

CRM-M-40455 of 2012

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

CRM-M-40455 of 2012
Date of Decision: 14.11.2018

Kanav Khanna

.....Petitioner

versus

State of Punjab and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Bipan Ghai, Sr. Advocate,
with Mr. Paras Talwar, Advocate, for the petitioner.
Mr. Davinder Bir Singh, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C. petitioner has laid challenge to order dated 19.11.2012 (Annexure P-1) of the Revisional Court, setting aside order dated 17.12.2009 (Annexure P-13) of the trial Court, whereby the petitioner was discharged in case FIR No.109 dated 08.04.2007 (Annexure P-6) registered under Section 420 IPC at Police Station Sadar, Amritsar.

Briefly, respondent No.2 got registered aforesaid FIR against the petitioner and eleven others on the allegations that they claiming themselves to be exclusive owners of land measuring 6071.02 sq. yards situated at Bypass Verka, District Amritsar, entered into a agreement to sell dated 20.07.2005 (Annexure P-2) with respondent No.2 through the petitioner, who propagated himself to be co-owner and general attorney of others. However, vendors of respondent No.2 finally became dis-honest

and did not execute and register the sale deed in favour of respondent

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No.2 on the agreed date i.e. 10.02.2006. In this way, they defrauded respondent No.2 for ₹15.00 lakh paid to them as earnest money and, thus, were liable to be tried and convicted under Section 420 IPC.

During investigation, co-accused of the petitioner were found innocent. Therefore, final report under Section 173(2) Cr.P.C. was filed on 05.11.2008 only against petitioner under Section 420 IPC.

At the time of framing of charge, after hearing both the sides, the trial Court vide order dated 17.12.2009 (Annexure P-13) discharged the petitioner on the ground that allegations of cheating levelled by respondent No.2-complainant against the petitioner were not proved inasmuch as the petitioner did not induce the complainant to pay earnest money of ₹15.00 lakh with *mala fide* intention.

Being aggrieved, respondent No.2-complainant approached revisional Court, challenging the aforesaid order of the trial Court dated 17.12.2009, who remanded the case to the trial Court for fresh decision vide order dated 19.11.2012 (Annexure P-1).

Learned counsel for the petitioner *inter alia* contends that order of the trial Court dated 17.12.2009 (Annexure P-13) was wrongly set aside by the revisional Court without appreciating the fact that petitioner as general attorney of other vendors never induced or cheated respondent No.2-complainant for ₹15.00 lakh, because all the terms and conditions settled in between petitioner and respondent No.2 were reduced into writing. Even otherwise, petitioner or his vendors at any point of time had any intention to cheat and induce respondent No.2-complainant for ₹15.00 lakh, because petitioner offered to return the said earnest money to respondent No.2-complainant, as is clear from order

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dated 07.02.2008 passed by a Co-ordinate Bench in CRM-M-42578 of 2007 titled as “Anu Khanna and another v. State of Punjab”, but counsel for respondent No.2-complainant pleaded that he had no instructions on behalf of respondent No.2-complainant as to whether he was ready and willing to take back his earnest money. Consequently, petitioner was granted anticipatory bail. Civil suit filed by respondent No.2-complainant against the petitioner and other vendors on whose behalf he has executed aforesaid agreement to sell on similar allegations, has already been dismissed by the civil Court vide judgment dated 2.07.2014. As far as his knowledge is concerned, respondent No.2-complainant till date has not made any effort to set aside the said order by filing appeal or otherwise. Therefore, impugned complaint on the same cause of action and on similar allegations, which have been negated by the civil Court, cannot be permitted to continue. Thus, order of the learned Chief Judicial Magistrate, Amritsar, dated 17.12.2009 discharging the petitioner may be held to be legal.

On the other hand, learned State counsel vehemently opposed the submissions made by learned counsel for the petitioner.

Having given thoughtful consideration to the rival contentions of learned counsel for the parties, this Court finds merit in the instant petition for the reasons to follow.

It is not disputed that agreement to sell dated 20.07.2005 (Annexure P-2) was executed by the petitioner for himself and on behalf of other eleven vendors in favour of respondent No.2-complainant. The date for execution/registration of sale deed was agreed on 10.02.2006.

Accordingly, on the agreed date, petitioner and his all co-vendors

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appeared before the Sub-Registrar, Amritsar for execution/registration of sale deed and furnished affidavit (Annexure P-3) qua their presence before him. However, respondent No.2-complainant did not appear. Consequently, petitioner and his co-sharers/vendors issued legal notice on the very next date on 11.02.2006 (Annexure P-4) to respondent No.2-complainant asking him to get the sale deed executed, clarifying therein that on failure to do so earnest money amounting to ₹15.00 lakh shall be forfeited. However, respondent No.2-complainant did not respond to the said legal notice and straightaway filed civil suit on 28.07.2008 for possession by way of specific performance of contract against petitioner and his co-vendors, which after six years was dismissed in default on 02.07.2014 by the trial Court under Order 9 Rule 8 CPC.

Be that as it may, petitioner to show his *bona fide* further offered to repay the earnest money to respondent No.2-complainant, during the hearing of his anticipatory bail application, but learned counsel for respondent No.2-complainant pleaded his inability to accept the same being, having no instructions from respondent No.2-complainant.

Core dispute in between the parties is qua purchase of land by respondent No.2-complainant from petitioner and his co-sharers/vendors in which respondent No.2-complainant has lost on civil side. Therefore, on the similar allegations, complaint of respondent No.2-complainant cannot be permitted to continue.

Consequently, petition is allowed. Impugned order of the revisional Court dated 19.11.2012 (Annexure P-1) is set aside.

Resultantly, order dated 17.12.2009 (Annexure P-13) of the trial Court is

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However, in the interest of justice, petitioner is directed to deposit the earnest money of ₹15.00 lakh in the name of respondent No.2-complainant before this Court along with interest @ 12% per annum from the date of agreement i.e. 20.07.2005 to 07.02.2008, on which date he offered to return the earnest money to respondent No.2, within one month, failing which this petition shall automatically stand dismissed.

Registry is directed to inform respondent No.2-complainant after deposit of amount by the petitioner and disburse the same to him against proper receipt and identification in accordance with law.

November 14, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No