IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.35138 of 2020(O&M)
Date of Decision-12.11.2020

Samir Sood ... Petitioner

Versus

State of Haryana ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Deepanshu Matya, Advocate
for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

Mr. P.S. Ahluwalia, Advocate,
Mr. Rehat Bir Singh Mann, Advocate and
Mr. Gaurav Singla, Advocate
for the complainant.

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__RAJ MOHAN SINGH, J.__

[1]. Petitioner seeks anticipatory bail in case bearing FIR No.145 dated 09.10.2020 registered under Sections 406, 420, 467, 468, 471 IPC at Police Station DLF, Sector-2, District Gurugram.

[2]. Petitioner is a real estate broker. The FIR was got registered by the power of attorney of Anil Kumar Garg. Complainant claimed himself to be NRI and permanent resident of USA. He is owner of a plot measuring 300 sq. yards in Sushant Lok-II, Gurugram.

Petitioner approached him and assured him to get healthy sale consideration for the plot. Petitioner informed the complainant that the plot in question can be sold out for Rs.1.77 crores. Complainant agreed for the sale. Petitioner paid an amount of 8 lacs in cash towards earnest money. Other conditions were also settled.

[3]. Learned Senior Counsel for the petitioner submitted that the petitioner could not find a willing purchaser for an amount of Rs.1.77 crores, rather found a purchaser for an amount of Rs.1.5 crores and the complainant was accordingly informed. Complainant gave his assent to go further with the deal. As per instructions of the complainant, an agreement was prepared with the complainant in which Mohan Singh Assi was shown as purchaser. The said agreement was taken to USA and the complainant signed the same and the petitioner signed as a witness. Agreement to sell dated 28.04.2018 was signed by the complainant on 05.05.2018. Learned Senior Counsel sought to prove the visit of the petitioner to USA for getting the signature of the complainant with reference to his passport, entries of departure on 02.05.2018 and arrival in India on 10.05.2018. Learned Senior Counsel further relied upon General Power of Attorney dated 19.07.2018 in favour of the petitioner which was executed by the complainant in USA. GPA was authorized in USA and was witnessed by two persons in USA. The said document was countered signed by Indian High Commission at USA and thereafter, same was embossed and registered in Gurugram. As per recital in the agreement to sell dated 28.04.2018, the sale deed could have been

executed either in the name of the vendee or in favour of his assignee. The vendee prepared to get the property purchased in the name of Smt. Superna Nagpal Chopra and signed himself as a witness to the sale deed. An amount of Rs.70 lacs was paid from the account of vendee and an amount of Rs.80 lacs was paid from the account of Superna Nagpal Chopra. The amount could not be deposited in favour of the complainant and the same was deposited in the account of the petitioner as the complainant did not have any account in India. The request was made by the petitioner for opening the account in India as the tax could not be deposited for want of account of the complainant. Petitioner sent form of Corporation Bank of Gurugram to the complainant for signature and got the same signed as well, but the bank refused to open the account for want of attestation by Indian High Commissioner. Complainant could not move to Indian High Commission due to some health issue. Complainant directed the petitioner orally to purchase alternate property from the said amount. Petitioner entered into a deal with Manoj Kumar (seller) and others in order to purchase 1.10 acre of land. Complainant agreed to the aforesaid transaction. Earnest money of Rs.50 lacs was paid by the petitioner to the seller. Agreement to sell dated 30.06.2019 was executed. All these facts have been verified by ACP, Gurugram in first inquiry. Complainant was informed by the petitioner to deposit tax on this sale proceed(s), but for want of Aadhaar and Pan Cards, the same could not be done. Penalty of Rs.7 lacs was imposed by the department. Complainant asked the petitioner whether he would use his address for preparing Aadhaar and Pan Cards. The needful could be done after the deal, therefore, Aadhaar and Pan Cards were not used by the petitioner in execution of sale deed. Petitioner deposited tax @ 23.3% of the value of sale consideration on receipt of Aadhaar and Pan Cards along with penalty. An amount of Rs.42 lacs was deposited as TDS in the name of the complainant on 31.10.2019. Petitioner asked the complainant for the brokerage, but the complainant did not pay the same, rather GPA was cancelled. New GPA was executed in the name of P.K. Gupta. A civil suit for recovery was filed by the petitioner which is pending. Now GPA filed complaint against the petitioner and two other persons. First complaint was inquired into by the police and no offence was found to have been committed. The inquiry was under the supervision of ACP, Gurugram. Thereafter, another complaint was filed only against the petitioner as the vendee of second agreement to sell had surrendered to the wishes of the complainant. Petitioner showed his willingness to deposit the sale proceeds and even offered two cheques in a sum of Rs.50 lacs each out of total sale consideration of Rs.1.5 crores. An amount of Rs.8 lacs had already been paid to the complainant and out of remaining amount of Rs.1.42 crores, an amount of Rs.42 lacs already stood paid through TDS. For remaining amount of Rs.1 crore, the aforesaid cheques were offered by the petitioner.

[4]. Learned counsel for the complainant on the other hand opposed the prayer on the ground that the petitioner has committed fraud with the complainant. The receipt Ex.P-2 does not carry any

date. The signature of Mohan Singh on the agreement to sell on 05.05.2018 could not be explained. Mohan Singh never visited USA, nor the complainant came to India. Police has also recorded the statement of Mohan Singh to this effect. The alleged signature of Anil Kumar (complainant) on 05.05.2018 and signature of Mohan Singh on 05.05.2018 creates serious doubt with regard to authenticity of agreement to sell dated 28.04.2018. First agreement is admitted between the parties, but dates are disputed. There is no date appearing on the receipt. A civil suit for recovery of Rs.26,00,000/- was filed by the petitioner. Para No.3 of the suit reads as under:-

> *"3. That defendant approached to plaintiff to assist in sale of property bearing plot No.D-124, Sushant Lok-II, Gurugram in the month June, 2019, in between both the very conversant and agreed with terms and conditions of the dealings."*

Agreement was never produced before the police in first inquiry.

[5]. Learned State Counsel duly assisted by learned counsel for the complainant submitted that agreement to sell dated 28.04.2018 is in utter disregard to the pleadings in aforesaid para No.3 of the civil suit. The recital of the sale deed dated 02.08.2018 would be tested as per this recital i.e. whether the same was on the basis of agreement to sell dated 28.04.2018 or not.

[6]. Evidently, signature of Mohan Singh on 05.05.2018 on agreement to sell dated 28.04.2018 has created some doubt as he never visited USA, nor the complainant came to India to sign the

aforesaid agreement on 05.05.2018. The statement of aforesaid Mohan Singh before the police has to be appreciated for further investigation, which requires custodial interrogation of the petitioner in order to find out worth in the allegations. The plot in question is 300 sq. yards situated in Sushant Lok, Phase-II Gurugram. The transaction in question appears to be on the basis of market value of Collector's rate. Petitioner is a property dealer. Petitioner approached the complainant for selling his plot in March 2018. In April 2018, a meeting was fixed and the petitioner visited USA. On 17.07.2018, the petitioner again visited USA and the deal was finalized for Rs.1.77 crores. GPA was executed on 19.07.2018. The sale consideration was to be paid on or before 31.12.2018 to the complainant, but no amount was paid to him. A complaint was filed by the complainant through his GPA on 13.12.2019. The investigation was carried out by the police and the petitioner was found to be innocent on the basis of pendency of the civil suit between the parties. The police did not consider the agreement to sell dated 28.04.2018 allegedly signed by the complainant and Mohan Singh on 05.05.2018. The place of agreement where the same was executed, is not mentioned in the agreement. In the month of May, neither the complainant, nor other party had visited USA or India. As per complainant and the petitioner, they met in the month of April and July 2018. There is no recital of any meeting in the month of May. It appears from this document i.e. agreement to sell dated 28.04.2018 that the deal was struck between the petitioner and the complainant in the month of May only, whereas the petitioner was appointed and authorized to doso in the month of July, 2018 vide GPA dated 19.07.2018.

[7]. Evidently, no payment has been received by the complainant till date, though the petitioner has expressed his desire to make payment of Rs.1 crore with a cut of Rs.42 lacs towards GST and an amount of Rs.8 lacs towards earnest money paid to the complainant.

[8]. As per the petitioner himself, he has purchased the property in the name of the complainant and make payment of Rs.50 lacs to the seller. Petitioner was only authorized to sell the property of the complainant situated in Sushant Lok. The alleged purchase of the property in the name of the complainant is claimed to be on the basis of oral instructions. Petitioner being an experienced real estate broker, is not expected to undertake the deal without any authorization from the complainant. In the absence of any special authorization, the petitioner was not supposed to invest the money of the complainant, particularly when the dispute has already arisen between them. The presence of address of the petitioner on the Pan and Aadhaar Cards in place of the complainant, would further require custodial interrogation of the petitioner so as to extract truth.

[9]. The aforesaid cumulative facts and circumstances of the case, require custodial interrogation of the petitioner. No indulgence can be granted in favour of the petitioner in this petition. This petition is accordingly dismissed.

[10]. Nothing expressed hereinabove, shall be construed to be an opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

12.11.2020
Prince

Whether reasoned/speaking Yes/No

Whether reportable Yes/No