

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

CRM-M-2019-2016

Date of decision: February 26, 2020

Kawaljit Kaur and another

....Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Veneet Sharma, Advocate
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Anil Chawla, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of the FIR No. 280 dated 21.11.2013 under Sections 420, 467, 468, 471, 120-B IPC, registered at Police Station Jandiala Guru, Amritsar Rural, District Amritsar and the further proceedings pending before the trial Court.

It is worth noticing that while issuing notice on 20.1.2016, the further proceedings, qua the petitioners, were stayed. Later on, the petition was admitted and the interim order was directed to continue.

Brief facts of the case are that respondent No.2-complainant- Rajdavinder Singh got the aforesaid FIR registered with the allegations that the land measuring 44 Kanals 02 Marlas was owned by Mahinder Pal Singh and Sukhpal Singh, residents of Jandiala Guru, Tehsil and District Amritsar and both of them vide agreement to sell dated 26.3.2011 agreed to sell the same to

the complainant and others. Later on, the complainant purchased 15 Kanals 18 Marlas of land vide sale deed dated 27.1.2012 in favour of the complainant and one Vishaldeep Singh, Surinder Kaur, Gurcharan Singh and Tejinder Singh. It is further stated in the FIR that the land was to be jointly purchased for the purpose of carving out of plot and selling the same. It is further stated that later on, the remaining land, i.e. 28 Kanals 4 Marlas was sold in favour of the petitioners and the owner has not returned certain amount as agreed between them and have committed the offence of cheating and forgery.

Counsel for the petitioners has argued that in fact, the complainants, who were the property dealers had entered into an agreement to purchase the aforesaid land from the two owners. However, they could not manage payment of balance money, therefore, they could only get sale deed of 15 Kanals 18 Marlas of land and, thereafter, the petitioners have purchased the land vide sale deed dated 22.2.2012 and the petitioners are the *bonafide* purchasers of the land. Counsel for the petitioners further submits that, in fact, the owners of the land are not arrayed as accused in the FIR as the dispute of the complainant with regard to the return of some earnest money in terms of the agreement to sell dated 26.3.2011 was only against the original owners Mahinder Pal Singh and Sukhpal Singh, whereas there was no privity of contract between the petitioners and the complainant as the petitioners have purchased the land from the original owner subsequently on payment of sale consideration.

Counsel for the petitioners has further argued that the very fact that the complainant never opted to file a suit for specific performance of the agreement to sell dated 26.3.2011, coupled with the fact that it is mentioned in the FIR that the complainant has purchased the land for the purpose of carving out of the plots itself demonstrate that the complainants were not ready with money

to purchase the land and, therefore, the petitioners, who have purchased the land against payment of sale consideration, being *bonafide* purchasers, have not committed any offence.

Counsel for the petitioners has next argued that the limitation for filing the suit for specific performance has lapsed long back and, therefore, the terms and conditions of the agreement of sell dated 26.3.2011 even as against the original owners Mahinder Pal Singh and Sukhpal Singh stand lapsed as the limitation of three years has already lapsed and, therefore, the complainant has converted the civil dispute into a criminal litigation just to put pressure on the accused persons.

Counsel for the petitioners has further argued that from a bare perusal of the FIR, no offence is made out against the petitioners who are a *bonafide* purchasers as the original owners who have sold the land are not arrayed as an accused. Counsel for the petitioners has submitted that the grievance of the complainant was only against the original owners with whom he entered into an agreement to purchase on 26.3.2011 and had purchased part of the land, qua which he was having money to make the payment and, therefore, the FIR is liable to be quashed.

Reply by way of affidavit of DSP, Jandiala Guru, Amritsar Rural is on record and as per the reply, petitioner No.1 is wife of Gurcharan Singh, petitioner No.2 is mother of Gurcharan Singh and wife of Gulzar Singh and, therefore, their conspiracy is apparent on record. It is further stated that Gurcharan Singh was partner of respondents No.2 and 3 and they jointly entered into agreement dated 26.3.2011, out of which, 15 Kanals 18 Marlas of land was purchased on 27.1.2012 by respondents No.2 and 3 along with Gurcharan Singh and Tejinder Singh, whereas the remaining land was purchased by the daughter and mother-in-law of aforesaid

Gurcharan Singh. Therefore, they have committed cheating with the complainant.

It is further stated that Gurcharan Singh and Tejinder Singh have prepared a fake document wherein the complainant-respondents No.2 and 3 have allegedly given their NOC that the remaining land be purchased by the petitioners *de horse* the share and percentage settled amongst themselves, the manner in which sale deed was to be executed and petitioners got the sale deed of entire land.

Counsel for the respondent No.3 has also filed the reply and reiterated the stand as taken by the police.

After hearing counsel for the parties, I find merit in the present petition.

Admittedly, the dispute has arisen out of an agreement to sell dated 26.3.2011 vide which the owner Mahinder Pal Singh and Sukhpal Singh had agreed to sell 44 Kanals 02 Marlas of land in favour of the complainant and Gurcharan Singh, Tejinder Singh etc. This agreement was followed by a sale deed dated 27.1.2012 in favour of the respondents No.2 and 3 for 15 Kanals 18 Marlas of land. The remaining land was purchased by the petitioners vide a subsequent sale deed dated 22.2.2012 for consideration.

Even otherwise, there is nothing on record to suggest that the complainants, after execution of sale deed in their favour on 27.1.2012, have approached the land owners with the balance sale consideration for the purchase of the remaining land. As noticed above, the fact that they failed to file a suit for specific performance itself signifies that they have no ready money to get the sale deed executed. Therefore, the petitioners who have purchased the land

from the original owner have a right to protect their title and possession being *bonafide* purchasers.

It is also admitted case of the complainants that they never filed any suit for specific performance on the basis of the alleged agreement to sell which pertains to the year 2011 and after a period of 09 years, as on today, the limitation for filing a suit of specific performance in possession has already lapsed and, therefore, in view of the judgment of the Hon'ble Supreme Court in case ***M/s Thermax Limited and others vs. K.M. Johny and others, 2011(4) RCR (Criminal) 409***, no offence is made out as the complainant has tried to convert the civil dispute into a criminal litigation.

Surprisingly, in the FIR the original owners Mahinder Pal Singh and Sukhpal, who have sold the land to the petitioners are not nominated as an accused. The grievance of the complainant, if any, for non performance of the agreement to sell for the remaining land, at the first instance, was against the original owners who have sold the land to the petitioners and in the absence of any gravity of contract between the petitioners and the complainant they have right to claim themselves to be a *bonafide* purchasers for a valid consideration.

The argument of the learned State counsel and counsel for the respondent that as per the agreement to sell some share was specified is beyond this document. During investigation, it came that respondent No.2 was having 40% share in the partnership, however the same is not supported by the contents of the agreement to sell and is after thought.

From a bare perusal of the FIR, it is apparent that it is a civil dispute relating to agreement to sell which was given the colour of a criminal litigation. Therefore, in view of the judgment of the

Hon'ble Supreme Court in ***K.M. Johnny's case (supra)***, the FIR is noting but the process of law and is also to be quashed.

Accordingly, this petition is allowed, the impugned FIR No. 280 dated 21.11.2013 under Sections 420, 467, 468, 471, 120-B IPC, registered at Police Station Jandiala Guru, Amritsar Rural, District Amritsar and all the subsequent proceedings taken therefrom are quashed.

The present petition stands disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

February 26, 2020
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No