201

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 1.2.2019

CRM-M-16823-2012 (O/M)

Haji Hasan Bisti alias Haji Hasam Bisti .... Petitioner (s)

Versus

State of Punjab and others .... Respondent (s)

CRM-M-13586-2012 (O/M)

Soyab A. Gani Kapadiya .... Petitioner (s)

Versus

State of Punjab and others .... Respondent (s)

CRM-M-38245-2012 (O/M)

Mohd. Safi Hasan Chauhan Hajji and another .... Petitioner (s)

Versus

State of Punjab and others .... Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Kanwaljit Singh, Senior Advocate, with,
Mr. Abhishek Bajaj, Advocate,
for petitioner in CRM-M-16823-2012.

None for petitioner in CRM-M-13586-2012.

None for petitioners in CRM-M-38245-2012.

Mr. Karanbir Singh, AAG Punjab.

Mr. Arshdeep Singh Cheema, Advocate,
for respondent No. 5-complainant in CRM-M-16823-2012,
CRM-M-13586-2012 and
for respondent No. 4-complainant in CRM-M-38245-2012

-.- -.-

KULDIP SINGH, J.

By this common judgment, I shall dispose of three abovenoted connected petitions for quashing FIR No. 154, dated 6.8.2011, under

Sections 420, 120-B, 467, 468, 471 IPC, registered at Police Station Sanehwal, District Ludhiana, (Annexure-P-8) as all petitions arise out of same FIR. Facts of case have been extracted from CRM-M-16823-2012. Petitioner Soyab A. Gani Kapdiya, in CRM-M-13586-2012, is partner of Winsor Sea Food, Veraval, District Junagarh, Gujarat and Petitioners Mohd. Safi Hasan Chauhan Hajji and Sameer Mohd. Safi Chauhan, in CRM-M-38245-2012, are partners of M/s Shabina Foods.

It was alleged by complainant Kamlpreet Singh Samra son of Amrik Singh, stating that he has been authorized by Board of Directors to file present complaint. It is stated that M/s Samra Sea Food Pvt. Ltd. is having its head office at Sahnewal, District Ludhiana. It was previously running business at 801-802/1, Gujarat Industrial Development Corporation Area (in short 'GIDC Area'), Udyog Nagar Veraval, District Junagarh, Gujarat. The company had two plots bearing No. 801-802/1, in GIDC Area, Udyog Nagar, Veraval, District Junagarh, Gujarat, and was running business of sea food products. Complainant claims that they have closed their business in Gujarat and came to Ludhiana. Haroon Bhai Hazi Bhai Panja, Partner, M/s Asian Fish Suppliers, came to office of complainant at Sahnewal, Ludhiana, expressing his intention to purchase plot No. 802/1, to which complainant agreed. Haroon Bhai Hazi Bhai Panja paid Rs. 11,00,000/- as part payment of sale consideration in Ludhiana office and thereafter father of complainant entered into agreement to sell with said Haroon Bhai Hazi Bhai Panja. Before execution of sale deed, Mohd. Safi Hasan Chauhan Hajji (accused No. 1) and Shoaib A. Gani Kapadia (accused No. 3) asked complainant to transfer plot No. 802/1 directly in the name of M/s Sabina Exports and accused No. 1 and 2, namely, Samir Mohd. Safi Chauhan Hajji handed over draft bearing No. 071546, dated 29.11.2010, drawn on Punjab National Bank, Veraval, Junagarh, Gujarat, payable at RCC Ludhana, for Rs. 30,00,000/- to complainant in Ludhiana office. Rest of payment was to be made at the time registration of sale deed/lease deed. Thereafter, father of complainant signed requisite transfer papers in good faith that remaining amount of Rs. 53,02,894/- will be paid by accused after reaching Gujarat. Remaining amount of said plot No. 802/1 is yet to be paid by accused No. 3. Accused No. 3 came to Ludhiana office of complainant and expressed his intention to purchase plot No. 801, measuring 3000 meters out of 5700 meters, for which he paid Rs. 15,01,000/- as part payment out of Rs. 54,00,000/-. Thereafter, accused No. 3 again came to Ludhiana office of complainant and again showed his intention to purchase whole of plot No. 801, measuring 5700 meters, for Rs. 99,75,000/- and due date for making entire payment was fixed for 5.1.2011. Accused No. 3 started dilly delaying payment. Thereafter, accused No. 1 and 2 came to Ludhiana for making balance payment. On 8.3.2011, all accused got transferred plot No. 801 in the name of firm of accused No. 1 and 2 by forging and fabricating agreement pertaining to plot No. 802/1 and also illegally shown the receiving of demand draft bearing No. 071808, dated 1.2.2011 for Rs. 39,90,000/-, drawn on Punjab National Bank, Veraval, Junagarh, Gujarat, payable at RCC Ludhiana, which was never received by complainant from accused. When complainant came to know about conspiracy, he moved application before GIDC and demanded documents pertaining to plot No. 801 in the name of M/s Sabina Exports, on which accused offered to pay balance amount of plot No. 801/2 and 801 and also got issued a legal notice from their advocate from Gujarat, in Gujarati language, which is not understood by complainant. Complainant then sent his employee Tejinder Singh to

Gujarat to collect papers from the office of GIDC regarding transfer of plot No. 801 in the name of accused No. 1 and 2. When Tejinder Singh reached Gujarat, in order to settle the matter between accused and complainant, accused by way of inducing and threatening Tejinder Singh gave a cheque No. 508249, dated 6.6.2011, of Rs. 43,30,000/-, drawn at Bank of Baroda, Station Road, Veraval, being part payment of plot No. 801 and 802/1 and promised to pay remaining amount of both plots within short span. Writing in this regard was not explained to Tejinder Singh. Tejinder Singh was never authorized to sign any document and receive money. Tejnder Singh handed over said cheque of Rs. 43,30,000/- to complainant. Cheque was dishonoured on 7.6.2011 on the ground of 'insufficient funds' and hence complaint.

I have heard learned senior counsel for petitioner in CRM-M-16823-2012 and considered case of petitioners in remaining two petitions as their counsels were not present to address arguments. I have also heard learned State counsel and learned counsel for complainant/ private respondent and have also carefully gone through file.

In reply, complainant reasserted versions given in complaint. However, it has not been denied by learned counsel for complainant at the time of arguments that for cheque of Rs. 43,30,000/- which was dishonoured, they received payment through RTGS from accused and said amount stands paid.

The learned counsel for complainant has argued that infact, petitioners are being blackmailed. It is a civil dispute. Facts have been twisted to show as if every transaction took place at Ludhiana, whereas everything happened at Veraval, Gujarat. Agreement and documents were executed at Veraval and property is also situated at Veraval. Therefore, registration of case at Police Station Sahnewal, District Ludhiana is nothing, but misuse of process of law.

The learned senior counsel for petitioner has stated that infact Winsor Sea Food entered into agreement with M/s Samra Sea Food Private Limited for transfer of 3000 meter portion of plot No. 801 in southern side at Rs.1800/- per sq. meter for Rs. 54,00,000/-. Rs. 14,00,000/- were paid through demand drafts No. 010342 and 010343, dated 5.8.2010, issued by Union Bank of India, Branch Veraval, District Junagarh and Rs. 1,00,001/- were paid in cash. It was mentioned in agreement that if GIDC does not permit plotting, remaining 2700 sq. mtr. of land shall be sold to Winsor Sea Food at the same rate. Memorandum of understanding dated 5.8.2010 was executed between parties at Veraval, Junagarh. Stamp papers were also purchased and memorandum of understanding was executed at Veraval with Amrik Singh, father of complainant, who was Managing Director of M/s Samra Sea Food Private Limited. Similarly, regarding plot No. 802/1, M/s Samra Sea Food Private Limited entered into an MOU with Asian Fish Supplier through its partner Haroon Bhai Hazi Bhai Panja on 6.8.2010. Asian Fish Supplier paid Rs. 11,00,000/- as advance through two post dated cheques of Rs. 5,00,000/- each and rest Rs. 1,00,000/- were paid in cash. Copy of said agreement is Annexure-P-2. When it was checked from GIDC, it was informed that plotting of portion is not possible. Even date mentioned in agreement has expired. Therefore, fresh MOU dated 23.11.2010 was executed for sale of whole plot i.e. 801, measuring 5700 sq. yds. for Rs. 99,75,000/-. The paper for MOU was purchased from Veraval and agreement was executed at Veraval, Junagarh, Gujarat. None of petitioners ever visited Ludhiana for any purpose. There was an understanding to transfer plot in favour of Sabina Exports. Petitioner is partner in same. Thereafter, application dated 29.11.2010 was moved before Regional Manager, GIDC, Rajkot, by Samra Sea Foods Private Limited and Sabina Foods on 28.11.2010 for transfer of plot alongwith requisite documents. The application was signed by Amrik Singh, father of complainant and same was submitted on 29.11.2010, vide diary No. 2776. On said date, Sabina Foods Limited made payment of Rs. 30,00,000/- through demand draft, bearing No. 071546, dated 29.11.2010 to Amrik Singh Samra. As per understanding between petitioners, other private respondents and complainant, M/s Samra Sea Food Private Limited, plots were to be transferred in the name of Sabina Foods Limited and payment was to be made by Sabina Foods Limited directly or through Winsor Sea Food as initial agreement was in the name of Winsor Sea Food. Amrik Singh requested petitioner that he may be burdened with certain additional liabilities, so that he may be given some amount in the name of his associate company Samra Dry Fish which is fully owned by Amrik Singh Samra alongwith his wife. On 29.11.2010, Sabina Foods gave direct payment of Rs. 30,00,000/- to Samra Sea Food Pvt. Limited and transferred Rs. 47,00,000/- to account of Winsor Sea Food Limited, from which five drafts of Rs. 9,00,000/- each, one draft of Rs. 2,00,000/- were issued in favour Samra Dry Fish. At that time, said drafts were encashed by complainant side. At that time, Amrik Singh was present at Veraval which can be verified from his mobile record. Said Rs. 77,00,000/- were handed over to Amrik Singh at Veraval Railway Station. Few lakhs were outstanding in the name of Samra Foods Limited on behalf of GIDC. On behalf of GIDC and other individuals, said amount was paid by petitioner firm on the direction of Amrik Singh Samra and firm of respondents No. 2 and 3 from time to time. Details of payment is mentioned in petition, stating that total amount paid is Rs. 2,01,77,800/- whereas as per agreement, only a sum of Rs. 1,93,77,894/- was to be paid. Excess amount was extracted by blackmailing attitude of Amrik Singh, father of complanant. Even if Rs. 4,80,900/- paid in cash on the direction of Amrik Singh are deducted, still amount paid by demand drafts and acknowledged mode, comes to Rs. 1,99,77,800/- which is more than agreed amount. It was further stated that application for transfer of plot was moved by Amrik Singh, father of complainant, on 29.11.2010. GIDC formally approved transfer on 8.3.2011, but some amount of Rs. 40,00,000/- was payable to complainant side, because on the spot, land was 1073 meter less than the land which was mentioned in agreements (Annexure-P-1 to Annexure-P-3) and it was under unauthorized occupation of some neighbours. Former employee Sakil Una of Samra Foods had also got stay regarding his transfer as his salary was due to complainant. Same was also settled by petitioner and other co accused by executing some agreement and making some payments. Ultimately, in first week June, Tejinder Singh representative of complainant side, approached petitioner with a resolution dated 23.5.2011 regarding settlement of matter at Veraval. He received balance payment of Rs. 43,30,000/-, vide cheque No. 508249 dated 6.6.2011 and executed full and final payment receipt dated 4.6.2011 (Annexure-P-5). As said cheque was dishonoured, legal notice was sent on 10.6.2011, but before receipt of said notice on 13.6.2011, Sabina Foods transferred Rs. 43,30,000/- to Samra Sea Food Pvt. Limited through RTGS. Sabina Sea Food also paid Rs. 39,90,000/- to complainant side in cash as one demand draft issued to complainant side was returned with request that amount may be paid in cash.

I have gone through all agreements Annexure-P-1 to

Annexure-P-3. It show that all agreements were executed at Veraval, District Junagarh. The property is also situated at Veraval, Junagarh. Agreements/MOUs are between Amrik Singh, father of complainant and all accused.

The learned counsel for complainant does not deny that for dishonoured cheque, they received Rs. 39,90,000/- through RTGS after issuance of notice under Section 138 of Negotiable Instruments Act, 1881. Transfer document is also on file, vide which plots No. 801-802/1 were transferred. Complainant had tried to make out jurisdiction at Ludhiana to show that every time, petitioner came to Ludhiana and everything happened in Ludhiana. Amrik Singh has himself not filed complainant and rather his son come come forward to file complaint. All documents were executed at Veraval, District Junagarh, Gujarat. Property is also situated at Gujarat. Therefore, apparently, averment that every time, accused came to Ludhiana, has been made just to make out jurisdiction at Sahnewal. Surprisingly, Amrik Singh has not himself come forward to make complaint. Tejinder Singh, representative of petitioner was fully authorized. He entered into agreement of full and final understanding. Demand drafts are also on file. If complainant claims that there is some dispute regarding payment, it is purely a dispute of civil nature. Amrik Singh, father of complainant signed transfer deeds and all formalities regarding transfer took place at Gujarat. Therefore, I am of the view that present complaint is nothing, but misuse of process of Court. No part of cause of action arose at Sahnewal, District Ludhiana. Immovable property is also not in Ludhiana. Documents were executed at Veraval, District Junagarh. Properties are also at Veraval. Transfer of property was also done at Veraval, Junagarh, on the request of Amrik Singh. Therefore, only Court having jurisdiction at Junagarh could take cognizance of offence, if any. Moreover, it is purely a civil dispute regarding some transactions. Complainant claims that he had not received entire money, whereas accused claims that they have paid more than sale consideration. Therefore, present FIR is nothing, but misuse of process of Court.

In view of matter, abovenoted three petitions are allowed and present FIR alongwith consequential proceedings stand quashed.

(KULDIP SINGH)
JUDGE

1.2.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No