

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

1. **CRR No.3788 of 2017 (O&M)**
Date of decision : December 05, 2017

Vineet Kumar Kapoor @ Vaneet Kumar Kapoor @ Vaneet Kapoor

..... Petitioner

Versus

State of Punjab

..... Respondent

2. **CRR No.4037 of 2017 (O&M)**
Date of decision : December 05, 2017

Saudagar Singh and others

..... Petitioners

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Rakesh Chopra, Advocate for the petitioner
in CRR No.3788 of 2017.

Mr. Sanjeev Pandit, Advocate for the petitioners
in CRR No.4037 of 2017.

Ms. Monika Jalota, DAG, Punjab.

Mr. Jagahar Singh, Advocate for the complainant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

By this common judgment, I will dispose of two connected revision petitions i.e. CRR Nos.3788 and 4037 of 2017, arising out of same judgments of two courts below.

The facts of the case as stitched together from the lower court file are that Dharamjit Singh complainant made a complaint dated 18.05.2010 (Ex.PW1/B) to the Sr. Superintendent of Police, Rupnagar, wherein he stated that he had entered into an agreement of sale regarding land measuring 27 kanals, 15 marlas with Saudagar Singh son of Hakikat Singh, Harwinder Singh and Kulwinder Singh sons of Bahadur Singh and Vineet Kumar Kapoor son of Pawan Kumar on 20.05.2006. He paid ₹71,60,000/- in cash and ₹10,00,000/- against some other property. In this way, total earnest money of ₹81,60,000/- were paid. The possession of the land was also delivered to them on the same day i.e. 20.05.2006. The due date for the execution of the sale deed was 31.05.2007. On that day, the complainant party went to the office of Sub Registrar but the other party was not available. The other party was not ready to execute the sale deed. The complainant party was ready to pay the balance sale consideration and they had time and again requested the vendors to execute the sale deed but they were not listening to them. It was further stated that from the reliable sources, it came out that the said vendors wanted to take forcible possession of the land from them. It was further stated that the complainant is cultivating the land from the date the earnest money was paid and possession was taken. Therefore, it was prayed that they are in possession of the land since 20.05.2006 and they have the right to possess the land and their lives should be protected from these people.

The Sr. Superintendent of Police vide order dated 18.05.2010 marked the inquiry to the Deputy Superintendent of Police, Rupnagar. The DSP, Rupnagar submitted the inquiry report dated 29.05.2010, wherein

while dealing with the agreement, it was further reported that on 29.05.2010, Saudagar Singh, Harwinder Singh, Kulwinder Singh and Baneet Kumar along with 3-4 persons entered the disputed land and started ploughing the same. Sarabjit Singh son of Darshan Singh resident of Mohali, who was authorized by the complainant to look after the land, came there. Then the said persons Saudagar Singh etc. threatened him and went away along with their weapons. While leaving, they broke the lock of the motor room and took away four bags of urea, three spades, one cot and one table fan and also damaged the spray pump lying inside. While asserting that the agreement to sell had taken place, the DSP, Rupnagar recommended for registration of the case under Sections 447, 427, 379, 506, 148 and 149 IPC. It was on the basis of the report that the present case was registered.

During investigation, accused Harwinder Singh, suffered a disclosure statement Ex.PW2/B and got recovered two spades allegedly stolen in the present case.

In support of its case, the prosecution examined complainant Dharamjit Singh as PW1, SI Gurmit Singh as PW2, Sarabjit Singh as PW3 and closed the evidence.

When examined under Section 313 Cr.P.C., accused Saudagar Singh, Kulwinder Singh and Harwinder Singh pleaded as under:

"I have been falsely implicated in the present case at the instance of complainant. In fact the complainant has failed to turn up to purchase the property as per the terms and conditions of the agreement to sell dated 20.05.2006 on the stipulated date. It was present on the stipulated in

the office of Sub-Registrar Ropar. Whereas the complainant or (hand)(sic) any other person on his behalf did not turn up. Thereafter I along with other sellers sent the registered notice through our counsel. In fact the earnest money received by me and other sellers have already been forfeited in the terms of the agreement to sell dated 20.5.2006 and I other co-accused have been falsely involved only to pressurized for the refund of the earnest money. The complainant never came into possession of our property. Even he has already filed the suit for possession by way of specific performance of agreement mentioned above. Only limit was taken. Nothing is due against me for any payment to the Bank. Even on the stipulated date nothing was due relating to my property in question.”

Accused Vineet Kumar pleaded false implication.

In defence, the accused produced the copy of plaint as Ex. D1, written statement as Ex.D2, copy of the application as Ex.D3 and copy of the affidavit of accused Mark A to Mark E and closed the evidence.

Learned Chief Judicial Magistrate, Rupnagar, vide judgment of conviction and order of sentence dated 26.10.2016 convicted and sentenced each of the accused as under:

<i>Sr. No.</i>	<i>Offence(u/s)</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine</i>
1	447 IPC	R.I. for 3 months	₹500/-	R.I. for 15 days
2	379 IPC	R.I. for 1 year	--	--
3	427 IPC	R.I. for 1 year	--	--
4	506 IPC	R.I. for 1 year	--	--

All the sentences were directed to run concurrently.

Against the said judgment of conviction and order of sentence dated 26.10.2016, two separate appeals were filed (one filed by Saudagar Singh, Kulwinder Singh and Harwinder Singh and another filed by Baneet Kumar). The same were dismissed by the learned Sessions Judge, Rupnagar, vide judgment dated 06.10.2017.

I have heard learned counsel for the parties and have also carefully gone through the case file.

If the stand of both the parties is examined, it comes out that an agreement of sale dated 20.05.2006 regarding the land measuring 27 kanals, 15 marlas, is not denied. Last date of execution of sale deed was 31.05.2007. The complainant claimed that he had paid ₹71,60,000/- in cash and ₹10,00,000/- regarding other land were adjusted. It was also claimed that possession of the land was also delivered to the proposed vendees.

The complaint reproduced above was filed nearly three years later i.e. 18.05.2010 when the limitation to file the suit for specific performance was going to expire in few days. It was not claimed that during this period there was any dispute between the parties regarding the possession of the said land. The complainant claimed that the possession of the land was delivered to him on 20.05.2006, whereas the accused claimed that it was not delivered to him.

Both the court below have heavily relied upon the terms of the agreement of sale Ex.PW1/A, wherein it is recorded that the possession of the land measuring 27 kanals 15 marlas has been delivered. The land was sold @ ₹45,00,000/- per acre. The date fixed for the execution of the sale deed was 31.05.2007. The complainant claimed that on that day, he had

gone for execution of the sale deed but the accused had not turned up, whereas accused claimed that they had gone to the office of Sub-Registrar but the complainant had not turned up. In any case, on the said date, the sale deed was not executed. From 31.05.2007 till the date of filing of the complaint i.e. 18.05.2010, the complainant had no apprehension that the accused will take back the possession.

In the complaint reproduced above, only apprehension was that the accused may try to take possession. This might be due to the reason that the limitation for filing the suit for specific performance was going to expire shortly and the complainant had not filed any suit for specific performance till then. It is not alleged that in these little less than three years, the accused interfered in the alleged possession of the land in dispute and ploughed the same. The complainant also did not issue any notice to the accused for nearly three years calling upon them to receive balance sale consideration of ₹60,00,000/- and execute the sale deed.

Now, the question would arise as to whether the recital in the sale deed regarding delivery of possession to the complainant is conclusive proof of delivery of the possession of the land as concluded by both the courts below?

I find the reply in negative. The accused had proved on file the copy of the suit Ex.D1 for specific performance filed by the complainant on 28.05.2010 i.e. one day before the alleged occurrence on 29.05.2010, in which on the basis of agreement of sale dated 20.05.2006, he had prayed for the execution of the sale deed along with the delivery of the possession of the land. In the said suit, it was nowhere claimed that the possession was

delivered to him on the date of execution to agreement of sale. The filing of the suit is a strong admission on the part of the complainant that though it was recited in the agreement of sale that the possession has been delivered but in fact the possession was not actually delivered to the complainant, since a big amount i.e. ₹60,00,000/- was still to be paid by them.

Accused Saudagar Singh had produced the copies of affidavits dated 31.05.2007 Mark A to E, wherein he had stated that he had appeared and was present in the office of Sub-Registrar for execution of the sale deed from 10 a.m. till evening but the other party had not come present.

Even if, it is assumed that complainant Dharmjit Singh was ready to get the sale deed executed along with remaining money, there is no reason why from 31.05.2007 till 28.05.2010, he kept silent and did not file the suit for specific performance, claiming that the possession is with him and the accused should be directed to execute the sale deed. The suit for specific performance was filed only three days before the limitation was going to be expired, in which it was not claimed that the possession was actually delivered to him at the time of execution of the agreement of sale. Therefore, the recital in the agreement of sale was duly rebutted by the admission made in the suit for specific performance Ex. D1, wherein the complainant did not claim that the possession was delivered to him at the time of execution of agreement of sale and rather sought decree for possession as one of the relief.

A perusal of the complaint itself shows that on the date of filing of the complaint before the Sr. Superintendent of Police, Rupnagar, no crime was committed till 18.05.2010. However, during inquiry, the DSP

came to the conclusion that on 29.05.2010, the crime of criminal trespass committed in the disputed land by the accused along with 3-4 unknown persons and accused stole four urea bags, three spades, one cot and one table fan and damaged one spray pump. Therefore, the DSP promptly submitted report on the same day i.e. 29.05.2010.

I am of the view that the report of the DSP cannot be relied upon for several reasons. First of all, the possession of the complainant over the land in dispute is not proved, in view of the admission made in the suit filed for specific performance. In his complaint to the police, the complainant has merely prayed that they have right to possess the land. Till the filing of the complaint on 18.05.2010, the complainant never moved any court, stating that he is ready to pay the balance sale consideration and the accused should execute the sale deed in his favour. In this way, by way of filing of the complaint Ex.PW1/B, the complainant wanted to claim the possession of the land without paying any balance sale price and without getting the sale deed executed from the accused vendees. There is possibility that since no crime was alleged in the complaint Ex.PW1/B, therefore, in order to make it a criminal case to put pressure on the accused-vendees to refund earned money of ₹71,60,000/-, the occurrence of 29.05.2010 was concocted. It was reported that as per version of Sarabjit Singh, when he visited the land in dispute, the accused were ploughing the land; that they were armed with weapons and while leaving, they broke the lock of the motor-room and took away four bags of urea, three spades, one cot and one table fan and damaged the spray pump.

The accused persons were four in numbers along with 3-4 unidentified persons, who could never be identified. It is unlikely that they would carry four bags of urea on their head or shoulders and would also carry three spades, one cot and one table fan while going on foot and just walked away and at the same time claim that said land is in their possession. The alleged occurrence from its face is unbelievable.

Even if, it is assumed that accused were ploughing the land, there was no reason for them to take away the said articles. This appears to be a concoction of story to make out a criminal offence so as to pressurize the accused to part with the earned money of ₹71,60,000/-, which according to accused stood forfeited for non-execution of sale deed on the date fixed. The manner in which, immediately, on the alleged day of the occurrence, the DSP submitted his report also raises doubt about the genuineness of the report, which formed the basis of registration of the FIR. These vital aspects of the case were not critically examined by both the courts below.

Complainant Dharamjit Singh, PW1 has admitted in his cross-examination that on 31.05.2007, he was out of country. So he could not be present in the Tehsil premisses. However, he volunteered that his brother Parminder Singh had come present for purchasing the property along with the balance sale consideration of approximately ₹60,00,000/-. He did not know from where his brother had withdrawn the remaining sale consideration. It goes to show that on the said date, the complainant was not present nor the said sale consideration was given by him to his brother for getting the sale deed executed. Though, the complainant had claimed that his brother has sworn an affidavit regarding his presence on 31.05.2007.

Then there is no reason why the complainant did not issue any notice to the accused-vendees nor filed any suit for specific performance for nearly three years to specifically enforce the said agreement?

It appears that it was a case of civil nature to which a colour of criminal case was given, making out a story of tres pass and theft, during the investigation by the DSP. So far as Sarabjit Singh alleged caretaker of the land in dispute is concerned, his cross-examination shows that according to him there is no khasra girdawri in the name of the complainant or his name. He did not know the four sides of the disputed land. He also could not tell in which khasra number the tubewell is existing. The electric connection of motor is in the name of Saudagar Singh etc.

It goes to show that the story of Sarabjit Singh son of Darshan Singh, resident of Mohali being caretaker was also introduced to create evidence of the crime and make him independent eye witness.

In view of the foregoing discussion, this Court has come to the conclusion that the prosecution case against all the accused is highly doubtful, shaky and undependable and cannot be relied upon. The possibility of false implication of the accused in the crime for putting pressure on them either to refund the earnest money or part with the possession is there without paying the balance sale consideration of approximately of ₹60,00,000/-.

As such, both the aforesaid revision petitions are allowed. The judgment of conviction and order of sentence dated 26.10.2016 passed by the learned Chief Judicial Magistrate, Rupnagar as well as the judgment dated 06.10.2017 passed by learned Sessions Judge, Rupnagar, are hereby

set aside. The bail bonds and surety bonds of the petitioners stand discharged. They are acquitted of the charges framed against them.

(KULDIP SINGH)
JUDGE

December 05, 2017

sarita

Whether speaking / reasoned	Yes
Whether Reportable:	Yes