

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

**CRM No.M-14224 of 2013 (O&M)
Date of Decision: May 23, 2019**

Kapil Soni and another

...Petitioners

VERSUS

Bhup Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Senior Advocate with
Mr.Sunil Sihag, Advocate
for the petitioners.

Mr.Deepender Singh, Advocate
for the respondents.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of criminal complaint No.70 dated 13.09.2011 under Section 156(3) Cr.P.C., summoning order dated 09.01.2012 passed by learned JMIC, Gurgaon and judgment dated 17.01.2013 passed by learned Addl. Sessions, Gurgaon, dismissing the revision petition filed against summoning order and all subsequent proceedings arising therefrom.

It is mainly the case of the petitioners they have been wrongly summoned in the complaint despite the fact that they have paid a sum of ₹2,12,50,000/- but have not got the possession of the land till date. On the contrary, they have been summoned in the present case at the instance of owners of the land.

The brief averments of the complaint as noted down in the

order dated 09.01.2012 passed by learned JMIC, Gurgaon, are as under:-

“2. In brief, the facts of the complaint are that the complainants were co-owners in joint possession to the extent of 1/7 share i.e. 4/7 share in the land bearing khewat/khata No.1156/1296, Rect. No.121 Killa No.14(7-16), 17/a(4-18) total measuring 12 kanal 14 marla and khewat/khata No.1323/1475, Rect. No.121, Killa No.15/2(4-6) total measuring 4 kanal 6 marla and measuring 17 kanal situated within the revenue estate of Badshahpur, Tehsil and District Gurgaon vide jamabandi for the year 2005-06. Accused no.1 and 2 approached the complainants and their co-sharers to purchase the land in question and promised to pay the sale consideration at prevailing market price and entered into an agreement to sell on 6.7.2007 for the land of complainants and their co-sharers @ Rs.3,20,00,000/- per acre, totalling to Rs.6,80,00,000/-. Accused No.1 and 2 also paid a sum of Rs.68,00,000/- as earnest money equivalent to 10% of the total sale consideration to the complainants, their brothers i.e. Amar Singh, Nain Singh and a grandnephew Pardeep and further promised to pay 90% balance sale consideration to the complainants etc. at the time of registration of sale deed which was agreed between the parties that accused no.1 will get registered the sale deed in its favour or in the name of its nominee, the seller i.e. complainants etc. will not object the same. The details of the earned money paid by the accused No.1 and 2 to the complainants etc. are mentioned as under:-

A. Rs.9,17,428/- vide DD No.086979 dated 6.7.2007 drawn on Centurian Bank of Punjab Ltd. payable at Gurgaon in favour of Shri Bhup Singh;

B. Rs.9,17,428/- vide DD No.086980 dated 6.7.2007 drawn on Centurian Bank of Punjab Ltd. payable at Gurgaon in favour of Shri Narain Singh;

C. Rs.9,17,428/- vide DD No.086984 dated 6.7.2007 drawn on Centurian Bank of Punjab Ltd. payable at Gurgaon in favour of Shri Ramesh Kumar;

D. Rs.9,17,428/- vide DD No.086981 dated 6.7.2007 drawn on Centurian Bank of Punjab Ltd. payable at Gurgaon in favour of Shri Amar Singh;

E. Rs.9,17,428/- vide DD No.086983 dated 6.7.2007 drawn on Centurian Bank of Punjab Ltd. payable at Gurgaon in favour of Shri Nain Singh;

F. Rs.9,17,428/- vide DD No.086982 dated 6.7.2007 drawn on Centurian Bank of Punjab Ltd. payable at Gurgaon in favour of Shri Jai Singh;

G. Rs.9,17,428/- vide DD No.086985 dated 6.7.2007 drawn on Centurian Bank of Punjab Ltd. payable at Gurgaon in favour of Shri Pardeep Kumar;

On 4.9.2007 accused No.1 got executed and registered a sale deed for the land in complaint in favour of its nominee i.e. accused No.2 vide sale deed bearing Vasika No.11819 dated 4.9.2007 in the office of Sub-Registrar, Gurgaon and handed over seven postdated cheques for Rs.72,25,000/- each totaling to Rs.5,05,75,000/- to the complainants etc. which includes amount of earnest money of Rs.68,00,000/-. The details of four postdated cheques given by the accused No.2 from his bank account No.119002000000268 for and on behalf of accused No.1 in favour of complainant etc. for a total sum of Rs.2,89,00,000/-. The complainants deposited the cheques for encashment with their bankers on 1.2.2008 but the same were not encashed. However, accused got mutation no.7342 sanctioned on 14.9.2007 in their favour without payment of balance sale consideration to the complainants. Complainants requested the accused to pay the balance sale consideration but initially they lingered on matter on one pretext or the other and finally they illegally and unlawfully refused to release the payments. Complainants came to know that accused No.1 and 2 illegally, unlawfully, malafidely, vexatiously with ulterior motive of cheating and committing fraud upon complainants by way of manipulation and fabrication of documents got transferred the land in

question of accused No.3 and 4 with an intention to cause wrongful loss to complainants and for their wrongful gains. The above facts and circumstances make it abundantly clear that accused in collusion with each other entered into the aforesaid agreement to sell dated 6.7.2007 with malafide intention of grabbing their valuable land without payment balance sale consideration and ultimately got executed and registered the sale deed bearing Vasika No.11819 dated 4.9.2007 without paying the balance sale consideration of Rs.2,89,00,000/- in breach of the aforesaid agreement and further with malafide common intentions with ulterior motive of grabbing the land in question further obtained mutation No.7342 dated 14.9.2007 by way of misrepresentation, manipulation, fabrication and committing fraud and further transferred to the land to accused No.3 and 4 for their lawful and wrongful gains and wrongful loss to complainants for which they are liable to be prosecuted and punished in accordance with law. Hence, the complaint.”

Learned trial Court on the basis of preliminary evidence, summoned the accused under Sections 420, 467, 468, 471 and 120-B IPC. A revision was filed and learned Addl. Sessions Judge, Gurgaon, dismissed the revision petition vide judgment dated 17.01.2013. Aggrieved from the above-stated order and judgment, present petition has been filed.

Notice of motion was issued. Learned counsel for the respondents appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

The perusal of the record shows that there is no document on record, which is alleged to have been forged by the accused. The main

dispute between the parties is that accused No.1 and 2 in the complaint, entered into an agreement to sell with the complainants, who were owners of the land and paid ₹68 lakhs as earnest money to the complainants. Then as per agreement, six cheques of more than ₹72 lakhs each, were given, out of which, two cheques have already been got encashed by the complainants. The sale deed has already been executed by the complainants in favour of the accused-company. The allegation of the complainants is that four cheques issued by the accused, have been dishonoured for want of 'sufficient funds' and they have further transferred the property to accused No.3 and 4 in the complaint, whereas, case of present petitioners-accused No.1 and 2 is that the possession of the land has not been delivered to the company, therefore, payment of the post-dated cheques was stopped, as there was oral condition between the parties that after payment of two cheques, the possession will be delivered by the complainants to the accused. Learned counsel for the petitioners argued that the complaint regarding dishonouring of the cheques, had already been decided, in which accused had been acquitted.

The perusal of the record further shows that in the complaint, no document is alleged to be tampered with or falsely prepared or forged. Therefore, summoning of the accused in these circumstances under Sections 465, 467, 468 and 471 IPC is without any evidence. As regarding offence under Section 420 IPC, admittedly, sale deeds are in favour of the company and present petitioners are alleged to be Directors of the Company. In no way, it can be held that petitioners have wrongfully gained personally anything. Furthermore, for the offence under Section 420 IPC, there should

in view the facts and circumstances of the present case, in no way, it can be held that intention of the petitioners/company was to cheat the complainants from the very beginning. Otherwise, why the company would have paid ₹68 lakhs as earnest money and then had given six cheques of more than ₹72 lakhs each, out of which, two cheques, as argued, have already been got encashed by the complainants. Though sale deeds have been executed in favour of the company of the petitioners and it is alleged that they have further sold the land to accused No.3 and 4, but admittedly, the possession of the land is still with the complainants, which means that complainants are enjoying the fruits of the property already sold and they have also taken more than ₹2 crores from the accused.

From the averments of the complaint itself, it is clear that there was no intention of the petitioners to cheat the complainant from the very beginning. Rather, the dispute between the parties is regarding delivery of the possession after execution of the sale deeds and therefore, payments of the cheques of remaining consideration, were stopped.

In view of the above discussion, I find that filing of present complaint is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in the present petition, the same is allowed. Criminal complaint No.70 dated 13.09.2011, summoning order dated 09.01.2012 passed by learned JMIC, Gurgaon and all subsequent proceedings arising therefrom, are hereby quashed.

May 23, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No