

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-21319-2016
Date of Decision:20.05.2019

Sarabjit Singh

...Petitioner

Versus

State of Punjab and another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Manoj Kumar Sharma, Advocate for the petitioner.
Mr.Ramdeep Partap Singh, DAG, Punjab.
Mr.Sarju Puri, Advocate for respondent No.2-complainant.

ANIL KSHETARPAL, J. (ORAL)

CRM-16749-2019

Application is allowed. Additional affidavit of respondent No.2
is taken on record.

Main case

At the outset, it must be noticed that there is growing tendency amongst the people attempting to give the cloak of a criminal offence to the disputes which are essentially civil in nature. In such circumstances, the courts dealing with criminal cases are under an additional responsibility to ensure that proceedings pending before it, are not permitted to be used for settling scores or to pressurise the parties to settle civil disputes. Facts of this case demonstrate one such attempt.

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure for quashing of criminal complaint dated 04.06.2013 (Annexure P-6) under Section 420 of the Indian Penal Code and

order of summoning dated 21.04.2016.

Some facts are required to be noticed. Kundan Singh @ Surjit Singh Banga and his sister Harbhajan Kaur @ Jagdeep Kaur Sharma were owners of land situated in village Mukh Ladhana, Hadbast No.284 Hoshiarpur. Smt. Harbhajan Kaur authorised his brother Kundan Singh through power of attorney to deal with the property. Kundan Singh is alleged to have executed an agreement to sell dated 01.03.2012 (Annexure P-1) for himself as well on behalf of her sister with respect to land measuring 65 kanals and 11 marlas @ Rs.23,00,000/- per acre and received a sum of Rs.10,00,000/- as earnest money from the petitioner Sarabjit Singh. As per agreement to sell, Sarabjit Singh was specifically authorised to further enter into an agreement to sell. He, thereafter, on the strength of that agreement to sell, executed an agreement to sell in favour of Mandeep Singh (complainant in a criminal complaint) son of Amrik Singh and Amrik Singh son of Pritam Singh with respect to same land specifically mentioning therein that he is agreeing to sell on the basis of agreement to sell dated 01.03.2012 in his favour from Kundan Singh @ Surjit Singh and Harbhajan Kaur. The petitioner Sarabjit Singh received a sum of Rs.45,00,000/- towards earnest money and thereafter he received additional money of Rs.3,00,000/-. The rate on which the land agreed to be sold by Sarabjit Singh (petitioner herein) in favour of Mandeep Singh and his father Amrik Singh was at Rs.25,00,000/- per acre. Total consideration comes to more than Rs.2,00,00,000/-.

It is undisputed that Jaswinder Kaur wife of Amrik Singh (mother of Mandeep Singh) and Smt. Balwinder Kaur wife of Joginder

Singh (mother-in-law of Mandeep Singh) have been transferred the land through a sale-deed with respect to land measuring 62 kanals and 11 marla on 7.11.2012 from Kundan Singh and his sister on payment of Rs.95,00,000/-. It is further claimed by the petitioner that the aforesaid land purchased is from the same khewat.

Mandeep Singh-respondent initially lodged a complaint with the police which on investigation by the Deputy Superintendent of Police was found to be a dispute of civil nature. However, the complainant-Mandeep Singh did not stop. He did not file a civil suit. He filed a criminal complaint dated 04.06.2013. It has been alleged in the complaint that Sarabjit Singh-petitioner/accused never entered into any agreement to purchase the property from original owners Kundan Singh and Harbhajan Kaur. It has further been alleged that Sarabjit Singh-petitioner/accused was never authorised by the original owners to enter into an agreement to sell. Thus, it has been alleged that the petitioner induced the complainant to enter into an agreement to sell and part with the amount of Rs.48,40,000/- and, therefore, the complainant has been cheated.

On 16.6.2016, while issuing notice of motion, following contentions of learned counsel for the petitioner were noticed:-

“The counsel for the petitioner contends that the original owners have already executed a sale deed dated 7.11.2012 (Annexure P-4) through General Power of Attorney Kundan Singh in favour of mother of the complainant, Jaswinder Kaur w/o Amrik Singh and another half share in favour of one Balwinder Kaur w/o Joginder Singh. The matter is purely of civil nature.”

A detailed reply was filed by the respondent/complainant. In

the detailed reply, it has been pleaded that the petitioner did not honour the agreement to sell. It was further pleaded that they have now come to know that there was no agreement to sell between Kundan Singh and Harbhajan Kaur in favour of Sarabjit Singh and they have been cheated of Rs.48,40,000/-. It has further been pleaded that the petitioner was never authorised by the original owners or had any subsisting agreement in his favour from original owners. On 29.04.2019, after hearing arguments of learned counsel for the parties, another opportunity was given to the respondent/complainant to file specific affidavit in response to the contentions raised by the learned counsel for the petitioner. Additional affidavit has been filed by the respondent-complainant. In this affidavit also, it has nowhere been asserted by the complainant-respondent that the sale-deed dated 17.11.2012 with respect to land 62 kanals and 11 marlas is not in pursuance to agreement to sell dated 13.03.2012 executed by the petitioner Sarabjit Singh in favour of Mandeep Singh and his father Amarjeet Singh.

There are precisely three allegations against the petitioner. Firstly, the petitioner herein was not having any agreement from Kundan Singh and his sister, secondly, the petitioner has not accounted for the amount received by him i.e. Rs.48,40,000/- and lastly he has not honoured the agreement to sell.

It is well settled that failure to perform obligation under an agreement to sell does not normally give rise to a criminal offence. It would always depend upon the facts and circumstances of the case. The remedy for non performance or failure to perform is to file a suit for specific

performance of the agreement to sell as provided under the Specific Relief Act, 1963 or to recover the amount paid.

Learned Judicial Magistrate 1st Class summoned the petitioner under Section 420 of Indian Penal Code. A bare reading of the order, summoning the petitioner, it is apparent that learned Judicial Magistrate 1st Class superficially examined the allegations in the complaint and the evidence. From the reading of the order, it does not appear that the learned Judicial Magistrate thoroughly apprised itself about the entire dispute between the parties and after applying well settled judicial principles passed the order. Relevant part of the order is extracted as under:-

“Documentary as well as oral evidence brought on record by the complainant seems sufficient to establish prima facie case against the accused no.1 Sarabjit Singh to the effect that accused no.1 Sarabjit singh dishonestly induced the complainant and his father to make them to enter into an agreement to sell on 13.03.2012 and thereby making them to deliver Rs.48,00,000/- along with Rs.40,000/-. However, no such evidence has been placed on record to establish prima facie case against the accused no.2 to 4 as no document produced by the complainant contains signature of any of them neither the witnesses examined by the complainant has specifically deposed against the accused no.2 to 4.

In view of the discussion made here in above, this can safely be held that the complainant has been able to prima facie establish that the accused no.1 has committed offence under section 420 of IPC by dishonestly inducing the complainant and his father by making them to enter into an agreement to sell dated 13.03.2012 and making them to deliver Rs.48,00,000/- along with Rs.40,000/-.”

Now, under these circumstances, the question which needs

consideration is as to whether the proceedings initiated on filing of criminal complaint should be allowed to continue or not?

The complainant-respondent Mandeep Singh, while filing the petition before the court, did not disclose in the complaint that land measuring 62 kanals and 11 marlas has been transferred through a registered sale-deed by Kundan Singh in favour of Jaswinder Kaur wife of Amrik Singh (mother of Mandeep Singh) and Smt.Balwinder Kaur (mother-in-law of Mandeep Singh).

There is no assertion in the reply to the petition that the sale-deed dated 07.11.2012 is not result of agreement to sell dated 13.03.2012. It is the case of the petitioner that the sale-deed has been executed by Kundan Singh is because of agreement to sell dated 01.03.2012 in his favour and further agreement to sell by the petitioner Sarabjit Singh in favour of Mandeep Singh and Amrik Singh. As per agreement to sell in favour of Mandeep Singh and Amrik Singh, the total sale consideration comes to more than Rs.2,00,00,000, out of which only Rs.48,00,000/- was alleged to have been paid to Sarabjit Singh, whereas the sale-deed in favour of Jaswinder Kaur and Balwinder Kaur is against payment of Rs.95,00,000/-.

It is now being claimed by the complainant that there was no agreement to sell in favour of Sarabjit Singh executed by Kundan Singh for himself and on behalf of Harbhajan Kaur as an attorney, whereas in the agreement to sell (Annexure P-3) which is an admitted document between the parties, it has been specifically noted that Sarabjit Singh is agreeing to sell the land on the strength of agreement to sell dated 01.03.2012.

Learned counsel for the respondent-complainant submits that the petitioner had received a sum of Rs.48,00,000/- and that amount has not been accounted for, whereas stand of the petitioner herein is that entire money received has been accounted for.

The dispute is with regard to non-payment of the amount. In the considered view of this Court and in the facts and circumstances of this case, no criminality is involved and the remedy for the respondent-complainant is to file a suit for recovery. It is undisputed that no civil suit has been filed.

Now let us examine the allegations made in the criminal complaint in detail.

First and foremost allegation is that there is no agreement to sell in favour of Sarabjit Singh from Kundan Singh and Harbhajan Kaur and Sarabjit Singh has not been authorised to further enter into an agreement to sell. Second allegation is that petitioner-accused and other accused induced the complainant to enter into an agreement to purchase the property. Third allegation is that the complainant has been cheated by inducing the complainant to enter into an agreement to purchase the property.

At the time of arguments, learned counsel for respondent No.2 could not dispute that there is agreement to sell dated 01.03.2012 by Kundan Singh and Harbhajan Kaur in favour of Sarabjit Singh. Copy whereof has been attached as Annexure P-1. A reading of the agreement to sell dated 01.03.2012, it is apparent that Sarabjit Singh had been authorised to further execute agreement to sell on the basis of agreement to sell dated 01.03.2012. As per the original agreement to sell, target date for execution and registration of the sale-deed was fixed as 10.10.2012 which

was thereafter extended to 09.11.2013. Therefore, allegations made in the complaint that there was no surviving agreement to sell in favour of Sarabjit Singh is also factually incorrect, because the agreement to sell by Sarabjit Singh in favour of Mandeep Singh and his father is dated 13.03.2012. Still further a bare look at the agreement to sell executed by Sarabjit Singh in favour of complainant and his father, it is apparent that reference to agreement to sell dated 01.03.2012 is specifically made. Now, the complainant cannot turn around and say that he did not see the agreement to sell in favour of Sarabjit Singh. There are no allegations that Sarabjit Singh has forged agreement to sell dated 01.03.2012. It is well settled that buyer has to be beware. In the present case, once the complainant and his father were entering into an agreement to purchase and paying amount of Rs.48,00,000/-, it was their duty to cross check the correctness and validity of the representation made by the intended seller. In any case, in view of subsequent sale-deed having been registered in favour of mother of the complainant and his mother-in-law, there is no doubt left with regard to correctness of agreement to sell dated 01.03.2012.

Next allegation against the petitioner is that he has been cheated. No details of cheating have been given in the complaint. Obviously the cheating is with reference to the fact that there is no agreement to sell in favour of Sarabjit Singh-petitioner by the owners and he does not have power to further enter into an agreement to sell. It may be noted that there is further assertion to the effect that the petitioner has not paid earnest money to the owners which was received from the complainant and his father.

While considering these allegations in the facts available on the file, it is to be seen that non-payment of earnest money by Sarabjit Singh, Kundan Singh and his sister is a fact which is to be noticed and rejected particularly by four reasons. Firstly, the complainant has no locus standi that Sarabjit Singh has not paid the amount. Secondly, Kundan Singh and his sister are not making any complaint of non-payment of the amount. Thirdly, once the sale deed has been executed and there are no allegations/assertions that the mother and mother-in-law of the complainant had to pay more than the amount agreed under the agreement to sell dated 13.03.2012, the case against the petitioner is not made out. Lastly the Deputy Superintendent of Police, after a thorough enquiry, had found that the entire amount has been accounted for. Lastly it is apparent that the petitioner had agreed to purchase the property @Rs.23,00,000/- per acre and had further agreed to sell the property @ Rs.25,00,000/- per acre, he was obviously earning money from the deal, earning Rs.2,00,000/- per acre. In such circumstances, once the deal has already been completed, the court erred in summoning the petitioner.

Keeping in view the facts, which have been noticed above, the proceedings initiated on the basis of complaint are abuse of the process of court. Accordingly, the complaint as well as summoning order as also subsequent proceedings are quashed.

The present petition is allowed.

20.05.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No