

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

201

1. CRM-M No. 34516 of 2019 (O & M)
Date of decision : 5.11.2019

Darshan SinghPetitioner

Vs.

State of PunjabRespondent

2. CRM-M No. 9186 of 2019 (O & M)

Kuldeep KaurPetitioner

Vs.

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Nand Lal Sammi, Advocate and
Mr. Manu K. Bhandari, Advocate, for the petitioner(s)

Mr. Harbir Sandhu, AAG, Punjab

Mr. Madan Sandhu, Advocate, for the complainant

Rajbir Sehrawat, J. (Oral)

CRM No. 33242 of 2019 in CRM-M No. 34516 of 2019 :

Since the main petition itself is being decided, therefore, the application is rendered infructuous.

CRM No. 29758 of 2019 in CRM-M No. 9186 of 2019 :

This is an application for bringing on record the additional facts and for placing on record Annexures A-1 to A-3.

For the reasons mentioned in the application, the same is allowed.

Documents Annexures A-1 to A-3 are taken on record subject to all just exceptions.

Main Case :

This order shall dispose of above said two petitions, filed under Section 438 of the Cr.P.C. by the petitioners, who are the husband and wife and are the co-accused in FIR No. 13 dated 10.1.2018, registered under Sections 406, 420, 506 and 120B IPC, at Police Station Zirakpur, District SAS Nagar.

The brief facts giving rise to the FIR in the present case are that an application was moved to the police by the applicant/complainant; Jagdish son of Bhagwan Dass, alleging therein that the petitioners herein had cheated him. It was alleged in the application that he is otherwise the resident of Faridabad but is running a bakery shop in village Peer Muchalla, Zirakpur. For establishing himself in Zirakpur, the complainant was looking for a suitable house for himself. In the process, the complainant had met the petitioners in the year 2016. The petitioners had expressed their desire to sell House No. 495A, AKS Colony, Zirakpur, whose boundaries were also mentioned. The petitioners had shown the above said house to the complainant along with the defined boundaries. The copy of the sale deed in their favour was also shown to the complainant to confirm their title. However, the petitioners had informed the complainant that there was some loan availed by them; upon that house. Therefore, while purchasing the said house, the complainant shall have to clear the said loan as well. As per the agreement between the parties, the amount of Rs. 29 lakhs was paid to the petitioners on 27.6.2016 and besides that the complainant was also to pay the outstanding loan amount to the concerned Bank. A written agreement was executed to this effect on

27.6.2016. A supporting affidavit was also executed in favour of the complainant. Not only that; even a registered power of attorney, dated 27.6.2016; was also executed by the petitioners in favour of the complainant. However, after the deal had been signed, and the amount of Rs.29 lakhs had been paid to the petitioners, the complainant came to know that the petitioners had cheated him. The petitioners started claiming that the said deal with the complainant was only qua ground floor of the said house; of which the value was Rs.17 lakhs. The complainant was ready for that proposal as well, however, the petitioners were not ready even to return the balance amount, or to honour the original agreement. Still further, on further enquiries, the complainant came to know that qua the said house; the petitioners had already executed one more agreement to sell dated 21.5.2015, in favour of one Hari Gopal son of Roshan Lal for an amount of Rs.24.5 lakhs, out of which they had already received Rs.22 lakhs on 21.5.2015. Hence, the complainant found himself totally cheated. Therefore, the present FIR was got lodged by the complainant.

Initially, the petitioners had taken a stand, as is reflected from the order passed by the Court below; that they had not entered into any agreement to sell with the complainant as such. In fact, the petitioners were in need of money for business purposes. To help them in this regard, two agents, namely, Surinder Kumar and Subhash Kumar, who were already known to the petitioners, had assured that they would help the petitioners in arranging the loan from the bank. Therefore, they had obtained signatures of the petitioners on various documents. Even power of attorney was executed by the petitioners in favour of the above said Subhash Kumar. The said persons

had also taken 10 blank signed cheques of the petitioners. They are misusing those documents. Hence, the petitioners have been involved in a false case.

Learned counsel for the petitioners has even now submitted that the case against the petitioners is false. The petitioners have not cheated the complainant at all. The earlier agreement to sell in favour of Hari Gopal is forged, in collusion with above said Subhash Kumar and Surinder Kumar. At the same time, learned counsel for the petitioners has also submitted that the petitioners have not received any money from the complainant. Extending the argument further, learned counsel for the petitioners has submitted that the petitioners had not executed any agreement to sell or power of attorney in favour of the present complainant. As an attempt to put up a plea of substitution, the learned counsel for the petitioners has submitted that the petitioners had executed one power of attorney in favour of one Jagdish Kumar son of Sham Sunder. Even the possession of the said house has been given to Jagdish Kumar and Ramesh Kumar sons of Sham Sunder. Hence, the present case has been totally concocted.

Of course the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C.; is that the investigating officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the investigating agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in

some some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Coming to the facts of the present case, the complainant has come with specific allegations qua execution of the agreement to sell and power of attorney in his favour; after the amounts mentioned in the FIR had been taken by the petitioners. The agreement to sell and the power of attorney also show that the petitioners had executed the said documents in favour of the complainant after receiving the money. The power of attorney in favour of complainant is a document registered before the Sub Registrar. Hence, this carries a prima facie credence.

As per the record, the petitioners cannot even deny the allegations of existence of the prior agreement with another person Hari Gopal; because he has already filed a civil suit against the petitioners on the basis of the said agreement, which is prior in time, as compared to the agreement and the power of attorney executed in favour of the present complainant. Although, the veracity of the said agreement and the consequences thereof; would be finally decided in the civil suit, which is pending before the civil Court, however, the complainant, as such, is not concerned with the said suit. He is genuinely aggrieved of the fact that he was not made aware by the petitioners regarding a

prior agreement qua the same property in favour of some other person.

In an attempt to deny the claim of the present complainant, the petitioners have even taken a plea that they had entered into some agreement and had executed a general power of attorney qua the said property in favour of one Jagdish Kumar son of Sham Sunder and not in favour of the complainant, who is Jagdish Kumar son of Bhagwan Dass. However, during the arguments, the photocopy of the said power of attorney was produced before the Court. The said power of attorney contains not only the signatures of the petitioners, rather; also contains the photograph of the complainant as well as petitioners. The photograph on the said power of attorney is not affixed separately. Rather; the same is clicked directly on the paper of the general power of attorney; in the presence of the Sub Registrar. The said power of attorney clearly states that it was in favour of the complainant, namely, Jagdish Kumar son of Bhagwan Dass and not in favour of Jagdish Kumar son of Sham Sunder, as the petitioners are now trying to claim.

In view of the above, this Court does not find any mitigating circumstances in favour of the petitioners, showing any ex facie innocence of the petitioners, vis-a-vis the allegations levelled against them in the FIR. Still further, since the petitioners have created a cobweb of transactions, out of which; all are stated to be forged and giving rise to one litigation or the other, therefore, the custodial interrogation of the petitioners could be required, to unearth the actual facts involved in the matter. Hence, otherwise also, if the petitioners are granted protection against arrest, the police would not be able to investigate the case in the right earnest. Hence, this Court does not find it to be a case appropriate to exercise its extraordinary powers to grant protection to

the petitioners.

In view of the above, finding no merit in the petitions, the same are dismissed.

A photocopy of this order be placed on the file of the connected case.

5.11.2019
Ashwani

(RAJBIR SEHRAWAT
JUDGE

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No