

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

CRM-M-34789 of 2020

Date of Decision: 30.10.2020

Manjit Kaur

Petitioner

Versus

State of Punjab

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S. S. Rangi, Advocate for the petitioner.

Mr. H. S. Multani, AAG, Punjab.

AVNEESH JHINGAN, J (Oral):

The matter is taken up for hearing through video conference due to COVID-19 situation.

Aggrieved of the order dated 19.10.2020 passed by Additional Sessions Judge, SAS Nagar dismissing the anticipatory bail, the present petition is filed.

FIR No. 28 dated 21.2.2020 under Sections 406 and 420 IPC was registered at the instance of Kirpal Singh. The accused in the FIR are Kuldeep Singh and Manjit Kaur. The facts forth coming are that an agreement to sell was entered on 2.2.2016 between Kuldeep Singh and the co-owners of property, namely, Gurjant Singh, Satnam Singh and Manjit Kaur W/o Jaswinder Singh. Token money of ₹ 5,00,000/- was taken. The total sale consideration was fixed at ₹ 18,00,000/-. The date fixed for execution of sale deed was 3.5.2016. On the very next day i.e. 3.2.2016, Kuldeep Singh entered into an agreement to sell with the complainant and took an advance of ₹ 16,50,000/-. It is alleged that fraud has been played

with the complainant as there was litigation pending between the parties and stay granted by the Civil Court was operating.

Learned counsel for the petitioner submits that the petitioner has been singled out whereas the agreement to sell was entered by all three co-owners. There was no direct dealing of the petitioner with the complainant and the dispute is of civil nature. He further relies on the receipt of money given to Kuldeep Singh specifying that there is stay operating with regard to property.

Learned counsel for the State opposes the contentions and submits that an agreement to sell was entered for the property which was subjudice in the litigation and the complainant has been deprived of his money.

Considering the facts and circumstances of the case the dispute has traits of a civil dispute. The complainant cannot allege cheating or criminal breach of trust against petitioner on the basis of agreement to sell entered by him with Kuldeep Singh. The petitioner was never a party to said agreement to sell. Moreover in receipt, it was specifically mentioned that registry will be done after vacation of stay.

The Supreme Court in **Hridaya Ranjan Pd. Verma and others v. State of Bihar and another**, 2000(2) R.C.R. (Criminal) 484 held as under:

“16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot

give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning that is, when he made the promise cannot be presumed.”

The petition is allowed subject to petitioner's joining the investigation within two weeks. He shall be bound by the conditions under Section 438(2) Cr.P.C.

It is clarified that anything observed hereinabove is only for the purpose of allowing the anticipatory bail to the petitioner.

Before parting, it would be necessary to take note of the prevailing tendency to paint civil disputes as criminal acts. The endeavour is to somehow wriggle the other party in criminal proceedings for applying pressure to settle the issue. The alternative route adopted is considered to be a short cut to the civil litigation. Such tendencies have been deprecated by the Apex Court. The distinction between the civil dispute and criminal proceeding is no longer *res integra*, various judgments of the Apex Court have dealt with the issue. It is being noticed that in number of cases involving pure and simple money recovery, specific performance issues or such like matters, FIRs are being registered by the police authorities. In order to avoid harassment in the matters involving civil disputes, it is need

of the hour that the police department at the appropriate level, looks into

the process of registering FIR, especially in matters having tone of civil dispute.

Without making any further comments, it is expected that the matter would be looked into and necessary steps would be taken.

[AVNEESH JHINGAN]
JUDGE

30th October, 2020

<i>mk</i>	1. Whether speaking/ reasoned	:	Yes
	2. Whether reportable	:	Yes