IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-16000-2019
Date of Decision:21.08.2019

Subhash Chand

...Petitioner

Versus

State of Haryana and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.S.K.Rana, Advocate for the petitioner.
Mr.Manish Bansal, DAG, Haryana.
Mr.Johan Kumar, Advocate for respondent No.4

ANIL KSHETARPAL, J.

In the considered opinion of this Court, two following fundamental issues arise for consideration:-

(i) Whether refusal to perform its part of the agreement to sell by the intended vendor/seller *ipso facto* give rise to a criminal offence-cheating?

(ii) Whether in the facts and circumstance of the present case filing of criminal case by the first informant is abuse of process of law?

The petitioner-Subhash Chand agreed to sell 03 kanal 5.5 marla land in village Uncha Gaon Tehsil Ballabhgarh, District Faridabad in favour of first informant i.e. Vijay Virmani for a total sale consideration of Rs.4,00,00,000/- crores out of which Rs.40,00,000/- (10% of the proposed sale consideration) was paid as earnest money vide written agreement to sell dated 09.07.2012. As per the agreement to sell, another amount of Rs.40,00,000/- was payable on 9.09.2012, whereas the balance amount of

Rs.32,00,000/- was to be paid up to 09.11.2012, the date on which sale-deed was agreed to be executed. It is undisputed that amount of Rs.40,00,000/- as payable on 09.09.2012 was not paid. Petitioner/intended vendor-Subhash Chand got issued a notice dated 15.09.2012(Annexure P-4), calling upon first informant to come and fulfill his part of the agreement to sell within two days from the date of receipt of notice, failing which the agreement to sell shall stand cancelled and amount of Rs.40,00,000/- paid as earnest money shall stand forfeited.

Reply was sent on behalf of first informant in which it was pleaded that a litigation is pending on account of filing of suit by one Munesh Devi, wherein she claims ownership of some part of the land subject matter of agreement to sell and therefore, called upon the petitioner to get the civil suit filed by Munesh Devi settled and only then first informant would perform his part of the contract. It is admitted position that on 09.11.2012 (the date fixed for execution and registration of sale deed) first informant Vijay Virmani did not pay remaining amount and did not come to the office of Sub Registrar for registration of the sale deed. Petitioner Subhah Chand once again got issued a notice, calling upon the first informant that the agreement to sell stands cancelled and earnest money stands forfeited. It was asserted in the notice that on 09.11.2012 petitioner Subhash Chand visited the office of Sub Registrar and was ready to perform his part of the contract.

It may be noted that Munesh Devi did file a suit but no injunction was granted. The injunction was granted only for the first time i.e. on 1.6.2013. Ultimately the suit filed by Munesh Devi was dismissed on 20.01.2018 and first appeal filed against the final judgment was withdrawn on 01.02.2019.

It may be further noted here that there is also an agreement to sell dated 17.09.2012 between Munesh Devi and Vijay Virmani, i.e. first informant, with respect to disputed alleged passage 19 feet wide. Vijay Virmani filed a suit for specific performance of agreement to sell dated 17.09.2012 against Munesh Devi which was dismissed by the Court vide judgment dated 14.08.2017, although defendant-Munesh Devi in that suit was ex-parte. Appeal filed by Vijay Virmani against the aforesaid judgment has been withdrawn.

It is undisputed that Vijay Virmani never filed any suit for specific performance of the agreement to sell dated 09.07.2012 against the petitioner. From the facts noted above, it is apparent that it was Vijay Virmani who had failed to perform his part of the contract dated 09.07.2012.

However, in sheer abuse of the process of law, Vijay Virmani got registered an FIR No. 92 dated 16.10.2018 alleging that he had visited petitioner-Subhash Chand after receipt of notice, but Subhash Chand had refused to accept the amount on the ground that he would sell the property only after settling the civil suit. He further averred that he came to know about dismissal of suit filed by Munesh Devi on 20.01.2018 and Subhash Chand told him that he would not register the land in his favour nor he would return the amount and, therefore, he has cheated him.

Through the present petition, petitioner has sought quashing of the FIR and subsequent proceedings arising therefrom.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the petition, reply filed by the

State as well as the documents filed in support of the petition.

From the facts noticed above, it is apparent that only allegation/assertion/averment in the FIR is that since Subhash Chand, petitioner-accused is refusing to honour the agreement to sell, therefore the offence of cheating is made out. The offence of cheating has been defined in Section 415 of Indian Penal Code, which is extracted as under:-

> *"Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

It is clear from the reading of the FIR that there are no assertions/averments, which may fall within the definition of 'Cheating', as defined in Section 415 of the Indian Penal Code.

It is also well settled that before someone can be accused of having committed an offence of cheating with regard to non performance of an agreement to sell, it has to be averred to the effect that at the time of entering into an agreement to sell, the intention of the proposed vendor was to deceive the proposed purchaser. Mere failure/refusal to perform its part of the contract by the proposed vendor itself/*ipso facto* simpliciter does not amount to the offence of cheating. Reference in this regard can be made to a judgment passed by the Hon'ble Supreme Court in the case of ***Murari Lal Gupta vs. Gopi Singh 2006 (2) SCC (Crimina) 430,*** wherein it was held that if the complainant does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money, the case of cheating is not made out. Relevant observations in the judgment passed by the Hon'ble Supreme Court in ***Murari Lal Gupta's*** case (supra) are extracted as under:-

> *"The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 Indian Penal Code is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent."*

Still further, it is now well known that disputes of civil nature are being given cloak of criminal cases. The Courts have been advised by the Hon'ble Supreme Court to be careful in such cases. Reference in this regard can be made by the Hon'ble Supreme Court in the cases of ***G. Sagar Suri and another Vs State of UP and others, (2000) 2 SCC 636 and Indian Oil Corporation vs. NEPC India Ltd., (2006) 6 SCC 736.***

Second offence under which the FIR has been registered is under Section 506 IPC. Section 506 IPC deals with punishment for criminal intimidation. Criminal intimidation has been defined in Section 503 IPC. In the present case, even if assertions/averments made in the first information report does not in any way establish that even the offence fall within the definition of criminal intimidation.

Let us examine this case from another angle. It is apparent that after the agreement to sell was executed on 09.07.2012 which was to be performed up to 09.11.2012, the first informant/intended purchaser never filed any suit for specific performance of the agreement to sell till today. Limitation for filing such suit is 03 years from the date fixed for performance of the agreement to sell. Thus, the limitation was only up to three years from the date from 09.11.2012. Obviously, prima facie the suit for specific performance has become barred by limitation.

Still further from the facts as noticed above, it is established that first informant-respondent was playing hide and seek with the petitioner-intended seller. On the one hand, first informant-private respondent had taken the plea that he will not perform his part of the contract till the suit filed by Munesh Devi is got settled. On the other hand, he entered into an agreement to sell with respect to some part of the land out of the land agreed to be purchased by him from Subhash Chand vide agreement to sell dated 17.09.2012. A suit for specific performance of the agreement to sell against Munesh Devi has already been dismissed. These facts, as asserted in the petition, have not been denied/disputed by the private respondent. Obviously, only unassailable conclusion is that it was private respondent no.4 who had not come forward to perform his own part of the contract .

Accordingly both these issues, which were culled out in the beginning of the judgment, are answered to the effect that merely refusal to perform the responsibility assigned under the agreement to sell by the intended seller/vendor would not give rise to the offence of cheating of criminal intimidation.

In the facts of the present case, it is held that lodging of the FIR in the year 2018 particularly after expiry of the agreement to sell was sheer abuse of the process of law. Hence, FIR No.92 dated 16.10.2018 under Section 420 and 506 IPC registered at Police Station Adarsh Nagar, Faridabad, is ordered to be quashed. Accordingly, the present petition is allowed with costs, which is assessed at Rs.50,000/- to be payable by private respondent No.4.

21.08.2019 **(ANIL KSHETARPAL)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No