

CRM NO.12782 OF 2018 (O&M)
CRM-M NO.12676 OF 2018

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

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CRM-M NO.12676 OF 2018 (O&M)
DATE OF DECISION: APRIL 06, 2018

Hukam Chand

.....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sushil Kumar Verma, Advocate,
for the petitioner.

Mr. Satbir Singh, Advocate,
for the complainant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Crl.Misc. No.12782 of 2018

Application is allowed as prayed for subject to all just exceptions.

Documents taken on record.

Criminal Misc. M No.12676 of 2018

It is the contention of learned counsel for the petitioner that the dispute primarily appears to be civil in nature, as is apparent from the FIR, which has been registered against the petitioner at the behest of the complainant. Referring to the said FIR, he states that the complainant has

specifically stated that an amount of ₹5,80,000/- taken by the petitioner be got recovered from the accused persons and the possession of the land be got delivered to him by executing the sale deed. He contends that the complainant has a remedy under the civil law and by giving it a criminal colour, efforts have been made by the complainant to project it as a case where money has been taken by the petitioner with a malafide intention, bringing it within the ambit of the offences punishable under Sections 420, 406 read with Section 120-B IPC. His further contention is that wife of the petitioner, namely, Bimla, has been granted bail by the Sessions Court on 15.03.2018 and case of the petitioner is similarly placed, thus, he be granted the same benefit. In support of his contention, he places reliance upon two judgments of this Court reported as Madan Lal and another Vs. State of Haryana and another, 2012 (3) R.C.R. (Criminal) 643 and Deegh Ram Vs. Shoe Narain @ Sheo Narain, 2015 (1) R.C.R. (Criminal) 960. Counsel for the petitioner has made reference to receipt (Annexure P-2), which is a calculation given by the Munshi of the complainant. He, on that basis, asserts that the amount, for which an agreement to sell is alleged to have been entered into, is the balance amount, which was available with the complainant on 02.02.2017, the date on which the agreement to sell was entered into, which fact is not disputed by the petitioner.

On the other hand, counsel for the complainant has brought to the notice of the Court that the wife of the petitioner, namely, Bimla, alongwith children of the petitioner had filed a suit for declaration to the effect that the plaintiffs are entitled to maintenance allowance from petitioner, Hukam Chand, for which purpose, they have sought a mandatory injunction, directing the petitioner to pay the maintenance amount of

₹50,000/- per month and for that purpose, alienation of the land measuring 7 kanals 17 marlas, being 1/3rd share of the total land measuring 23 kanals 12 marlas compromised in Khewat No.480, Khatauni No.519, Kitte 5 situated in village Mithi Surera, Tehsil Ellenabad, District Sirsa, is being sought, restraining the petitioner from illegally evicting them. This suit was instituted on 11.08.2017, in which an injunction has been granted. The parties have been directed to maintain status-quo with regard to alienation over the suit land on 17.08.2017, with the interim order extended on 15.01.2018. It has also been pointed out by counsel for the complainant that land measuring 7 kanals 17 marlas, which is the subject matter of the present controversy, an agreement to sell dated 08.08.2016 has been entered into by the petitioner with one Dinesh Kumar son of Varinder Kumar. This agreement to sell was much prior to the date of agreement to sell entered into between the petitioner and the complainant. He, therefore, contends that agreement to sell, which has been entered into between the complainant and the petitioner on 02.02.2017, further reflects the intention of the petitioner as malafide is writ large on the part of the petitioner, because firstly having entered into an agreement to sell with some other person on 08.08.2016 qua the land, the subsequent agreement entered into between the complainant and the petitioner on 02.02.2017, despite the earlier agreement to sell having been subsisting, is cheating. That apart, the suit preferred by co-accused, Bimla, which has been referred to above, further leaves no manner of doubt that the petitioner had committed an offence, for which the FIR stands registered.

Having considered the submissions made by counsel for the parties and on considering the facts and circumstances of the present case,

this Court agrees with the submissions made by counsel for the complainant in toto as it is apparent from the allegations in the FIR that the petitioner has, by deceitful means, taken an amount of ₹5,80,000/- as earnest money by entering into agreement to sell with the complainant on 02.02.2017, when an agreement to sell dated 08.08.2016 qua the same land stood entered into with some other person which subsisted. Further intention and the conduct of the petitioner is established from the fact that civil suit, referred to above, was also filed.

So far as cases of Madan Lal and Deegh Ram's cases (supra), on which reliance has been placed by counsel for the petitioner, are concerned, the same are relatable to a situation where an agreement to sell for a property has been entered into and there has been breach of contract, where the Court had proceeded to come to a conclusion that it was a civil dispute and no offence of cheating was made out. Present is a case, as has been pointed out by this Court, where cheating is writ large at the very inception and, therefore, no ground for grant of anticipatory bail to the petitioner is made out, irrespective of the fact that co-accused of the petitioner, namely, Bimla (his wife) has been granted the said benefit by the Additional Sessions Judge, Sirsa.

The contention of learned counsel for the petitioner, with reference to receipt, Annexure P-2, cannot be accepted in the light of the fact that agreement to sell is not disputed by the petitioner as his signatures find mentioned therein and it is for the investigating agency to come to a conclusion on the basis of interrogation of the petitioner as to whether actually the document contained his signatures or not.

In the considered view of this Court, custodial interrogation of the petitioner is essential in the present case so that the truth may come out. Accordingly, the present petition stands dismissed.

April 06, 2018
khurmi
(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No