

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

CRM No.M-25195 of 2015 (O&M)

Date of Decision: January 10, 2017

Rupinder Singh

...Petitioner

VERSUS

Raj Kumari and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arun Jindal, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against Raj Kumari and other respondents for setting aside the order dated 15.01.2013 passed by learned Judicial Magistrate Ist Class, Patiala, vide which the complaint filed by the petitioner was dismissed and judgment dated 07.01.2015 passed by learned Addl. Sessions Judge, Patiala vide which the revision filed by the petitioner was also dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that Rupinder Singh filed a complaint against Raj Kumari and seven other accused under Sections 406, 420, 323, 506/34 and 120-B IPC. The brief facts of the complaint as noted down in the judgment passed by learned JMIC, Patiala, are as under:-

the accused persons are that accused No.1 Raj Kumari was owner of the plot comprised in Khewat/Khatoni No. 3766/6343 Kh. No. 4496/1697/2(0-61/2), 1698 min (0-9-7), 1699 min (1-11-1/4), 4498/1700 min (1-1) item 4 measuring 3 bighas 5-3/4 biswas out of which 3/65-3/4 share measuring 0-3 biswas i.e. 150 sq. yards which was sold by her to the complainant for Rs. 3,75,000/- on 4.1.2006 vide agreement to sell dated 4.1.2006. All the accused persons after hatching criminal conspiracy received Rs. 3,75,000/- from the complainant on account of consideration of the aforesaid plot out of which Rs. 2,50,000/- was taken by all the accused persons at the time of agreement to sell dated 4.1.2006 and Rs. 75,000/- were received by them on 17.6.2006, Rs. 25,000/- were received by them on 15.7.2006, Rs. 10,000/- were received by them on 12.9.2006 and Rs. 15,000/- were received by them on 8.11.2006. That amount was received by them in the presence of Billu Lal son of Bhanwari Lal, Sheela Rani wife of late Sh. Raj Kumar and Amrinder Singh son of the complainant on the aforesaid dates. The possession of the plot was delivered to the complainant. On that plot the complainant has already constructed his one room/shed and electric connection is also installed in the name of the complainant. The complainant and his family have been residing in the house after raising the construction on the aforesaid plot for last about 5 years. The complainant also alleged that even earlier also he had purchased one plot from the accused on 4.10.2005 and paid Rs. 1,85,000/- whereas the actual value of that plot was Rs. 1,50,000/-, so the accused received Rs. 35,000/- in excess from the complainant. The accused persons assured that they will execute the sale deed very soon in view of agreement to sell dated 4.1.2006 and they also assured that they shall adjust Rs. 35,000/- out of the sale consideration of the present plot. But at the time of such adjustment, the accused persons said that they are in shortage of money so the complainant should not adjust that amount from the consideration of sale of that plot but the accused will return Rs. 35,000/- after few months. The accused persons kept on putting off the matter of the execution of sale deed on one pretext or the other and they told the complainant that since the possession of the plot is already with the complainant, so he can raise the construction thereon and registration of sale deed is just a formality. On this assurance, the complainant raised the aforesaid construction. Thereafter, whenever the complainant requested the accused persons to execute the sale deed, then all the accused persons abused the complainant and threatened him to eliminate him from his life. On 6.1.2011 at about 5:00 pm accused persons came to the residence of the complainant where they abused the complainant and his wife and threatened to kill them. The accused persons also with malafide intention tore the clothes of the wife of the complainant with the intention to defame her in the society and they also called bad names to the complainant party and called

them as “Thug, Chor” etc. Thus, this complainant under Sections 406, 420, 323, 506/34 and 120-B IPC.”

After going through the preliminary evidence, learned JMIC, Patiala, dismissed the complaint. A revision was filed which was also dismissed by learned Addl. Sessions Judge, Patiala, vide judgment dated 07.01.2015.

From the record, I find that the main allegation is that accused No.1-Raj Kumari, was owner of the plot and she agreed to sell the same to the complainant for ₹3,75,000/- vide agreement dated 04.01.2006. As per the complainant, the possession of the plot was delivered to him and he has raised the construction over it, which means that other accused No.2 to 8 are not involved in the transaction. The fact that sale deed has not been executed on the basis of the agreement to sell shows that it is a dispute of civil nature. The complainant was at liberty to file civil suit for getting registered the sale deed. Neither any offence is made out nor there is any averment that from the very beginning the accused persons have intention to cheat the complainant. Rather, the facts of the case show that there was no such intention as after entering into agreement to sell, they have delivered the possession and the complainant has raised the construction and the accused have not objected to it. Therefore, no offence is made out for this transaction regarding agreement to sell.

Further, it is stated in the complaint by the complainant that he has also purchased another plot from the accused and paid ₹1,85,000/- whereas the actual value of that plot was ₹1,50,000/-, so the accused received ₹35,000/- in excess from the complainant and they have not

adjusted that amount in the present agreement to sell. No writing/document

has been shown showing that in the agreement dated 04.01.2006, this fact has been stated that accused will adjust this amount of ₹35,000/- or they have taken ₹35,000/- in excess.

In view of the above discussion, I find that the findings given by both the Courts below are correct, as per evidence and law and the same are upheld.

Therefore, finding no merit in the present petition, the same is dismissed.

January 10, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No