IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-6685 of 2017 (O&M)
Date of Decision: November 02, 2017

Ashok Kumar and others

...Petitioners

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Hooda, Advocate
for the petitioners.

Mr.Kuldeep Sharma, Deputy Advocate General, Haryana
for the respondent-State.

Mr.Pardeep Singh Poonia, Advocate
for respondent No.4.

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INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against State of Haryana and other respondents for quashing the FIR No.61 dated 03.02.2017 under Sections 406 and 420 IPC registered at Police Station Nuh, District Mewat and all proceedings arising therefrom.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.4 appeared and contested the petition.

Learned counsel for the petitioners argued that first of all, challan has not been presented in this case. The perusal of the FIR itself shows that dispute between the parties is of civil nature and no cognizable offence is made.

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On the other hand, learned counsel for respondent No.4 argued that accused have committed offence of misappropriation and cheating and FIR is not liable to be quashed at this stage.

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 as per the FIR, the complainant is a private limited company. As per the allegations, accused entered into agreement to sell dated 12.01.2012 with the complainant-company with respect to selling of property situated in village Barota measuring 19 kanals 7 marla @ ₹37 lakhs per acre for total consideration of ₹89,49,375/-. It is stated by the accused persons the land is clean, free from any incumbrances, mortgage, lien/or charge and is having a clear and marketable title. The complainant paid ₹15,000/- in cash and ₹8,80,000/- by cheque dated 12.01.2012 to all the accused.

From the perusal of the record, I find that only ₹8,95,000/- has been paid as earnest money at the time of execution of agreement to sell and the total sale consideration is about ₹90 lakhs. The mortgage amount is only ₹7 lakhs. Learned counsel for the petitioners contended that petitioner side remained ready and willing to perform their part of the contract. Further, on the date, when the sale deed was to be executed, the petitioners have cleared the loan amount on that day and there was no incumbrance on the land of any type.

I have gone through the documents placed on record. Annexure P-2 is the agreement to sell, in which also, there is condition that if the second party/purchaser/vendee does not satisfied with the title of the first party/owner/vendor, then it is the sole option of the second

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party/purchaser/vendee either to purchase or to cancel the agreement to sell and the first party/owner/vendor shall refund the amount including the cost of stamp papers to the second party/purchaser/vendee along with interest at the rate of 18% per annum. This condition itself shows that if any discrepancy is found by the purchaser then the first party will refund the amount with interest along with cost of stamp papers.

Secondly, I find that as per Annexure P-3, Senior Manager, Oriental Bank of Commerce has written to the Tehsildar, Nuh on 15.05.2012 that Ashok Kumar had availed the loan of KCC from the bank and now, the party has deposited all his dues and requested to cancel the mutation on agricultural land. Annexure P-4 has been placed on record to show the presence of the petitioners' side for execution of the sale deed on 15.05.2012.

Keeping in view above facts, I find that, first of all, the dispute between the parties is of civil nature. At the most, this dispute is regarding breach of agreement. Thirdly, the loan amount was only ₹7 lakhs. When the remaining sale consideration which was to be paid by the respondent-complainant at the time of execution of the sale deed was about ₹80 lakhs, then, ₹7 lakhs could easily be adjusted. The date of execution of the sale deed was 15.05.2012 and on that day, the loan was already cleared. The petitioners appeared before Tehsildar for execution of the sale deed as per affidavit Annexure P-4. Furthermore, the date for execution of the sale deed as 15.05.2012 and the FIR has been got registered on 03.02.2017 and there is no explanation as to why the complainant kept silent for such a long period.

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In view of the above discussion, I find that registration of the

FIR in the present case is nothing but abuse of process of law.

Therefore, finding merit in the present petition, the same is allowed. FIR No.61 dated 03.02.2017 under Sections 406 and 420 IPC registered at Police Station Nuh, District Mewat and all subsequent proceedings arising therefrom, are hereby quashed.

November 02, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**

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