

254 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9774-2018 (O&M)

Date of decision:26.03.2019

Deepak Sachdev and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Deepandshu Mehta, Advocate
for the petitioners.

Mr. K.S.Aulakh, DAG, Punjab

RAJBIR SEHRAWAT, J. (ORAL)

Prayer in this petition filed under Section 482 of Cr.P.C. is for quashing of FIR No.160, dated 29.12.2015, registered under Sections 420, 465, 466, 467, 471 of IPC, including report submitted under Section 173, at Police Station Division No.3, District Jalandhar and all subsequent proceedings arising therefrom.

The FIR in the present case was registered on the statement of one Yogita Puri wife of Vikas Anand with the allegation that the Company, named Ansal Highway Plaza had developed a commercial mall on Jalandhar-Phagwara G.T.Road Highway. The said mall consisted of various commercial sites and accommodations available therein. The petitioners herein advertised and represented to her and to the general public as well, that all the shops/sites in the aforesaid mall, have already been leased out to the different tenants and that paying of the rent to the purchasers of shops/sites would immediately start after allotment of the site in question. On the above said representation of the Company and representation by the present petitioners, the complainant evinced

interest in purchasing shop in the said mall. On her showing interest in purchasing the site in the said mall, to further instill more confidence in the complainant, the petitioners and the Company Executives repeatedly visited her house and offered her the commercial space bearing No. SSF-06B measuring 1572 square ft. situated on the second floor of the said mall for a total sale consideration of Rs.85 lakhs. The petitioners herein, who were working as the Executives of the Company, represented to the complainant that the site offered to the complainant had already been rented out to one Femella Fashion Private Limited and that after deduction of TDS, the complainant shall get ₹64,660/- per month, as rent from the day one. It was further assured by the petitioners that the complainant would continue to get the rent in perpetuity and therefore, the petitioners shall have a fixed income against the investment made by her. Believing the representations made by the Executives of the Company as well as the Director of the Ansal Properties & Infrastructure Limited, the complainant had purchased the above said unit No. SSF-06B measuring 1572 square ft. in the said mall for a sale consideration of Rs. 85 Lakhs. It was further alleged in the FIR that after issuance of the allotment letter, the complainant had been handed over as many as 17 cheques of ₹64,660/- each, issued by Femella Fashion Private Limited. This was done by the petitioners herein to assure the complainant that the premises in question had, in fact, been occupied by some tenant. Thereafter, some cheques were handed over by another Company named Ritesh Properties and Industries Private Limited for an amount of ₹68,774/- as the rent. It is further alleged that the complainant had not inducted any tenant on the said premises, nor, at any stage, she had been informed regarding the change of tenants. Still further, it is alleged that after 15.05.2010, the complainant did not receive any cheque on account of the

payment of rent. Therefore, the complainant got suspicious about the representation made by the petitioners. The complainant had made an investment only on the assurance of the petitioners and of the Company that it would be the responsibility of the company to ensure that the premises is rented out and Mall is in operation in perpetuity. However, when the payment of rent was stopped then the complainant made enquiries at the spot and came to know that as a matter of fact, the unit purchased by the complainant had neither been occupied by the Femella Fashion Private Limited nor the same had ever been occupied by the Ritesh Properties & Industries Limited. Rather garbage and debris was lying on the site. Hence, it became clear that some cheques, mentioned above, were being issued only at the instance of the Mall Company i.e. Ansal Properties & Infrastructures Limited, just to show that the commitment made by them at the time of selling the unit, regarding the assured rent, were genuine and that there has been no misrepresentations on their part. When the complainant stopped receiving any cheque or rent, then she contacted one Monica, in the office of the aforesaid Company. However, all the times, she was very evasive in her replies. Further allegation of the complainant in the FIR is that at the time of purchase of this property, it was assured that the property would be maintained by the Company through out. However, in the month of February, 2014, when the complainant went to the aforesaid mall, she found the same to be totally locked and there was no maintenance apparent, anywhere. On the basis of these allegations, the FIR came into existence against the petitioners.

Learned counsel for the petitioners has submitted that after the investigation even the police had come to a conclusion that no offence was committed by the petitioners. The police had also found that there was no

clause in the allotment letter to the effect that rent was to be paid to the complainant in perpetuity. However, despite the Investigating Officer coming to the conclusion that no offence is made out, the challan has been filed only on the advice of the District Attorney working in the office of Superintendent of Police. Learned counsel for the petitioners has further referred to the allotment letter, attached with the present petition at Annexure P-8, to substantiate his above said submission that no such promise to ensure rent in perpetuity was ever made by the Company. It is further submitted by the counsel for the petitioners that the complainant had even sold her 50% share in the above said property to one Seema Arora on 11.11.2008. He further submitted that the FIR is lodged after five years of stoppage of the rent, therefore, the case of the complainant is misuse of process of Court. Learned counsel for the petitioners has also submitted that although there are certain statements recorded by the police under Section 161 Cr.P.C. to the effect that the representations, mentioned in the FIR, were; in fact, made by the petitioners, however, the said statements are made by the interested witnesses who are relatives of the complainant.

On the other hand, learned counsel for the State, being instructed by SI Surinder Singh, submits that although, the ACP had conducted an inquiry at the first instance. He had recorded the statement of the complainant and other witnesses. He had also taken on record the documents submitted by the accused. Ultimately, without giving definite finding regarding commission of any offence, the ACP had recommended taking opinion of the DA before proceeding further in the matter, in view of the record collected by him. Accordingly, the opinion of DA (Legal), Jalandhar was obtained. After perusing the documents, the DA (Legal) had duly opined that its a case worth

proceeding further and the documents suggest the material sufficient for filing challan against the petitioners. Accordingly, the Investigating Officer proceeded further with the Investigation and recorded the statement of the witnesses under Section 161 Cr.P.C. Finding the material to be sufficient to make out the case against the petitioners, challan was filed. Still further, it is submitted by the learned counsel for the State that even charge has been framed by the trial Court in the case and now, the case is pending for prosecution evidence for 22.04.2019. It is submitted by the counsel that the allegations, made by the complainant in the FIR, have been duly corroborated by the witnesses; who claimed to have been present at the time when the representation and assurances were made by the petitioners by visiting the house of the complainant. Hence, the offences of cheating by misrepresentation and fabrication of documents are duly made out.

Having heard learned counsel for the parties, this Court does not find any substance in the argument of the learned counsel for the petitioners. The submissions of the counsel for the petitioners; that the document produced by the petitioners before the Investigating Officer in the form of the allotment letter of the property to the complainant, does not show any clause of perpetuity for ensuring payment of rent is not, per se, acceptable. Clause 24 and 25 of the allotment letter are significant in this regard and the same are as reproduced hereinbelow:-

“24. *The developer shall have exclusive rights on behalf of the allottee to let out the allotted unit to any tenant for the decided and agreed purpose and in furtherance thereof the developer shall have all the rights regarding negotiation of rent and execution of the necessary documents in respect thereof in order to ensure that the Ansal Highway Plaza*

Shopping Mall at G.T. Road, Jalandhar becomes fully and effectively operational. This right is reserved by the developer to ensure that best of the brands, tenants and occupiers are brought to the complex. Good tenants suggested by the allottee may also be considered.

25. *With the advent of time, Mall Management has emerged as a specialized field/area of activity. Mall Management aims to ensure and maximize prospective customers by boosting the operational environment. This includes organizing theme shows, events, celebrity sessions, gaming zones, games and other promotional activities. Ansal Plaza Mall Management company over the years has established itself in this specialized area of work. Presently, engaged in managing malls at New Delhi and Faridabad. The developer appoints and entrusts the role of Mall Management and promotion to M/s Ansal Plaza Mall Management Company or its nominee. The allottee hereby expresses its consent to this arrangement, which will not be withdrawn.”*

A bare perusal of Clause 24 of the allotment letter shows that the Company had retained the exclusive rights over the allottee to rent out the said property to keep the mall fully operational. Clause 25 shows that the company claimed expertise in maintenance and operation of such malls and, again, retained exclusive right to manage and operate the mall. For that purpose, the company had even taken irrevocable consent from the allottees. Hence, the allegation of the complainant, qua the property being rented out by the petitioners/Company stands corroborated even from the document of the petitioners/Company. Accordingly, the representation stated to have been made to her cannot be, per se, ruled out. In view of the Clause 24 and 25 of the Allotment letter, the Company/petitioners cannot even be permitted to claim

that they had no responsibility of ensuring renting out the said properties after the property had been allotted to the complainant. Rather to make & keep the Mall fully operational, the Company/petitioners had undertaken upon themselves to rent out the sites in the Mall and to manage and maintain the same. There is nothing on record to show that the Mall had remained fully operational till lodging of the FIR.

The record further shows that, in fact, the cheques of rents were duly given to the complainant for sometime, although, the complainant had not entered into any agreement with any tenant. This also shows that the Company/petitioners had ensured that the shop is shown to have been let out for rent; when it was being offered for allotment to the complainant. Hence, the allegation of the complainant qua making representation/assurance of return on the investment; also stands corroborated by the facts available on record. Although it is so discernible from the documents on record otherwise also, but in any case, only thing which remains to be proved by the complainant/prosecution appears to be whether any promise was actually made to the complainant to ensure the receipt of the rent in perpetuity or not. In this regard, suffice it to say that there are the statements of the eye-witnesses to corroborate this assertion of the complainant. It was stated by these witnesses before the police that they were present when the petitioners made such representations and assurances to the complainant. Those statements duly form the part of the challan filed in the Court. The said statements and documents have even been supplied to the petitioners. Hence, at this stage, it is not for this Court to venture into assessing the veracity or evidentiary value of the said statements qua the representations stated to have been made by the petitioners to the complainant. The trial Court would be assessing the evidentiary value of

the statements made by the witnesses. This being a question of fact, which is otherwise supported by the statements made by the eye witnesses, at this stage, this Court does not intend to delve into.

Although, the learned counsel for the petitioners has argued that the complainant was well aware of the situation existing on the ground, qua the said property, because she had even sold her 50% share on 11.11.2008, however, this transaction of sale also appears to be only a paper transaction, not having any connection with the real facts existing on the spot. This is so indicated by the fact that although the petitioners claim that the complainant had sold 50% of her share on 11.11.2008, yet the complainant was getting rent of full property right upto to the year 2010. Therefore, this argument of the learned counsel for the petitioners also does not cut any ice.

Regarding the statements of witnesses recorded by the Investigating Officer under Section 161 Cr.P.C., which show the culpability of the present petitioners, the learned counsel for the petitioners has submitted that these are the statements made by the interested witnesses, who happened to be the husband and brother of the complainant. Therefore, these statements cannot be relied upon against the petitioners. Still further, it is submitted that these statements are against the documentary evidence. However, this Court does not find any substance even in this argument. Firstly, the statement of a witness, if duly proved before the trial Court cannot be discarded only for the reason that the witness happens to be an interested witness. The only prosecution regarding such witness could be that the trial Court may appreciate such statements cautiously. However, that is to be done by the trial Court after completion of the evidence. Otherwise also, the allegation against the petitioners are that they visited the house of the complainant. Therefore, it is but natural that in her

house only the husband and the near relative of the complainant would be available. Secondly, the statements of these witnesses are not even against the documentary record, *per se*. As observed above, the allotment letter, itself says that the Company would be retaining the exclusive right of renting out and managing the property to the exclusion of the allottee, to have the mall fully operational and to ensure that good brand shops are opened in the mall. Therefore, the statements of the witnesses are only in consonance with and can be seen as deposition qua the facts which are in furtherance of what is recorded in the letter of allotment. Hence, this argument of the petitioners is also to be noted only to be discarded.

Moreover, at this stage, even the charge has been framed by the trial Court against the petitioners. Hence, from the evidence collected by the Prosecuting Agency, even the trial Court has found material sufficient to proceed against the petitioners. Therefore, at this stage, it would not be appropriate for this Court to interfere and to scuttle the prosecution in the case by discarding the evidence, which has been collected by the prosecution.

In view of the above, this Court does not find any ground to interfere in the case to quash the FIR. Hence, the present petition is dismissed.

However, it is observed that nothing said hereinabove would be taken as expression of opinion on merits of the case during the trial.

Learned counsel for the petitioners has submitted that petitioners are no more employees of the said Company-Ansal Properties & Infrastructure Limited. Whatever they are alleged to have done, was done only in capacity as employees of the Company. However, after leaving the company they have taken up jobs at far-off places. But now they have to appear before the trial Court regularly. Therefore, they be granted the concession of personal

appearance during the trial.

In view of the above submissions, it would not be unjustified if the petitioners are extended the limited concession of exempting their personal appearance during the trial, till they are specifically required for some particular purpose by the trial Court.

Hence, it is ordered that in case the petitioners make applications before the trial Court for seeking exemption from personal appearance during the trial and they file requisite undertakings before the trial Court, then, the trial Court would exempt the personal appearance of the petitioners except for the dates when the trial Court deems it appropriate to call them specifically for some specified purpose.

(RAJBIR SEHRAWAT)
JUDGE

26.03.2019
Hemlata

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No