summon the accused in this case. The summoning order dated 11.01.2016 passed by learned JMIC, Gurgaon and judgment dated 02.05.2016 passed by learned Addl. Sessions Judge, Gurgaon, are not as per law and the same are set aside.

complaint is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in both the petitions, the same are allowed. The criminal complaint No.173 dated 20.12.2014 titled as “Rajender sharma vs. MGF Developments Limited and others” and all subsequent proceeding arising therefrom, are hereby quashed.

January 11, 2017	(INDERJIT SINGH)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No