

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

CRM-M-22122-2005 (O&M)

Date of decision: 30.04.2019

Tilak Raj

...Petitioner

Versus

State of U.T., Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Gaurav Gogna, Advocate
for the petitioner.

Mr. Anil Kumar Lamdharia, Addl. P. P., U.T., Chandigarh.

None for respondent No. 2/complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition, filed under Section 482 Cr.P.C., is for quashing of FIR No. 45 dated 01.04.2005, registered under Section 420 IPC at Police Station Sector 19, Chandigarh.

Since this petition is pending since 2005, the same was ordered to be shown in the Urgent List, vide order dated 17.01.2019.

Brief facts of the case are that respondent No. 2/complainant got the present FIR registered against petitioner Tilak Raj son of Late Hans Raj on the premise that the petitioner has entered into an agreement to sell of a house belonging to his son Rahul Arora, who is settled in United States of America, on the basis of GPA dated 20.12.1993, executed by Rahul Arora in favour of the petitioner. On the basis of the said GPA, an agreement to sell dated 31.03.2001 was executed by the petitioner in favour of the complainant and petitioner received ₹1 Lakh as earnest money and thereafter, on two occasions, ₹1 Lakh and ₹2 Lakh were given to the

petitioner as part of the sale consideration.

As per Clause 5 the aforesaid agreement to sell, it was agreed by the parties that the sale deed will be executed by 09.07.2001. The complainant has further stated that at the time of execution of agreement to sell, a copy of the said GPA was handed over to him, however, at later stage, he came to know that as per the GPA, the petitioner has no right to sell the property and he was just appointed as a caretaker of the property and since the GPA executed by the son of the petitioner does not provide any right to the petitioner to execute any sale deed, he has cheated the complainant and has lured him to part away ₹4 Lakh as earnest money.

Learned counsel for the petitioner has submitted that the complainant has filed a civil suit for specific performance of agreement to sell, which was dismissed on the premise that as per GPA, the petitioner was not competent to execute the sale deed, however, alternative relief of refund of earnest money of ₹4 Lakh along with interest @ 9% was granted, vide judgment and decree dated 24.05.2014.

The appeal filed by the petitioner against the aforesaid judgment and decree was dismissed by the lower appellate Court, vide judgment dated 19.03.2016. The RSA filed by the complainant is still pending before this Court.

Learned counsel for the petitioner further submitted that primarily it is a civil dispute which is *inter se* parties and no offence under Section 420 IPC is made out.

Learned counsel, appearing for U.T., Chandigarh, has submitted that in fact the property relates to one Tara Rani, who is the mother of the petitioner and has died on 23.07.1991, therefore, the Civil

Court has rightly held that Rahul Arora was not competent to even execute the GPA in favour of the petitioner as he was not having the clear title over the property.

Learned Counsel for U.T. Chandigarh further submitted that the case is now fixed for prosecution evidence and the trial was delayed for a considerable long time on account of the fact that the proceedings were stayed by this Court.

Learned Counsel for U.T. Chandigarh has drawn reference to the findings of the Civil Court wherein it has been held that neither the petitioner has any authority to alienate the property in favour of the complainant nor his son Rahul Arora has clear title over the property in dispute.

Learned Counsel for U.T. Chandigarh further submitted that till date, the property is in the name of Tara Rani and, therefore, at no point of time, the petitioner could have entered into an agreement to sell with the complainant, hence, the ingredients of Section 420 IPC are made out against the petitioner.

After hearing learned counsel for the parties, I find no merit in the present petition for the reasons that after the death of Tara Rani on 23.07.1991, when Rahul Arora, son of the petitioner, who claims to be the owner of the property, had further executed the GPA in favour of his father/petitioner on 20.12.1993, himself was not the owner of the property in dispute. This fact could not be denied by learned counsel for the petitioner that till date, the property stands in the name of Late Tara Rani and proceedings in probate petition are still pending.

Accordingly, in view of the judgment rendered by Hon'ble

Supreme Court in *State of Haryana and others vs. Ch. Bhajan Lal and others, 1991 (1) R.C.R. (Criminal) 383*, prima facie case under Section 420 IPC is made out against the petitioner.

In view of the above, finding no merit, this petition is hereby dismissed.

30.04.2019
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>