

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Misc. No. M-40309 of 2014 (O&M)

Date of decision : April 20, 2017

Baldev Raj

..... Petitioner

VERSUS

State of Punjab & anr.

..... Respondents

CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI

PRESENT: Mr. Puneet Jindal, Sr.Advocate, with
Mr. N.A. Mahajan, Advocate, for the petitioner.
Mr. D.S. Virk, Deputy Advocate General, Punjab.
Mr. Kanwal Goel, Advocate, for respondent No.2.

...

1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

Per A.B. Chaudhari, J.

By the present petition, the petitioner seeks quashing of F.I.R. No.4 dated 07.01.2013 under Sections 406, 420, 120-B, Indian Penal Code, Police Station Maksoodan, Jalandhar City (Annexure P-6) and all subsequent proceedings.

In support of the petition, learned senior counsel for the petitioner vehemently argued that the dispute in the present case is merely of civil nature and no element of criminality is involved and the FIR deserves to be quashed. He contended that by registered sale deed dated 07.03.1996, for total consideration of ₹ 4,34,000/-, petitioner-Baldev Raj had sold house measuring

further the case of the complainant that inquiry made by him revealed that the complainant was given the possession of the plot which did not belong to the petitioner and, therefore, offence of breach of trust, fraud and cheating, etc. was committed. In other words, the transaction of the year 1996 is being painted as a transaction of fraud in the year 2013. It is admitted that a civil suit is pending in the court for determination about the location of the plot and for proper adjudication. The conclusion would come in the suit pending in the Court of Civil Judge (Junior Division), Jalandhar (Subhash Chander Sharma vs. Baldev Raj). He, therefore, submitted that there is no element of any criminal intention as is clear from the facts of the case. Even the revenue documents clearly indicated the location of the plot and the purchase was made by respondent No.2 after due diligence and civil suit No.192 of 2005 filed by the petitioner was also pending in the court in the same matter and the same was decreed by the 1st Appellate Court on 17.01.2011 against respondent No.2. He, therefore, submitted that the dispute being of civil nature, the FIR is required to be quashed.

Per contra, learned counsel for respondent No.2 as well as State opposed the petition and submitted that it is not necessary that the cases in which civil suits are filed are necessarily of civil nature as in the present case, the petitioner with mala fide intention sold a plot which did not belong to him and, therefore, the petition deserves to be dismissed.

I have gone through the entire petition as also the reply filed by respondent No.2 along with the documents. It is a fact that by sale deed dated 07.03.1996 bearing document No.13310, respondent No.2 had purchased the house measuring 1 kanal 11 marlas comprised in Khasra Nos.19//3 min, 4, 5/1, 5/2, 7, 8 min, situated in Village Shekhe, Teshil and District Jalandhar. According to the petitioner, in the year 2005, respondent No.2 tried to interfere in the peaceful possession of the adjoining land belonging to the petitioner and, therefore, the petitioner had filed Civil Suit No.192 of 2005 dated 10.01.2005, for permanent injunction. The suit was dismissed on 17.11.2008. However, in appeal, the Ist Appellate Court decreed the suit filed by the petitioner on 17.01.2011 in favour of the petitioner and against respondent No.2. It is also not in dispute that against the said judgment and decree dated 17.01.2011 passed by the Ist Appellate Court, RSA No.782 of 2011 is pending in this Court. It appears that thereafter as late as on 16.05.2012 i.e. about 16 years after the transaction, respondent No.2 made an application to the Tehsildar, Jalandhar for issuing demarcation report and on 16.05.2012 itself, the Halqa Patwari had issued the demarcation of land report. On the basis of that report, respondent No.2 filed the FIR against the petitioner contending that he was given possession of some other Khasra Nos. i.e. 19//9 instead of 19//3 and 19//8.

At the outset, since it is the admitted position that the dispute between the parties was subject matter of a civil suit

and now in RSA 782 of 2011 before this Court and since the dispute is being raised after 16 years, I find that the element of criminality is totally absent in the present case. The dispute in the civil suit is about demarcation and location of the same plot in respect of which the FIR has been lodged by respondent No.2. I, therefore, find that the dispute being purely of civil nature, continuation of the FIR proceedings would be an abuse of the process of law.

In the result, I make the following order:-

ORDER:

- i) Criminal Misc. No.M-40309 of 2014 is allowed;
- ii) F.I.R. No.4 dated 07.01.2013 under Sections 406, 420, 120-B, Indian Penal Code, Police Station Maksoodan, Jalandhar City (Annexure P-6) and all subsequent proceedings are quashed and set aside.

April 20, 2017
Kang

(A.B. CHAUDHARI)
JUDGE