

207 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-5117-2019 in/and
CRM-M-56101-2018 (O&M)
Date of decision: 27.03.2019

Major Singh and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Sherry K. Singla, Advocate, for the petitioners.
Mr. P.S.Walia, AAG, Punjab.
Mr. Deepak Aggarwal, Advocate, for the complainant.

RAJBIR SEHRAWAT, J. (ORAL)

CRM-5117-2019

Application is allowed. The document as Annexure P-4 is taken on record.

CRM-M-56101-2018 (O&M)

The present petition has been filed by the petitioners under Section 438 Cr.P.C for grant of anticipatory bail in FIR No.337 dated 20.11.2018 under Sections 465, 467, 468, 471, 511, 120-B of IPC, registered at Police Station Talwandi Sabo, District Bathinda.

The FIR in the present case has been registered on the complaint of one Charanjit Kaur widow of Bachittar Singh S/o Baru Singh, with the allegation that the complainant got married with abovesaid Bachittar Singh in the year 2002 and one daughter, Amarpreet Kaur, presently aged about 10 years, was born out of the said wedlock. The husband of the complainant expired in the year 2014. Accordingly, the complainant and her daughter, both got right in the property of the share of her deceased husband. Accordingly, 1/4th share out of the properties of father-in-law of the

complainant came to the share of the complainant and her daughter, after the death of her husband. It is further alleged that with a view to usurp the properties of the complainant, the petitioners herein had prepared a forged agreement to sell dated 10.10.2017 regarding the land, which had come to the share of complainant and her daughter. It is further alleged that the agreement to sell is taken because the land mentioned in the said agreement to sell has not even been mutated in the name of the complainant and that the same is still recorded in the name of the husband of the complainant in the revenue records. To support her allegations of fabrication, the complainant has also alleged in the FIR that the land is situated in the village Ghuman Kalan, Tehsil Maur, District Bathinda, whereas, the agreement has been attested as witness by the Lambardar Harphool Singh of village Rama. Still further, it has been alleged that being a literate person, the complainant used to put signatures, however, in the alleged agreement to sell, only her thumb marks have been put. Further allegation in the FIR is that although the said agreement to sell speaks of ₹32 lakhs as having been paid to the complainant, however, no such payment has ever been received by the complainant.

While arguing the case, learned counsel for the petitioners has submitted that the complainant had, in fact, executed the said agreement to sell and taken the money mentioned in the same. However, now with mala-fide intentions, she has taken turn-around and started disputing the agreement to sell itself. Still further, it is submitted that the assertion that the Mutation of inheritance has not been entered into the name of the complainant and her daughter is factually incorrect, because Mutation No.12022 already stands sanctioned in favour of the complainant and her daughter qua the share of the property of above said Bachittar Singh, though

illegally. Learned counsel for the petitioners has further submitted that to frustrate the agreement to sell in favour of the petitioners, even before lodging of the FIR, the complainant had already sold her share in the said property to one Buta Singh, Amarjot Singh and Naib Singh, vide registered sale deed and mutation No.12082 dated 18.05.2018 have already been entered into the revenue record to this effect. Hence, the present FIR has been got lodged by the complainant only to harass the petitioners. It is further submitted that, in any case, the matter is of civil nature. The petitioners may avail their remedy of recovery of ₹32 Lakhs; as shown to have been paid to the complainant in the agreement. Just to create a pressure on the petitioners with a view to avoid returning of ₹32 Lakhs, the present FIR has been concocted by the complainant.

On the other hand, learned counsel for the complainant submits that he supports the allegations levelled in the FIR. It is further submitted that the agreement to sell in question is dated 10.10.2017. Since, the complainant had not entered into an agreement to sell with the petitioners, therefore, she was well within a right to dispose of the property being owner of the same, as per her choice.

Learned counsel for the State, being instructed by ASI Joginder Singh, submits that the petitioners are involved in a heinous crime of attempting to usurp the properties of a widow. Learned counsel for the State further submits that the alleged thumb impression, found on the agreement to sell, has been got compared from the private finger print expert and the same has been found to be not matching with the thumb impression of the complainant.

Having heard learned counsel for the parties, this Court finds

substance in the arguments of learned counsel for the petitioners.

No doubt that 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. However, 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. to protect the accused from being arrested. However, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts 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.

In the present case, it is established that the Mutation of inheritance had already been entered in the name of the complainant along with her daughter, qua the properties of her deceased husband, although the petitioners have challenged the status of the complainant as wife of the deceased Bachittar Singh; by availing their legal remedies. It is also not disputed that after mutation of inheritance was entered in her name, the complainant has already sold the property of her share to some one else through a registered sale deed and even a mutation has been entered in records in the name of that purchaser. Hence, on the date, when the FIR was got lodged, the complainant was not even the owner of the said property qua her share.

The only dispute which remains is the validity of the agreement to sell in question. While the complainant submits that agreement to sell is a fabricated document, the petitioners still insist that the same is valid document, the same having been executed by the complainant after having received the money. The petitioners have further submitted that they reserved their right to file a suit for recovery of the money, which has been paid to the complainant under the said agreement to sell. In any case, the validity of the agreement to sell is purely a civil dispute, which can be determined by Civil Court in appropriate proceedings. By any means, in criminal proceedings the validity of the agreement to sell cannot be appropriately adjudicated upon.

In view of the above facts, there does not appear to be anything criminally incriminating against the petitioners, at this stage. Since, the properties have already been sold by the complainant, therefore only the claim of the petitioners, if any, qua the amount mentioned in the alleged agreement to sell is remaining to be adjudicated upon. So far as the properties of the share of the minor daughter of the complainant are concerned, those cannot be, otherwise also, sold without permission of Court.

In view of the above facts, it would not be unjustified, if the petitioners are protected against their arrest.

Accordingly, the present petition is allowed and it is ordered that in case, the petitioners are arrested in connection with the FIR No.337 dated 20.11.2018 under Sections 465, 467, 468, 471, 511, 120-B of IPC, registered at Police Station Talwandi Sabo, District Bathinda, then they shall be released on bail by the Arresting Officer on their furnishing

bail/surety bonds to the satisfaction of the Arresting Officer. The petitioners shall also abide by the conditions as mentioned in Section 438(2) Cr.P.C.

(RAJBIR SEHRAWAT)
JUDGE

27.03.2019

Hemlata

Whether speaking/reasoned	Yes
Whether reportable	Yes