

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

CRM No.M-26729 of 2013 (O&M)
Date of Decision: May 06, 2019

Mahesh Chand Jain

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Mehndiratta, Advocate
for the petitioner.

Mr.Sharad Kumar Yadav, DAG, Haryana
for the respondent-State.

None for respondent No.2.

Mr.Satinder Pal Singh, Advocate for
Mr.C.S.Pasricha, Advocate
for respondent No.3.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of FIR No.89 dated 28.02.2012 under Sections 420, 467, 468, 471 and 506 IPC, registered at Police Station City Yamunanagar at Jagadhri and all other consequential proceedings arising therefrom.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.3 appeared and contested the petition.

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

From the record, I find that in the present case, a complaint was

filed before CJM, Yamunanagar at Jagadhri, which was sent for registration of FIR under Section 156(3) Cr.P.C. The averments of the complaint as stated in the FIR are as under:-

“1. That the complainant is a permanent resident of Jagadhari, Teshil Jagadhari District Yamuna Nagar and is a peace loving and law abiding citizen. 2. That the accused had got published a news item in Punjab Kesri and the Tribune on 14.12.2009 under the head “Notice Inviting from the Public” in the form of letter dated 12.12.2009, copy of this letter is attached with this complaint. As per this advertisement at Sr. No.4 a residential plot situated at Hanuman Gate, Chaneti Road, Jagadhri measuring 375 sq. yards i.e. 313.53 sq. meters, owned by Rajesh Kumar son of Shri Manmohan vide regd. Sale deed No.1897, 1898 and 631 dated 11.07.95 and 07.05.96 and minimum reserve price was fixed as Rs.8,43,000/- and earnest money was shown as Rs.85000/- and last date was 22.01.2010 upto 4.00 p.m 3. That thereafter the accused showed his documents to the complainant, which are valuation report dated 07.05.2007 prepared by Yamuna Engineers, approved valuers & Chartered Engineers and road map and land, which was also prepared by Yamuna Engineers and were bearing stamps of Yamuna Engineers & Valuers. The photostat copies of these documents and a plot were shown to the complainant and total value of this plot amounting to Rs.8,50,000/- was received by the accused from the complainant, upon which the complainant asked the accused to hand over the possession of the above said plot because the complainant had already paid full amount of plot to the accused. 4. That first of all the complainant wrote a letter dated 05.02.2010 to the accused, according to which balance 75% amount of plot auctioned on 22.01.2010 through banker cheque No.184627 dated 05.02.2010 for Rs.6,37,500/- was given and the accused received this banker cheque under his signature. Thereafter,

the accused wrote a letter to the complainant on 22.02.2010, according to which he had confirmed receipt of total amount of Rs.8,50,000/- of the plot and a sale certificate dated 4.3.2010 was issued to the complainant by the accused. 5. That the plot, which was sold to the complainant by the accused and shown in the sale certificate, is not existing at the spot, because plot, which has been shown to have been sold to the complainant by the accused, is not existing at the spot and very next date i.e. 5.3.2010 a letter was written to the accused and requested him to give possession of the plot, which has been sold to the complainant by the accused, at the spot after demarcation, as said plot was not existing at the spot. Upon this the accused did not give any satisfactory reply and the complainant again wrote a letter dated 21.07.2010 to the accused regarding handing over possession of the plot, sold to the complainant, but the accused did not respond to this for considerable long time and thereafter a letter dated 9.8.2010 was written by the accused to the complainant stating therein that he has already written to the concerned officials regarding demarcation and process of demarcation is in progress and also assured the complainant that he will be intimated after locating the plot. 6. That when the accused did not give any satisfactory reply to the complainant, then the complainant applied through Right to Information Act and the accused gave a reply on 23.08.2010 and the accused intentionally wrote in that required information cannot be given. Thereafter, the complainant again wrote another letter requesting therein regarding details of plot, which has been sold to the complainant by the accused fraudulently. This letter was also replied by the accused vide his reply dated 01.10.2010 mentioning therein that no such type of information is available in the bank records as to which plot has been sold. By this time, the complainant was completely fed up and ultimately vide his letter dated 03.12.2010, the complainant

again requested the accused that he has usurped the amount of Rs.8,50,000/- but no information was being given by the accused to the complainant. This letter was replied by the accused on 10.12.2010, wherein it was disclosed that there was no information in the record of the bank regarding demarcation of the said plot. Thereafter another letter dated 18.01.2011 was written to the accused by the complainant requesting therein to tell the complainant regarding fate of demarcation initiated at the end of the bank. Thereafter, another reply dated 03.02.2011 was sent by the accused to the complainant stating that the accused has already written a letter dated 10.08.2010 to Tehsildar regarding demarcation and copy of that letter was sent with the reply to the complainant. In spite of the same neither any action has been taken nor any reply has been given regarding handing over possession of the plot. 7. That on 27.05.2011 a letter was given to the accused according to which it was required regarding letter dated 10.08.2010 and also sought information regarding demarcation. 8. That on 8.6.2011 a report of Tehsildar was given to the complainant, in which also it was mentioned that there is no such plot at the spot. Thereafter, the accused again wrote a letter to Tehsildar on 13.06.2012 in which also it was mentioned that there is no plot at the spot as per demarcation. 9. That the accused was very much clear and it was within the knowledge that the possession of the plot sold in public auction was not with the bank, but some other plot was shown to the complainant at the spot and ownership of the plot mentioned in the sale certificate has been transferred in the name of the complainant, but possession of the same was never handed over to the complainant and even amount of Rs.8,50,000/- has been usurped by the accused and when the complainant asked the accused that if he is unable to hand over the possession of the plot to the complainant, then amount of Rs.8,50,000/- alongwith interest should be returned

to him, but the accused kept on lingering on the matter and started misbehaving with the complainant and ultimately threatened the complainant that the complainant should run away the bank and further directed not to say anything regarding possession of the plot or return of Rs.8,50,000/-, otherwise the complainant will be entangled in a false case of bank robbery. 10. That an application dated 27.05.2011 was given to the S.P.Yamuna Nagar but after lapse of much time of about 9 months, no action has been taken against the accused. 11. That the accused has committed fraud & forgery of documents with a view to defraud the complainant and has caused a loss to the tune of Rs.8,50,000/- with interest and continuously he is giving threats to the life of the complainant and thereby the accused have committed offences under Section 420, 467, 468, 471, 506 IPC in the area of police station, City Yamuna Nagar, hence this Hon'ble Court has the jurisdiction to entertain and try the present complaint. It is, therefore, respectfully prayed that in view of the facts and circumstances stated above, the above complaint may kindly be sent u/S 156(3) Cr.P.C. to the S.HO. P.S.City Yamuna Nagar with the directions to register a case against the accused and to investigate the matter or in the alternative, it is prayed that the accused may kindly be summoned, tried and convicted according to law in the interest of justice.”

First of all, I find that, neither learned State counsel nor counsel for respondent No.3 showed any forged or false document to this Court, to show commission of offence under Sections 467, 468 and 471 IPC. No document has been shown to this Court, which was tampered with or falsely prepared or prepared by impersonation etc. The perusal of the FIR also nowhere shows that any document has been forged.

Further, from the record, I find that it is nowhere the allegation

of the complainant that the petitioner acted for personal wrongful gain in this case. If at all, due to conduct of the present petitioner, there was any wrongful gain that was to the bank and not to the present petitioner. One of the necessary ingredient for Section 420 IPC, that inducement is for wrongful gain to the accused and wrongful loss to the complainant, is missing. The perusal of the FIR shows that it does not disclose the commission of any cognizable offence by the present petitioner. The petitioner was discharging official duties and even if, for the sake of arguments, it is taken that he was negligent in performing his official duties, even then, at the most, he can be held liable for departmental enquiry. Even in the present case, auction has already been set aside and the amount was asked to be returned, which was refused by the complainant and that amount is lying in the shape of FD, as argued.

The perusal of the complaint as well as record, nowhere shows any *mensrea* on the part of the petitioner. As already discussed, commission of any cognizable offence is not made out. Therefore, registration of the FIR in the present case is nothing but abuse of process of law and amounts to miscarriage of justice.

Finding merit in the present petition, the same is allowed. FIR No.89 dated 28.02.2012 under Sections 420, 467, 468, 471 and 506 IPC, registered at Police Station City Yamunanagar at Jagadhri, along with all subsequent proceedings arising therefrom, are hereby quashed.

May 06, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No