In the High Court of Punjab and Haryana at Chandigarh

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Cr. Misc. No.M-15730 of 2014

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Date of decision:28.02.2019

Shyam Sunder Sanganeria and others

.....Petitioners

v.

State of Haryana and others

.....Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. J.S. Bedi, Senior Advocate with Mr. Ashwani Bhardwaj and Mr. Aditya Sanghi, Advocates for the petitioners.

Mr. Tarun Sharma, Assistant Advocate General, Haryana for the respondent-State.

Mr. Birender Singh Rana, Senior Advocate with Ms Divya Bajaj, Advocate for respondent No.2.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.460 dated 6.8.2012 (Annexure-P.1) registered for the offences under Sections 420, 406 and 120-B IPC at Police Station City Hansi, District Hisar and all subsequent proceedings arising therefrom.

Notice of motion was issued.

Mr. Tarun Sharma, learned Assistant Advocate General, Haryana has appeared on behalf of the respondent-State and Mr. Birender Singh Rana, learned Senior Advocate with Ms Divya Bajaj, Advocate has appeared for respondent No.2 and contested this petition.

I have heard learned senior counsel for the parties as well as learned State counsel and have gone through the record.

A perusal of the record shows that the FIR in the present case has been got registered by Ram Kishan-complainant against the present petitioners by filing the complaint. It has been stated that the complainant has knowledge regarding property matters and is well connected with the Government Departments and its functioning. In the year 2002, the accused persons (petitioners herein) contacted the complainant and told him that they had a very good business proposal and wanted somebody from Hansi City to execute the plan. The petitioners told the complainant that they were owners of land measuring 67 Kanals 3 Marlas at prime location and wanted to develop a big colony over this land and had asked the complainant and his partner Ghanshyam that they can earn a lot of money from this deal. The petitioners contacted the complainant and his partner Ghanshyam several times and convinced them to enter into a collaboration for development of a colony with them. After various negotiations, discussions, the accused-petitioners managed to convince the complainants to enter into an agreement. Vijay Kumar Sanganeria representing himself to be the holder of the power of attorney of Shyam Sunder Sanganeria HUF, Sushil Kumar Sanganeria HUF and having powers on behalf of M/s Radha Krishan Sri Niwas entered into an agreement of sale-cum-collaboration on 7.3.2003 for development of colony called Radhey Enclave, which was reduced in writing on 8.9.2004. All the accused-petitioners agreed with the agreement. As per the agreement, an amount of ₹1.5 Crores was payable to the accused-petitioners from the complainant for the cost of land. From the sale proceeds, profits had to be shared in the ratio of 40:60 i.e. 40% by the firm of the accused and 60% by the complainant. The complainants had to get the site plan and colony scheme approved from the concerned authorities. The possession of the land was also handed over to the complainant side for development as per norms and guide-lines of the Government. The sale deeds of the plot were to be registered in the name of the buyers i.e. named by the complainant side and the partners of firm M/s Radha Krishan Shri Niwas. The complainant side also arranged the bank guarantee of ₹72,57,700/- from their near relative for submitting it to the Town and Country Planning Department, Haryana, for obtaining necessary permission in order to develop this land as colony. It has been stated that it was a joint venture but the accused persons and power of attorney holders of firm M/s Radha Krishan Shri Niwas, Vijay Kumar Sanganeria, Arun Kumar Sanganeria and Rajender Kumar Sanganeria cheated the complainant side and made a false statement regarding the fact that the land is free from all encumbrances. One person, namely, Ram Kumar set-up the claim of tenancy over the land and the complainant side paid a sum of ₹15.50 Lakhs on 28.3.2005 to him in order to clear the land. The complainant side deposited a sum of ₹43.50 Lakhs with the Department of Town and Country Planning, Haryana, for obtaining licence of colony. The sum of ₹65 Lakhs was spent by the complainant side for construction i.e. for laying roads, water, sewerage, parks etc. It has been stated that apart from this, the accused persons cheated the complainant side that the land bearing Khasra No. 1224(17-8) and 1228(10-15) measuring 28 Kanals 3 Marlas out of total land measuring 67 Kanals 3 Marlas was not owned and possessed by the firm M/s Radha Krishan Shri Niwas, but the same was owned and possessed by the heirs of Radha Krishan and Shri Niwas and in this manner, the complainant side was further cheated by the accused persons. It has further been stated that the partners of M/s Radha Krishan Shri Niwas executed several sale deeds through their attorney, namely, Aadesh Sanganeria, Anup Sanganeria, Gautam Sanganeria, Parduman Sanganeria, Aman Kumar and Vipin Garg to the extent of their share and received the entire sale consideration from vendees of those sale deeds themselves. While executing all these sale deeds they also admitted the formation of the colony, namely, Radhey Enclave, but they did not pay even a single penny to the complainant side out of the sale proceeds. It has also been stated that the complainant side paid huge amount of ₹5,91,11,750/-. It has also been stated that the accused persons have allegedly got filed a civil suit titled as "Arun Kumar Versus Secretary and others" challenging formation of colony and for illegally stopping the development of colony etc.

Learned senior counsel appearing for the petitioners brought it to my notice a copy of the admitted agreement Annexure.P.1 between the parties wherein it has been mentioned that net sale proceeds of the total saleable plots shall be shared in the ratio of 40:60 respectively by both the parties i.e. from the total net proceeds from the sale of the said entire land in plots as stated above, ₹1.5 Crores shall be payable to the party of the first part, the remaining net balance after deducting the said amount of ₹1.5 Crores from the total net sale proceeds as referred above, shall be divisible between the parties of both the parts in the ratio of 40:60 respectively which means the petitioners as per this collaboration agreement-cum-sale agreement were entitled to receive ₹1.5 Crores, which is admittedly not paid to the accused petitioners. Learned senior counsel for the petitioners further argued that Annexure-P.3 is another agreement for sale executed by Smt. Kalawati Devi Sanganeria, wife of late Baijnath Sanganeria, Sushil Kumar Sanganeria, Raj Kumar Sanganeria and Giridhar Kumar Sanganeria sons of late Baijnath, Hari Ram Sanganeria, Ramesh Kumar Sanganeria and Suresh Kumar Sanganeria sons of late Keshavdeo Sanganeria, Rajendra Kumar Sanganeria, Narendra Kumar Sanganeria and Birender Kumar Sanganeria sons of late Mohan Lal Sanganeria of the one part and Ram Kishan son of Bhag Chand and Ghanshyam Dass son of Dilip Singh, complainants in which it was agreed as per this agreement that the area of 17 Kanals 8 Marlas and 10 Kanals 15 Marlas respectively totaling to 28 Kanals 3 Marlas, regarding which permission has been duly granted by the Department to the purchasers, shall pay to the vendors ₹27 Lakhs on or before the date of execution and the purchasers shall be entitled to possession of the property immediately after the vendors having received the consideration money simultaneously with the execution of this agreement. The vendors shall simultaneously with the execution of this agreement and having received the entire consideration money as stated hereinabove, shall grant power of attorney in favour of the purchaser and/or his nominee and nominees for executing the proper Deed of Conveyance. Learned senior counsel for the petitioners argued that this disputed property, which is stated to have been sold by the petitioners regarding their share, is same property which makes part of Annexure-P.3 agreement to sell and as per this agreement between the parties the power of attorneys have been executed. Learned senior counsel for the petitioners relied upon the chart Annexure-P.4 showing all the sale deeds in which either the complainants are signatories as witnesses to the sale deeds or these sale deeds have been signed by the complainant side on behalf of the vendees, which means that no cheating has been there and these sale deeds were of the year 2006 and the FIR has been registered in 2012. Learned counsel for the petitioners further argued that vide Annexure-P.5, two power of attorneys have been executed in favour of the sons of the complainants which means that all these sale deeds, regarding which the complainant is alleging cheating, have been executed through the sons of the complainants or at their instances and the complainants are signing the sale deeds on behalf of the vendees or as witnesses in these sale deeds. Now the FIR cannot be got registered by the complainants regarding these sale deeds.

Learned senior counsel for private respondent No.2 on the other hand stated that the agreement Annexure-P.3 is not signed by the complainants. Learned senior counsel argued that it is a forged agreement.

Learned senior counsel for the petitioners on this argument brought it to my notice that the power of attorneys are admitted documents between the parties. On the basis of the power of attorneys which are in favour of sons of the complainants, the sale deeds have been executed. These power of attorneys (Annexure-P.5) show the mention of this agreement Annexure P.3 dated 17.12.2005.

As there is no dispute regarding the power of attorneys, the collaboration agreement-cum-sale agreement and the sale deeds, which are admitted documents, I find that no offence is made out from these documents. Rather, it is a dispute between the parties regarding the agreements qua which civil remedy lies. There is no mention regarding payment of ₹1.5 Crores to the accused nor this fact has been mentioned in the FIR that ₹1.5 Crores have been paid to the petitioners-accused nor it was argued at the time of arguments. The only point regarding cheating is selling the share regarding 28 Kanals 3 Marls, but the admitted documents show that this has been sold to the complainants themselves by executing the power of attorneys in favour of their sons as told by them and further the complainants being signatory to all the sale deeds. Earlier one of the complainants filed complaint under Section 156(3) Cr.P.C. which was still pending before the Court and further other complainant got registered the FIR, which the learned senior counsel for the petitioners argued that this shows their conduct.

From the above discussion, I find that the petitioners, who are residents of Kolkata, have been harassed by getting registered this FIR and this FIR is nothing but an abuse of the process of law and amounts to miscarriage of justice as the FIR has been got registered only to put pressure upon the petitioners regarding their business transactions.

Therefore, from the above discussion, this petition is allowed and FIR No.460 dated 6.8.2012 (Annexure-P.1) registered for the offences under Sections 420, 406 and 120-B IPC at Police Station City Hansi, District Hisar and all subsequent proceedings arising therefrom are hereby quashed qua the petitioners.

February 28, 2019. **(Inderjit Singh)**
Judge

hsp

NOTE: Whether speaking/reasoned: Yes
Whether reportable: No