

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

105

CRM-M-51938 of 2019

Date of decision:6.12.2019

Ranbir Singh

... Petitioner

versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.J.S.Maani pur, Advocate, with
Ms.Anu Datta, Advocate,
for the petitioner

...

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioner seeks the concession of anticipatory bail, upon FIR no.232 having been registered against him at Police Station Yamuna Nagar Sadar, District Yamuna Nagar, on 5.9.2018, alleging therein the commission of offences punishable under Sections 406/420/506/120-B of the IPC.

As per the FIR, which is stated to have been filed through the attorney of the owner of the land in dispute, i.e. the brother of the owner, it is stated that the petitioner had sold 'his full share of land', i.e. 32 kanals and 4 marlas comprised in the *khasra* numbers given in the FIR, to the complainant (i.e. the attorneys' sister) on 30.1.2009.

The new owner to whom the petitioner had sold the land thereafter started living with her husband in Nagpur, Maharashtra, after which, on 13.10.2016 and 23.2.2017, vide two sale deeds, the petitioner sold the land to others named as accused in the FIR.

Thus, the contention was that despite him having initially sold the land 7-8 years earlier to the complainant, subsequently he sold the same land in which he has no interest, to other persons, and thereafter is alleged to have threatened the complainant that he being a politically influential person, the complainant would not be able to do anything against him.

Learned counsel for the petitioner at the outset submits that the complaint having been filed through an attorney is not maintainable.

Upon query to him as to any provision of law which would debar the filing of a complaint of a person who is shown to be living almost a 1000 kms away, by her brother and attorney, he does not submit anything further on that issue.

He next relies upon a judgment of the Supreme Court in The Commissioner of Police and others vs. Devender Anand and others (Criminal Appeal no.834 of 2017, decided on 8.8.2019), from which he points to what has been held therein as follows:-

“Even considering the nature of allegations in the complaint, we are of the firm opinion that no case is made out for taking cognizance of the offence under Section 420/34 IPC. The case involves a civil dispute and for settling a civil dispute, the criminal complaint has been filed, which is nothing but an abuse of the process of law.”

Having considered the above, what is first to be noticed is that in the case before the Supreme Court, the complainant had entered into an agreement of sale in respect of a particular property, after which he came to know that the property had been mortgaged to the Andhra Bank, when a

notice was affixed by the bank on the said property, and consequently he was compelled to settle the claim of the bank to the tune of almost Rs.17.00 lakhs for release of the mortgaged documents, with him also having paid the necessary registration charges.

He thereafter lodged a complaint at the Karol Bagh Police Station, alleging therein the commission of an offence punishable under Section 420 read with Section 34 of the IPC, to the effect that the fact that the property was mortgaged with the bank was not disclosed to him and therefore he had been cheated.

A Sub Inspector is stated to have submitted his report, *prima facie* making out an offence punishable under Section 420 read with Section 34 of the IPC, further seeking permission to register an FIR for further investigation.

The SHO and the Assistant Commissioner of Police are stated to have concurred with that finding but with the FIR still not registered; and thereafter a fresh preliminary enquiry initiated on the same set of facts. Thereafter, on that enquiry, it was concluded by the police that since the complainant had given his consent to registration of the sale deed and to discharge his liability to the bank, there was no police action required, the factum of mortgage having been revealed to him on 31.7.2013. After that, the SHO and the ACP agreed with that finding, also recording that the dispute was wholly civil in nature.

In the aforesaid circumstances, it was held by their Lordships as above.

In the present case, the factum of the sale deed having been

executed by the petitioner in favour of Anita Devi (complainant through her attorney), on 30.1.2009, has not been denied, before this Court at least.

That being so and subsequently the petitioner having sold the same land again, to other persons, after he had lost all his interest in it (as per the case of the complainant), I do not see any parity of situations, the second sale also being by way of a registered sale deed.

Consequently, as regards this petition, I see no reason to entertain it, which is therefore dismissed.

However, nothing observed herein above shall be taken to be a comment on the merits of the case, which would, naturally, be subject matter of evidence gathered during investigation, and presented to the competent court when that stage comes.

All observations made herein above will be taken to be only in the context of this petition, filed under the provisions of Section 438 of the Cr.P.C.

6.12.2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No