

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-2402 of 2012
Date of Decision: 18.09.2018

Balesh Devi and anotherPetitioners

VERSUS

Priyanka and anotherRespondents

2. CRM-M-7054 of 2016

Munesh and anotherPetitioners

VERSUS

Priyanka and anotherRespondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Shaurya Sharma, Advocate
for petitioners in CRM-M-2402-2012.

Mr. S.S. Dinarpur, Advocate
for petitioners in CRM-M-7054-2016.

Mr. P.L. Verma, Advocate
for respondents in both the petitions.

SURINDER GUPTA, J.

Both the above captioned petitions have been filed under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of Complaint No. 188 dated 11.08.2010 titled “Priyanka and another vs. Munesh Devi and others” instituted for offence punishable under Sections 420/463/467/468/471/120-B/34 of Indian Penal Code pending in Court of Judicial Magistrate Ist Class, Gurgaon (now Gurugram), in which petitioners has been summoned vide order dated 06.07.2011 to face trial.

2. Allegations in the complaint are recapitulated as follows:-

“Complainants, Priyanka and Shashi, daughters of Jagdish Chand have alleged that they are owners of 2/9th share in land measuring 15 *kanals* 4 *marlas* situated in village Bahora Kalan, *Tehsil* Farrukhnagar, District Gurgaon as per *jamabandi* for the year 1999-2000. Munesh Devi (petitioner in CRM-M-7054-2016) in collusion with *nambardar* Sohan Singh and Sandeep Kumar got a sale deed dated 01.10.2007 executed by producing some other ladies in place of complainants by using their photographs in a fraudulent manner. Complainants have never sold the land, received the sale consideration or were even aware of the sale deed, which was not having photograph of Priyanka. Munesh Devi sold the land in favour of Balesh Devi (petitioner in CRM-M-2402-2012) vide sale deed no. 217 dated 29.04.2012. Complainants came to know of the fraud when Balesh Devi and her son accompanied by other persons came to take possession of the suit property and complainants made inquiries from Patwari and office of Sub-Registrar. They also got their finger prints compared with finger prints of Shashi and Babli on the sale deed from Naresh Kataria, Finger Print Expert and made complaint to the police but no action was taken.”

3. After recording preliminary evidence, learned trial Court vide order dated 06.07.2011 summoned all the accused named in the complaint to face trial.

4. I have heard learned counsel for parties in both the petitions and have perused paper-books and documents with their active assistance.

5. Firstly, I take petition (CRM-M-2402-2012) filed by Balesh Devi and her husband to find whether any offence as alleged by complainant/private respondents is made out on the basis of allegations levelled by them in the complaint. As per sale deed dated 01.10.2007, land measuring 15 *kanals* 4 *marlas* situated at village Bahora Kalan, *Tehsil* Farrukhnagar, District Gurgaon was sold to Munesh Devi by Nagender, Babita, Priyata, Shashi, Babli and Ram Murti. Nagender is brother of complainant/private respondents while Babita and Babli are their sisters and Smt. Ram Murti is their mother. Aforesaid four persons have not come forward to allege that sale deed dated 01.10.2007 was not executed by them or it does not bear their signatures/thumb impressions. Inference, which can be drawn from the above fact on taking the allegations as levelled in complaint as correct, is that the sale deed is valid to the extent of 4/6th share of land measuring 15 *kanals* 4 *marlas* sold vide above referred sale deed and if Munesh Devi had sold 7 *kanals* of land out of 15 *kanals* 4 *marlas* purchased by her to Balesh Devi (petitioner in CRM-M-2402-2012), the sale deed in her favour is valid to the extent of share in land she has purchased from Nagender, Babita, Babli and Ram Murti. Balesh Devi had purchased the land after 30 months of sale deed dated 01.10.2007. If at all there is any fraud in execution of sale deed dated 01.10.2007 or 29.04.2010, it is petitioner-Balesh Devi, who is a victim and not owner of the property. Reference in this regard can be made to observations of Hon'ble Apex Court in case of ***Md. Ibrahim and others vs. State of Bihar and another, 2009 (4) RCR (Criminal) 369***. There is no cheating of complainant/private respondents by petitioner-Balesh Devi or her husband while purchasing the land measuring 7 *kanals* from Munesh Devi. If at all the title of Munesh

Devi is defective, it is petitioner-Balesh Devi, who is sufferer and not complainant/private respondents. The complaint filed by Priyanka and Shashi, as such, is a sheer misuse of process of Court and calls for its quashing on this score.

6. The matter, however, does not end here. Facts and documents, which have come on record, point towards a major fraud in the sale of land owned by complainants and her other co-sharers. Admittedly, the land was inherited by complainants, their brother, sisters and mother from Jagdish Chand. It is admitted that son, daughters (including respondents) and wife of Jagdish Chand vide sale deed dated 14.06.2005 have sold their 14 *kanals* 2 *marlas* of land situated at village Bahora Kalan, *Tehsil Farrukhnagar, District Gurgaon* in favour of M/s Active Promoters Pvt. Ltd. for a sale consideration of ₹9,25,312/-. They again sold 15 *kanals* 4 *marlas* of land, vide sale deed dated 01.10.2007 which include the land sold vide sale deed dated 14.06.2005. Complainants have not denied their signatures/ thumb impressions on sale deed dated 14.06.2005 or have ever challenged the same. It is rather an admitted document. In that sale deed name of complainant-Priyanka is also mentioned as Priyata. Sale deed dated 01.10.2007 was executed by Nagender (brother), Babita and Babli (sisters) and Smt. Ram Murti (mother) alongwith two ladies, who the respondents/complainants, allege had impersonated them at the time of execution of sale deed. The best persons to know complainants are their brother, sisters and mother, who never raised any objection about appearance of impersonators for Priyanka and Shashi at the time of execution of sale deed. The question, which arises for consideration is as to whether they were conspirators to produce some other ladies in place of

complainants?

7. From above facts, points which arise for consideration are as follows:-

- (i) If allegations of complainants/private respondents are believed, in that case it appears that instead of accused Munesh Devi, it is brother, sisters and mother of complainants, who have tried to cheat the vendee (Munesh Devi) or have connived with respondents in executing the sale deed;
- (ii) being brother, sisters and mother of complainants/ respondents, they are best persons to tell as to who appeared or was made to appear in place of complainants;
- (iii) if someone had impersonated complainants, why they have not raised the issue before Sub-Registrar;
- (iv) vendee (Munesh Devi) had no reason to check or challenge the identity of complainants at the time of execution of sale deed in her favour, when their mother, brother and sisters were also appearing and executing the sale deed; and
- (v) whether brother, sisters and mother of complainants in the event of their plea of impersonation being believed, had any animus or motive to produce some other ladies as impersonators in place of complainants to cheat the vendee?

8. As a sequel of discussion as above, I am of the considered

opinion that complaint filed against Balesh Devi and her husband Devender (petitioners in CRM-M-2402-2012) is a sheer misuse of process of Court and is liable to be quashed. Petition (CRM-M-2402-2012) has merit and the same is allowed and Complaint No. 188 dated 11.08.2010 titled "*Priyanka and another vs. Munesh Devi and others*" and summoning order dated 06.07.2011 along with all consequential proceedings arising therefrom, qua petitioners in CRM-M-2402-2012, are quashed.

9. Before deciding the other petition (CRM-M-7054-2016), Commissioner of Police, Gurugram is directed to appoint investigating officer not below the rank of Deputy Superintendent of Police to look into the allegations of complainants in the complaint and points as mentioned in para 7 above. The investigating officer will also further look into other aspects of alleged forgery or connivance of complainants/private respondents, their family members or any other person in executing the sale deed dated 01.10.2007, when the land had already been sold vide sale deed dated 14.06.2005 and they were apparently left with no title to transfer land vide sale deed dated 01.10.2007 in favour of Ms. Munesh and submit report on or before 29.11.2018 for taking further action in the matter as per report. In the meanwhile further proceedings before the trial Court shall remain stayed. The complainants shall not be allowed to withdraw the complaint till further orders.

Copy of this order be immediately conveyed to Commissioner of Police, Gurugram.

September 18, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No