

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM-M-26064-2016 (O&M)
Date of Decision: 01.8.2017

Ramesh Kumar

..Petitioner

versus

Swaran Singh and others

..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Rishu Mahajan, Advocate, for the petitioner.

RAMENDRA JAIN, J.

Through this petition under section 482 of the Code of Criminal Procedure, prayer has been made for quashing order dated 11.12.2014 passed by Judicial Magistrate 1st Class, Amritsar, dismissing the complaint of the petitioner and order dated 28.1.2016 passed by learned Additional Sessions Judge, Amritsar, affirming the order dated 11.12.2014.

Briefly stated, the petitioner filed a complaint under sections 420/467/468 and 471 IPC against the respondents after six years in 2009 on the basis of agreements to sell, allegedly, executed between the parties in the year 2003 on the allegations that the respondents, though vide previous agreements dated 21.2.2003 and 26.2.2003, had agreed to sell 23K-6M of land for a sum of Rs.28,25,000/- per killa to the petitioner, but only delivered the possession of land measuring 16 Kanals, which too on demarcation, after spending a lot of money on its development, was found to be short by 3K-01M as on measurement the same was found to be 12K-

19M. When the petitioner came to know about the aforesaid short delivery of possession of land to him by the respondents, the complainant requested them to execute the sale deed qua the remaining land. The respondents, initially making some excuses, finally refused to do so. In this way, the respondents had committed fraud with the petitioner.

In preliminary evidence, the complainant examined Bodh Raj as CW1 and himself as CW2, besides Om Parkash as CW3 and placed on the record certain documents, viz., copy of report submitted by Officer Incharge, Police Station Vijay Nagar, Exhibit C1, copy of letter written by Superintendent of Police to the Senior Superintendent of Police as Ex.C2, photo copy of roznamcha as Mark A and his application moved to the Senior Superintendent of Police, Amritsar Mark B. After hearing learned counsel for the petitioner, the learned Judicial Magistrate 1st Class, Amritsar, vide impugned order dated 11.12.2014 (Annexure P-1) dismissed the complaint.

The petitioner challenged the said order by way of revision, but remained unsuccessful as the same was also dismissed vide order dated 28.1.2016 (Annexure P-2) by learned Additional Sessions Judge, Amritsar.

Learned counsel for the petitioner has contended that the intention of respondent nos. 2 to 4 from the very beginning was to cheat and commit fraud with the petitioner. Sukhwinder Singh, Office Incharge of Police Station Vijay Nagar, upon receipt of the application of the petitioner through the Senior Superintendent of Police Amritsar, submitted his report dated 7.2.2006 in favour of the petitioner. Thereafter, another inquiry was conducted by the Superintendent of Police City-II, Amritsar and subsequent report dated 11.4.2007, after conducting fresh inquiry, given by him also

supported the claim of the petitioner, but no FIR was registered. The impugned orders passed by the trial court as well as the revisional court are based on conjecture and surmises, inasmuch as both the courts below have failed to appreciate that there was no delay on part of the complainant in filing the complaint or to approach the police and even this court as well vide CrI.Misc.No.M-8365 of 2009, which, ultimately was got dismissed as withdrawn on 25.3.2009 with liberty to avail an alternative remedy of filing complaint. Both the courts below have failed to appreciate the statement of the petitioner and the evidence adduced by him, which had clearly established the complicity of the respondents in the commission of the crime under section 420 IPC and thus, the trial court ought to have summoned the respondents, inasmuch as at the stage of summoning, the Magistrate was not required to consider the defence version or materials or arguments to evaluate the merits of the materials or evidence brought on record by the petitioner, as he was not competent to undertake the exercise to find out at that stage whether the materials brought on record by the petitioner would lead to conviction or not. The respondents, after summoning, could seek their discharge at the time of framing of charge, if evidence brought before the court by the petitioner was insufficient for framing of charge against them.

I have given my thoughtful consideration to the submissions made by learned counsel for the petitioner and also gone through the impugned judgments passed by both the courts below.

The petitioner has filed the impugned complaint in the year 2009 on the basis of agreements to sell dated 21.2.2003 and 26.2.2003 after a long period of six years. There is no explanation on behalf of the

petitioner as to what abstained the petitioner from not taking action against the respondents promptly or within reasonable time. The plea of the petitioner that he had moved an application Mark B to the Senior Superintendent of Police, Amritsar, has been dealt with by the trial court. The trial court has observed that the said application bears no date, but the stamp of the office of the Senior Superintendent of Police, Amritsar, bears the date as 12.1.2006, which means that the application was moved by the petitioner against the respondents after around three years and thereafter, remained silent even for not taking action against the accused by the police on the basis of that complaint. The trial court has further observed as under:-

“ Further, the photocopy of alleged agreement in question dated 27.2.2003 shows that the agreement was executed in favour of complainant along with Munish Mahajan, Nidhi Kakkar, Pallavi, Pankaj Kumar, Palwinder Singh and Prince Sachdeva, but complainant has failed to examine the above persons in support of his case. Further, for the execution of sale deed regarding remaining land, the remedy available with the complainant was to file a civil suit for possession by way of specific performance, but he failed to prove on record as to whether he has filed any suit in the Civil Court and that fact also goes against the complainant. The complainant has also failed to place on file the original agreement in question and he has placed only a photocopy of that agreement and the court cannot place its reliance on a document which is a photocopy and not the original or certified. The case of complainant is

totally based on oral statement of the complainant, which is remained uncorroborated with any cogent or convincing evidence and as such, no ground is made out to summon the accused persons on the basis of oral allegations of the complainant. Further, the complainant could have placed on record the relevant revenue record to show whether the accused persons were the owners of the property in dispute.”

In view of the above discussion, I do not find any illegality or perversity in the impugned orders passed by both the courts below. Consequently, the instant petition, being without any merit, fails and is dismissed.

01.08.2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable: | Yes/No |