IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-29767-2013
Date of Decision:17.09.2019

Shakti and others

...Petitioners

Versus

State of Haryana

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.B.S.Bedi, Advocate for the petitioners.
Mr.Manish Bansal, DAG, Haryana.
Mr.Mayank Sharma, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

Through present petition under Section 482 of the Code of Criminal Procedure (`Cr.P.C.' for short), petitioners have prayed for quashing of FIR No.27 dated 26.01.2011 registered under Sections 420, 467, 468, 471 and 506 IPC at Police Station Sadar, Thanesar and charge-sheet dated 19.07.2013 with all subsequent proceedings arising therefrom.

Facts of the case are that Satish Kumar-respondent No.2 lodged the FIR with allegations that Vishavnath was owner of 44 kanals 14 marlas of land and he entered into an agreement to sell with Satish-first informant @ Rs.8,00,000/- per acre vide agreement to sell dated 07.03.2008 and received a sum of Rs.20,00,000/- as earnest money. As per agreement to sell, target date for execution and registration of sale-deed was fixed as 05.02.2009. On 07.03.2008, Mange Ram-petitioner No.4 had given a guarantee that in case the sale-deed is not executed, he shall remain liable to pay a sum of Rs.40,00,000/- i.e. double the amount of earnest money.

It is further averred that on the target date i.e. 05.02.2009/06.02.2009 the first informant visited the office of the Sub-Registrar along with the balance sale consideration but the accused did not come. The first informant got his presence marked and thereafter first informant had been calling upon the accused to come and execute the sale deed but they had been putting off the matter. Now the first informant has come to know that accused No.1 had in fact entered into an agreement to sell with Seo Ram etc. on 2.9.1982 and civil court decree was passed in favour of Seo Ram on 10.12.1984. Appeal against the same was dismissed by the learned Additional District Judge on 30.09.1995, which was also upheld in the High Court vide judgment dated 08.10.2009. Thus, it was averred that fraud has been played with him, the accused are also refusing to return the amount and they are threatening to kill him.

Police after completion of the investigation submitted final report against all the accused and charges were also framed by the Court.

On the other hand, it may be noted that first informant on the basis of the agreement to sell dated 07.03.2008 filed a civil suit vide Civil Suit No.280/2011 for recovery of Rs.40,00,000/- i.e. double of the earnest money, which has been dismissed by the learned trial court vide judgment and decree dated 28.03.2016. The civil court has found that, in fact, there was no agreement to sell as pleaded by the first informant and in fact blank signed stamp paper of the owner Vishavnath has been misused by forging agreement to sell in question. The relevant findings of the learned civil court are extracted as under:-

> *"So, it is very well established on record that one Jai Bhagwan Sharma, Samdhi of the plaintiff was running a commission agency and defendant no.1 remained customer of the aforesaid firms since 2005 to 2009 and used to take casual expenses for the upliftment of his crops and used to sell his crops through the aforesaid firm. In these process Jai Bhagwan Sharma used to take blank signed stamp papers and papers from the defendant no.1 a security to secure the transaction of commission agency, hence the blank signed stamp paper of the answering defendant has been misused by the said Jai Bhagwan Sharma by forging the agreement in question with collusion of the plaintiff. It is also established on record that the defendant no.1 never executed agreement to sell in question in favour of the plaintiff to sell the suit land, rather it is a forged and fabricated document in the name of the plaintiff by the said Jai Bhagwan with the collusion of the plaintiff. Further, defendant no.1 never executed any agreement in question in favour of the plaintiff nor even received the amount shown in the agreement in question from the plaintiff towards alleged earnest money. Thus, the plaintiff has no right, title or interest to recover Rs.40 lacs from the defendants or from the property of the defendant no.2 as no agreement to sell has been executed in favour of the plaintiff."*

It is undisputed that the aforesaid judgment has also been upheld in appeal. Now the question is whether criminal proceedings can be permitted to continue.

It may be noted here that in the civil court as well as in this petition, it has been asserted by the petitioners-accused that there was neither any agreement to sell executed in favour of first informant nor payment of Rs.20,00,000/- as alleged was paid.

Civil Court as noticed above has already held that the alleged agreement to sell dated 07.03.2008 is result of forgery as blank signed stamp papers have been used in collusion with first informant. No doubt, judgment passed by a civil court is not binding in the criminal case. However, in the facts of the present case, the judgment would have material bearing/influence.

The civil suits are decided on the basis of preponderance of evidence, whereas in the criminal case, prosecution is required to prove guilt of the accused beyond shadow of doubt. In other words, the standard of proof/evidence required to prove that accused had committed offence is much stringent as compared to the civil court. Once first informant has failed to discharge onus on the touchstone of preponderance of evidence, there is hardly any doubt that first informant is bound to fail to prove genuineness of the agreement to sell beyond shadow of reasonable doubt.

It may further be noted that in spite of repeated opportunities given, respondent-first informant had not chosen to file any reply/counter affidavit. Learned counsel for the respondent also could not address any meaningful argument in response to the contentions being raised by the learned counsel for the petitioners.

Keeping in view the facts of the present case, this Court is of the view that continuation of criminal proceedings in the facts and circumstances of the present case shall be abuse of the process of court. Hence, the present petition is allowed. FIR No.27 dated 26.01.2011 registered under Sections 420, 467, 468, 471 and 506 IPC at Police Station Sadar, Thanesar, charge-sheet dated 19.07.2013 and all subsequent proceedings arising therefrom are ordered to be quashed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

17.09.2019 **(ANIL KSHETARPAL)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No