

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

CRM No.M-38369 of 2014 (O&M)

Date of Decision: May 05, 2017

Jagjit Kaur

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.V.P.S.Sidhu, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Rajinder Sharma, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Kewal Singh for quashing the FIR No.79 dated 27.06.2014 under Sections 420 and 120-B IPC registered at Police Station Kathunangla, Amritsar Rural and all other consequential proceedings arising therefrom.

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

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

From the record, I find that the FIR in the present case has been

registered on the basis of application given by complainant Kewal Singh against Jagjit Kaur, Ranjit Singh, Baldev Singh and Dalvinder Singh, Patwari. The brief averments of the complaint are as under:-

“That I Kewal Singh s/o Sh.Tarlok Singh r/o village Jhanjotti, Teh Ajnala, Distt. Amritsar and I am a law abiding citizen. (2) That I had entered into agreement to sell dt. 8.07.2008, area measuring 27K 17M, khasra No.37//4/2(2-0), 6(8-0), 7/2(5-17), 38//9/3(2-4), 9/4(1-16), 10(8-0) in Kathunangal, Tehsil and District Amritsar with Jagjit Kaur wd/o Harwinder Singh. Total consideration of Rs.21,15,000/- per acre was settled and I handed over Rs.16,00,000/- as earnest money to Jagjit Kaur at the time of execution of agreement. Sale deed was to be executed on 8.10.2008, the copy of agreement to sell dated 8.07.2008 is attached herewith. On 8.10.2008 above said Jagjit Kaur got extended the date of execution of sale deed from 8.10.2008 to 10.12.2008 which was endorsed on back of sale deed. (3) That I on 10.12.2008 went to Tehsil complex to get the sale deed executed but due to strike in the revenue side I went there again on 11.12.2008 but above said Jagjit Kaur did not turn up to execute the sale deed in my favour. I was present on both the days along with the sale deed expenses and balance sale consideration. I also gave an application along with duly attested affidavit to get my presence marked. Copy of application and affidavit are also attached herewith. (4) After this I sent a legal notice through my counsel to Jagjit Kaur on 1.05.2009, stating that I am ready and willing to get the sale deed executed, therefore, you are requested to execute the same within 15 days in my favour and take the balance sale consideration, but then also above said Jagjit Kaur did not execute the sale deed in my favour. I have also filed a civil suit against Jagjit Kaur, in which the Hon'ble court of Smt.Daljit Kaur CJJD, Amritsar on 5.02.2010 granted a stay order in my favour. (5) I had provided a copy of stay order to the Patwari, which was also got mentioned in the Jamabandi of the disputed property, in spite of all the facts mentioned, Jagjit Kaur in connivance with her son sold the property being Khasra No.37//6 37/4(2-0) 38/9/3(2-4) (1.167) (8-0) in favour of accused No.3 Baldev Singh Chandi of total area comprising 16 kanal. They in connivance with the patwari have also sanctioned the mutation in the Jamabandi, whereas Jagjit Kaur had entered into an agreement with me to sell the property. (6) That all the accused have connived and had cheated me, despite stay order of the court and entry in the Jamabandi. The accused have disobeyed the order of the court and Baldev Singh Chandi even after enquiring about the property in detail before purchasing it. (7) That Jagjit Kaur is neither returning my money nor is executing the sale deed in my favour, therefore, she has confiscated my Rs.16,00,000/-

which had caused undue gain to her.

The above mentioned accused have cheated me, therefore, it is requested that FIR be registered against them under the relevant sections. I shall be highly grateful.”

From the perusal of the record, it is clear that the dispute between the parties is regarding specific performance of the agreement to sell dated 08.07.2008. The sale deed was to be executed on 08.10.2008 but the time was extended to 10.12.2008. As per the complainant, he went to Tehsil Complex but above-said Jagjit Kaur did not turn up to execute the sale deed in his favour. After that, he sent a legal notice to the accused but even then, the sale deed was not executed. A civil suit was also filed in the year 2010 which is pending in the Court.

The case of the complainant shows that it is a case of breach of agreement to sell qua which the complainant has availed the remedy before the civil Court. The fact that accused sold the property despite the stay of the Court, does not amount to commission of offence under Section 420 IPC. The doctrine of *lis pendence* may apply in this case. Furthermore, if any stay order has been violated by the accused, the petitioner has the remedy under Order 39 Rule 2A CPC. It is nowhere the case of the complainant that intention of the accused from the very beginning, was to cheat the complainant, which is necessary ingredient for the offence under Section 420 IPC. Therefore, the necessary ingredient under Section 420 IPC is missing and the perusal of the FIR itself shows that the case is of civil nature.

In view of the above discussion, I find the filing of the FIR in question is nothing but abuse of the process of law or amounts to miscarriage of justice, especially, when the civil remedy is being availed by

the complaintant.

Therefore, finding merit in the present petition, the same is allowed. FIR No.79 dated 27.06.2014 under Sections 420 and 120-B IPC registered at Police Station Kathunangla, Amritsar Rural and all subsequent proceedings arising therefrom, are hereby quashed.

May 05, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No