

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35858 of 2015

DATE OF DECISION:-15.01.2019

SANJIV KUMAR AND ANR.

...PETITIONERS...

V.

STATE OF PUNJAB AND ANR.

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sherry K. Singla, Advocate for the petitioners.

Mr. Davinder Bir Singh, DAG, Punjab.

Mr. Madan Sandhu, Advocate for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing FIR No.116 dated 06.09.2014, registered under Sections 420 and 120-B IPC, Police Station Sadar Mansa, District Mansa (P-1) along with all consequential proceedings arising therefrom.

Briefly, petitioners, being attorneys of original owner namely, Harbhagwan Dass and Krishan Kumar, entered into an agreement to sell with respondent No.2-complainant on 01.01.2008 qua land measuring 15 kanals 19 marlas situated at village Kotli Kalan, Tehsil and District Mansa. Sale deed was agreed to be executed on 15.02.2008, which was further extended to 17.03.2008. Since, petitioners were attorneys of the original owners only for 10 kanals and 13 marlas, therefore, to this extent, they executed and registered sale deed in favour of respondent No.2 on

a fresh agreement on the same date, with condition either to execute sale deed themselves as attorneys or through original owners in favour of respondent No.2 on 15.04.2008. On that date, earnest money of ₹2 lakh was received by the petitioners. Balance sale consideration remains to be paid was Rs.1 lakh. However, on the agreed date, sale deed could not be executed for one reason or the other. Therefore, with the consent of the parties, a fresh agreement was executed by them on 19.08.2009. The petitioners received remaining sale consideration of ₹1 lakh and undertook to execute sale deed by 30.10.2010, which was further extended to 30.10.2011, 30.10.2012, 31.10.2012 and then again to 31.12.2013. Consequently, on 27.01.2014 sale deed was executed by original owners of the land in favour of wife of respondent No.2.

Learned counsel for the petitioners contends that no fraud was committed by the petitioners with respondent No.2. In fact, petitioners had agreed to sell 15 kanals 19 marlas of land to respondent No.2 being, general attorneys of the original owners. Since, petitioners, on the date of execution of sale deed dated 01.01.2008, were attorneys only to the extent of 10 kanals 13 marlas, therefore, they executed sale deed of said area on 13.03.2008. Qua remaining 5 kanals 6 marlas of land, it was agreed between the parties that the sale deed would be executed by themselves as attorneys or by their original owners. The said condition was complied with by executing and registering sale deed in favour of wife of respondent No.2 on 27.01.2014. No extra money or sale consideration was ever charged by petitioners or the original owners from respondent

No.2 or his wife. In the sale deed dated 27.01.2014, excess sale consideration was shown to match the collector rate. The alleged dispute raised by respondent No.2 is a civil dispute and thus, petitioners are not liable to be prosecuted under criminal law.

On the other hand, learned counsel for respondent No.2 refuting the above submissions contends that at the time of execution of initial agreement dated 01.01.2008 for selling land measuring 15 kanals 19 marlas, petitioners were not the attorneys of the original owners of the entire land, but were attorneys to the extent of 10 kanals 13 marlas. Therefore, agreement dated 01.01.2008, entered into by petitioners was an illegal document. Thereafter, petitioners despite receipt of entire sale consideration of ₹3 lakhs on two different dates i.e. on 13.03.2008 and 19.08.2009, did not execute the sale deed in favour of respondent No.2 or his wife, nor got the same executed from the original owners for around 5 years, thereby forcing respondent No.2 to get the sale deed executed from original owners after paying extra sale price of ₹3.74 lakh duly recited in (P-6).

Having given thoughtful consideration to the rival submissions, this Court finds instant petition merits acceptance for the reasons to follow:-

1. Learned counsel for respondent No.2 was not able to show any receipt in support of his assertion that he had to pay some extra sale price of the land measuring 5 kanals 6 marlas over and above the amount paid by respondent No.2 to petitioners on account of their alleged

dishonesty. In the absence of any such proof, what to talk of any cogent and convincing evidence, it can safely be inferred that the earnest money/sale consideration paid by respondent No.2 vide above two agreements to the petitioners was adjusted/shown in the sale deed (Annexure P-6). No alleged fraud whatsoever, prima facie seems to have been committed by the petitioners, inasmuch as, in the subsequent agreement to sell dated 13.03.2008, petitioners and respondent No.2 categorically agreed that sale deed of the remaining land measuring 5 kanals 6 marlas shall be executed by them as attorneys or in the alternative by original owners.

2. As far as, the fact that petitioners were not general attorneys of the original vendors of the entire area measuring 15 kanals 19 marlas agreed to be sold by them to respondent No.2, at the time of execution of agreement dated 01.01.2018 (P-4) is concerned, the same has no legs to stand, inasmuch as, in the aforesaid agreement, the petitioners specifically gave reference of general and special attorney in their favour executed by original owners, whereby, the petitioners were authorised only to deal with 10 kanal 13 marlas of land in dispute. Therefore, nothing was hide/concealed by them from respondent No.2.

That apart respondent No. 2 is an educated man, inasmuch as, he witnessed both the sale deeds in favour of his wife executed by the petitioners and the original vendors by appending his signature in English. Therefore, it cannot be expected of respondent No.2 that he had not gone through the general and special attorneys in favour of the petitioners, on

the basis of which, petitioners were claiming themselves as attorneys of the original owners. From this angle also, prima facie it is evident that petitioners had never any intention to cheat and commit fraud with respondent No.2.

The entire land executed by the petitioners was for 15 kanals 19 marlas. The said land in its entirety has now been sold to respondent No.2 by execution and registration of sale deed in favour of his wife.

In view of the above, the petition is allowed. FIR No.116 dated 06.09.2014 and all consequential proceeding arising out of the same are quashed.

15.01.2019

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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:**Yes/No****whether reportable:****Yes/No**