

CRM-M-11954 -2018 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11954 -2018 (O&M)

Date of Decision :24.10.2019

Mandhir Singh

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present : Mr.K.S.Boparai, Advocate for the petitioner

Mr. S.P.S.Tinna, Additional Advocate General, Punjab

Mr. T.K.Joshi, Advocate for respondent No.2

ANIL KSHETARPAL, J.(ORAL)

Reply on behalf of respondent No.2 filed in the Court today is taken on record. A copy thereof has been supplied to the counsel for the petitioner.

With the consent of the learned counsel for the parties, main petition is taken on Board for final disposal.

Jurisdiction of this Court has been invoked under Section 482 Cr.P.C seeking quashing of criminal case arising from FIR No.65 dated 30.4.2017 registered under Section 420 IPC at Police Station Payal, Police District Khanna and the consequent order passed by the Magistrate framing charge vide order dated 27.10.2017.

Case of the prosecution as recorded in the FIR reads as under:-

“It is requested that I am Karamjit Singh s/o

Surjit Singh R/o Ward No. 9 Payal, District Ludhiana. I

am peace loving and law abiding citizen that I had entered into agreement of sale with accused No.1 Mandhir Singh regarding his land measuring 5 Bigh-9Biswas situated in village Sihora, Tehsil Payal through the written agreement dated 9.2.2012 for Rs. 6 lacs per Bigha in the presence of witness and Mandhir Singh had received Rs.5 lacs, 72 thousand (Rs.5,72,000/-) as earnest money. Sale deed was to be executed upto 25.2.2013. Copy of agreement is attached. On 25.2.2013 I remanded present in the office of Tehsildar but the owner Mandhir Singh did not come present. My General Attorney Surjit Singh s/o Harnam Singh r/o Ward No. 9 Payal had got his presence marked. The copy of power attorney and application are attached here with. The above said Mandhir Singh accused No.1 despite knowing everything in conspiracy with the other accused, in order to misappropriate my amount, have entered into deal in favour of Jasvir Kaur w/o Mawa Singh r/o of village Asgaripur. The copy of sale deed is attached herewith. Thereafter, I requested Mandhir Singh to return the earnest money of Rs.5,75,000/- in terms of the agreement. He is putting of my request till today and does not reply to my satisfaction. This person is threatening and intimidating me. The accused Nos. 1 to 5 in conspiracy with each other have misappropriated my amount and have cheated me therefore, moving this

application you are requested to take action against the above mention accused and my life and property be protected and the amount be got returned in terms of the agreement. I shall be thankful to you.”

On careful reading of the aforesaid FIR, it is undisputed that dispute arises out of an agreement to sell dated 9.2.2012 under which first informant is alleged to have paid Rs.5,72,000/- as earnest money. As per agreement to sell, sale deed was to be executed upto 25.2.2013. Gist of the allegations is that after entering into written agreement to sell on receipt of earnest money, accused has not come forward to perform his part of contract and had sold the same property in favour of Jasvir Kaur w/o Mawa Singh. It has come on record that the sale deed was executed on 20.3.2014 whereas target date for execution and registration of sale deed pursuant to written agreement to sell between the first informant and the petitioner was 25.2.2013 although first informant claims that he was present in the office of the Tehsildar and thus ready and willing to perform his part of contract. However, first informant has admittedly not filed any suit either seeking specific performance of the agreement to sell or refund of the earnest money. First informant has got registered the FIR after a period of more than four years from the target date agreed to between the parties for execution and registration of sale deed. From the reading of the FIR, it is apparent that there is no averment or assertion that petitioner-the intended seller was dishonest or his intention was bad at the time of entering into the agreement. FIR itself has been got registered after a period of more than three years from the date property in question was sold through registered sale deed in favour of Jasvir Kaur on 20.3.2014.

Keeping in view the aforesaid undisputed facts, it is apparent that offence under Section 420 IPC is not made out. Section 420 IPC provides for punishment of offence of cheating and dishonestly inducing delivery of property. Cheating has been defined in Section 415 IPC which is extracted as under:-

“415. Cheating- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or property to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation- A dishonest concealment of facts is a deception within the meaning of this section.”

Phraseography used in Section 415 IPC has been now well explained by series of judgments passed by the Hon'ble Supreme Court. This Court also in the case CRM-M-11935-2019 titled as **Vijay Sodhi vs. Priya Sodhi** decided on 22.10.2019 has examined this aspect in detail. In the considered view of this Court, the allegations made in the FIR do not make out a case under Section 420 IPC . Further it is not clear as to what steps have been taken by the first informant after the petitioner did not come forward to perform his part of contract on 25.2.2013. Further the order passed by the Court deciding to frame charge is without application of mind.

mind and arrive at a conclusion as to how offence for which accused is sought to be charged is prima facie made out. Framing of charge is an important stage and Magistrates by applying their minds can save large number of innocent persons from undergoing the rigmarole of full trial although no case is made out against them. This Court has time and again emphasized the need of requirement of application of mind by the Magistrates at the stage of decision on framing or not of the charge. Hence, present petition is allowed. Consequently, FIR No.65 dated 30.4.2017 registered under Section 420 IPC at Police Station Payal, Police District Khanna and the consequent order passed by the Magistrate framing charge vide order dated 27.10.2017 are hereby quashed.

(ANIL KSHETARPAL)
JUDGE

24.10.2019
rekha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No