IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No. M-22562 of 2017
Date of decision: 18.01.2019

Ramdiya **..Petitioner**

Versus

State of Haryana and another **..Respondents**

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Nitin Meel, Advocate
for the petitioner.

Ms. Rashmi Attri, AAG, Punjab
for respondent No.1- State.

Mr. Sanjay Vashisth, Advocate
for respondent No.2-complainant.

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Daya Chaudhary, J.

Petitioner, namely, Ramdiya, has approached this Court by way of filing the present petition under Section 438 Cr.P.C. for grant of anticipatory bail to him in case FIR No.150 dated 02.06.2017 registered under Sections 171, 420, 506 of Indian Penal Code (Sections 406 and 120-B PC added later on) at Police Station Civil Lines, Bhiwani, District Bhiwani.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case whereas he was not involved. The petitioner himself is a victim of cheating and manipulation and he failed to notice the real modus operandi of the complainant leading to false implication. Learned counsel further submits that there is no evidence of any transaction/payment of amount given by the complainant to the petitioner. Just to make the offence more serious, he has levelled baseless allegation of giving ₹45 lacs and an amount of ₹20 lacs to the petitioner to be paid in cash whereas during period of demonitization, there was no occasion to pay such a huge amount. Learned counsel also submits that the petitioner was inducted as partner of 50% of LPG distributorship and was authorized by his wife Smt. Usha Sharma to sell the same by giving Special Power of Attorney. Nothing is to be recovered from the petitioner and his custodial interrogation is not required. The petitioner has joined investigation and he be released on anticipatory bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that although the petitioner has joined investigation but has not cooperated in spite of giving various opportunities and has also not supplied the documents as required by the Investigating Officer.

Similarly, learned counsel for the complainant has also opposed the submissions made by learned counsel for the petitioner on the ground that it has been admitted by the petitioner himself on the last date of hearing i.e. on 30.11.2018 that an amount of ₹10,00,000/- was returned to the complainant whereas total amount is ₹45,30,000/-, which was paid in cash. Learned counsel also submits that serious allegations are there as the petitioner was owner of 50% of the LPG distributorship and on the basis of forged document, an agreement to sell was executed with the complainant whereas he was not having any authority.

Heard arguments of learned counsel for the parties and have also perused the contents of the FIR and other documents available on the file.

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As per allegations levelled in the FIR, an agreement to sell was executed between the parties on 23.07.2016 and an amount of ₹10,00,000/- was received by the petitioner from the complainant. At the time of agreement, it was not disclosed by the petitioner that his wife Usha Sharma was also share holder in the gas agency. The petitioner himself entered into the agreement and received an amount of ₹5,00,000/- on 05.08.2016 in presence of Rakesh and subsequently an amount of ₹10,00,000/- was also received on 23.09.2016 again in presence of Rakesh. It is also alleged that in continuation of the earlier payments, DD No.39451 dated 15.11.2016 amounting to ₹30,000/- drawn on Central Bank of India was paid directly by the complainant to Joint Chief Controller, Agra and thereafter, on 20.12.2016, the petitioner received an amount of ₹20,00,000/- from the complainant in presence of Rakesh and Vikas. The total amount, which was paid to the petitioner comes to ₹45,30,000/-. It was also agreed in the agreement entered upon between the parties that the complainant would himself spend further expenditure in constructing of godown, office etc. and he will take care of documentation and help to complete whatever documentary proceedings would be there at the end. Said terms and conditions were undertaken to be complied with.

On perusal of documents available on the file, it appears that the petitioner has projected himself as sole owner as per Letter of Intent dated 10.06.2016 issued by HPCL whereas it was issued in the name of his wife Usha Sharma. Although as per clause 5.3, there was a clause to induct the spouse as 50% partner, who can be co-owner but it was not disclosed as he projected himself to be the sole owner of the gas agency. Neither the amount was returned nor the agreement to sell was executed even by the wife of the petitioner.

The Delhi High Court in ***Seemax Construction (P.) Ltd. vs. State Bank of India, AIR 1992 Delhi 197*** held as under: -

> *“The suppression of material fact by itself is a sufficient ground to decline the discretionary relief of injunction. A party seeking discretionary relief has to approach the Court with clean hands and is required to disclose all material facts which may, one way or the other, affect the decision. A person deliberately concealing material facts from court is not entitled to any discretionary relief. The Court can refuse to hear such person on merits. A person seeking relief of injunction is required to make honest disclosure of all relevant statement of facts otherwise it would amount to an abuse of the process of the Court.”*

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is cheating intended to get an advantage.

The concept of fraud has been enunciated by Hon'ble the Apex Court in ***Ram Chandra Singh vs. Savitri Devi, (2003) 8 SCC 319*** and the same is reproduced as under: -

> *“15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.*

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> *16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.*
>
> *17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentations may also give reason to claim relief against fraud.*
>
> *18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad."*

Even in spite of giving opportunities, the petitioner neither handed over the documents nor cooperated in the investigation. The petitioner not only cheated the complainant but wrong facts have been mentioned before this Court by concealing material facts. The petitioner does not deserve concession of anticipatory bail as he has not approached this Court with clean hands.

Accordingly, the petition being devoid of any merit is, hereby, dismissed.

18.01.2019 **(DAYA CHAUDHARY)**
neetu **JUDGE**

Whether speaking/reasoned Yes

Whether Reportable No