

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

**CRM No.M-2023 of 2010 (O&M)
Date of Decision: January 23, 2019**

Mender Singh and another

...Petitioners

VERSUS

Dr.S.L.Arora and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rahul Sharma, Advocate
for the petitioners.

Mr.Anuj Raura, Advocate
for respondent No.1.

None for respondent No.2.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against respondents Dr.S.L.Arora and U.T. Chandigarh for quashing of criminal complaint No.7464 of 19.08.2009 titled as 'Dr.S.L.Arora vs. Vijay Goyal and others' and summoning order dated 08.10.2009 along with all subsequent proceedings thereto.

Notice of motion was issued. Learned counsel for respondent No.1 appeared, filed reply and contested the petition.

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

From the record, I find that a complaint was filed by

Dr.S.L.Arora against Vijay Goyal and other accused under Section 156(3) Cr.P.C. As per the complainant, a calculated fraud has been played by all the accused with him in connivance with each other and made the complainant to part with an amount of ₹1.50 crore by making false representations. The complainant believing said representations as true and correct, parted with such a huge amount. It is also stated that complainant was made to enter into an agreement to sell by Vijay Kumar Goyal and others, in respect of 25% share of SCO No.47-48, Sector-17C, Chandigarh. At that time, these persons had no right/title to enter into the agreement to sell dated 21.04.2008 and to make the complainant to part with an amount of ₹1.50 crore. When the complainant approached to get the sale deed executed in his favour in respect of 25% share of above-said SCO, accused flatly refused nor returned the amount. This refusal has been done as Vijay Kumar Goyal and his so called parties, were not having 25% share with them. It is further stated that Mender Singh and Mohinder Kaur entered into an agreement to sell dated 14.03.2005 with six persons namely Raj Bansal, Anju Bansal, Surjit Chaudhary, Vijay Kumar Goyal, Jaswinder Singh and Ramesh Kumar Mittal, in respect of SCO No.47-48, Sector-17C, Chandigarh for an amount of ₹3.20 crore. As per para 6 of that agreement to sell, Vijay Kumar Goyal had 20% share in the SCO in question. None of these clauses of that agreement to sell states that vacant possession of the SCO in question had been handed over to the purchasers i.e. Vijay Kumar Goyal etc. That agreement to sell has been specifically signed by Mender Singh and as GPA of Mohinder Kaur. Vijay Kumar Goyal has share of 20% only and he had a right to enter into agreement to sell only upto 20% share.

connivance with Manohar Singh and Rattan Lal and they had got Vijay Kumar Goyal introduced with the complainant.

The perusal of the complaint itself shows that present petitioners have not entered into agreement to sell with the present complainant Dr.S.L.Arora. The complainant has never met petitioners nor they ever induced the complainant to part with any money. As per complainant's version, he entered into agreement to sell with Vijay Kumar Goyal and others. The present petitioners have entered into agreement to sell three years earlier to the complainant's agreement with Vijay Kumar Goyal and five other persons. There is nothing on the record to show connivance of present petitioners with Vijay Kumar Goyal. If Vijay Kumar Goyal has entered into agreement to sell with the complainant for share of 25% and has taken ₹1.50 crore from the complainant though he was having only 20% share etc., even then, present petitioners cannot be held as guilty for cheating, if any, by other accused. The present petitioners are residing in Malaysia. As already discussed, there was no interaction of any type of the complainant with the petitioners. Vijay Kumar Goyal or any of the other accused, was not Power of Attorney holder of present petitioners. Rather, as per complainant, one Power of Attorney was got executed from present petitioners in the name of complainant, which the petitioners cancelled after one or two days. The execution of Power of Attorney or cancellation of the same, does not constitute any offence. There was no inducement by the present petitioners to the complainant to part with the money nor there is any document to show connivance of present petitioners with Vijay Kumar Goyal etc.

argued that the payment was got made by Vijay Kumar Goyal in the name of present petitioners, therefore, they are beneficiary and guilty. On this argument, I find that present petitioners had entered into agreement to sell with Vijay Kumar Goyal and others for ₹3.20 crores. As admitted, at the time of arguments, there was a condition in the agreement that Vijay Kumar Goyal etc. can get the sale deed executed in their names or in the name of other person. Therefore, if Vijay Kumar Goyal got money in the names of present petitioners to get the sale deed executed in favour of the complainant or other person and also got GPA in the name of complainant, even then, it will not show that present petitioners have cheated the complainant.

Keeping in view the above discussion, I find that the filing of present complaint against the petitioners 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.7464 of 19.08.2009 titled as 'Dr.S.L.Arora vs. Vijay Goyal and others' and summoning order dated 08.10.2009 along with all subsequent proceedings arising therefrom, are hereby quashed qua the petitioners.

January 23, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No