

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

CRM-M No.15982 of 2016 (O&M)

Decided on: 28.09.2021

Mukhtiar Kaur and others

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Sanjiv Gupta, Advocate for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. K.D.S. Sidhu, Advocate for respondent No.2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of FIR No.80 dated 09.11.2014 registered under Sections 379/427/447 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Bhadson, District Patiala, along with subsequent proceedings arising therefrom.

Counsel for the petitioners has argued that the FIR has been registered on the basis of an agreement to sell and primarily it is a pure civil dispute.

Since the petitioners are praying for quashing of the aforesaid FIR, it would be appropriate to reproduce the FIR as below:-

“At this time an application No.2154 dated 20.09.2013 from Karamjeet Singh son of Bant Singh resident of Alohran Khurd Tehsil Nabha District Patiala after inquiry No.448/DAL dated 30.09.2014 and order No.69C/HP/Invest. Patiala dated 30.10.2014 against Mukhtiar Kaur wife of Bohar Singh and Bohar Singh son of Deva Singh, Pipal Singh and Bachittar Singh sons of Bohar Singh residents of Nanowal as per Order No.2154/Peshi/13 dated 07.11.2014. I agree upon which

SSP Sahab has passed the orders for registration of case Sd/- Sr. Superintendent of Police, Patiala, received through Dak, whose contents are as under:-

To

*The Senior Superintendent of Police,
Patiala.*

Sub:- Application for registration of case against Mukhtiar Kaur wife of Bohar Singh son of Deva Singh, resident of village Nanowal Sub Tehsil Bhadson, Tehsil Nabha, District Patiala.

Sir,

The applicant submits as under:-

1. That I Vinay Chhatpal son of Sh. Ashok Kumar Chhatpal son of Sh. Bhagmal Chhatpal resident of Nabha and I am a peace loving citizen and I keep faith in law.

2. That on 30.12.2010 aforesaid accused persons out of their land 161 bighas 06 biswas agreed to sell 16 biswas land and entered into an agreement to sell along with Rasta Pahi, Khal, trees along with all rights, whose full detail has been given in the enclosed agreement to sell dated 30.12.2010, whose photostat copy in proof is enclosed, situated at village Nanowal, Tehsil Nabha, District Patiala, has agreed to sell with me, Gurvinder Singh son of Sh. Bant Singh residents of Nabha Tehsil Nabha, District Patiala, at the rate of Rs.2400/- per square yard and as earnest money Rs.75,00,000/- has been received in the presence of witnesses Pardeep Kumar son of Sh. Lachhman Dass, resident of Nabha and Rajesh Kumar son of Sh. Chaman lal resident of Bhadson. The possession has handed over to us at the spot. The date of registry was fixed as 30.5.2012.

3. That on the aforesaid land loan was raised from the bank and the accused at the time of receiving

earnest money, has concealed this fact and because of non-payment of loan by accused on the aforesaid land, on 30.05.2012, registry could not be executed and registered in our favour. Accused from the beginning was having intention to commit fraud with us and accordingly, he mala fide by telling lie, he has received Rs.75,00,000/- from us as earnest money.

4. That when we visited to see the aforesaid land in village Nanowal, then we see that whatever bricks etc. were lying in the aforesaid land, accused and other persons with the intention to take possession, committed theft of those bricks and now we have come to know that accused persons and other persons are trying to take possession over the suit land.

5. That when I along with some respectables persons went to accused to meet, then she started to give filthy abuses to us and she also give this threat if you will initiate any legal proceedings against me, then you will be killed, because aforesaid Balveer Singh is an influential person and he has much approach in the Police also. Aforesaid accused from the beginning wants to commit fraud with us and as such he malafidely embezzled our earnest money. From the aforesaid accused persons and from her companions, I along with my companions are having full danger to life and property. At any time he can cause loss to our life and property. As such by submitting the application it is requested that the appropriate legal action may be taken against aforesaid accused and after registration of case against him, stern punishment may be given to him and we may be given justice.”

It is argued on behalf of the petitioners that as per the agreement to sell dated 30.12.2010, the petitioner (in connected petition) namely Balveer Singh has offered to sell 16 bighas of land to

respondent No.2/complainant @ Rs.2400/- per sq. yds. and amount of Rs.75.00 lacs was paid as earnest money.

Thereafter, on 30.05.2011, the second installment was paid and the stipulated date was fixed as 30.05.2012.

Counsel for the petitioners has referred to a part of the agreement to sell wherein it was agreed between the parties, as under:-

“The possession of the purchasers has been handed over and the balance amount will be received at the time of Registry and the limit of the registry has been fixed upto 30.05.2012. In case the purchasers do not pay the agreed amount of Rs.75,00,000/- (Rs. Seventy Five lacs only) upto 30.05.2011, then the agreement shall be treated as cancelled. Similarly if the purchasers if on the aforesaid dates filed to pay the amount as per given dates, whatever amount will come to me, the same shall be treated as forfeited. If I back out to this agreement, then the purchasers can get execute and register the sale deed through court or can recover double the amount received by me for which I have no objection. Purchasers can get the registry of this land in the pieces of plots or in favour of anybody for which I have no objection.”

Counsel for the petitioners has submitted that thereafter, the complainant neither made the balance payment on 30.05.2011 or further on the stipulated date i.e. 30.05.2012, nor got his presence marked for effecting the sale deed though, it was done by the petitioners' side to show their *bona fide* to execute the sale deed. It is further submitted that contrary to this, the complainant's side filed a suit for permanent injunction on 09.09.2011 praying for a decree of permanent injunction to restrain the petitioner or his representative from interfering in the peaceful possession of the land on the basis of

the agreement to sell.

Counsel for the petitioners has, then referred to Para 2 of the plaint wherein, the complainant has stated as under:-

“The defendant orally gave assurance and agreed that they will get the land partitioned from the other co-sharer and further agreed that they will also get passed the colony from the PUDA (Department) on or before 30.05.2011. The date of the execution and registration of the sale deed was fixed 30.12.2012.”

Counsel for the petitioners has also submitted that in the later part of the plaint, it is also stated that the complainant wanted to develop a colony by taking the permission from Punjab Urban Development Authority (in short 'PUDA') but it is the petitioner, who was to seek permission from PUDA whereas in the agreement to sell, there was no such Clause, as it was the complainant himself, who wanted to develop a colony.

Counsel for the petitioners has further submitted that later on, when the Civil Court refused to grant any interim injunction qua the possession in favour of the complainant, the said civil suit was withdrawn on 24.02.2012 and thereafter, no suit was filed by the petitioners praying for specific performance of the agreement to sell or for recovery of the earnest money and the period of limitation has already lapsed.

Counsel for the petitioners has also argued that though in the FIR, the complainant has stated that the petitioners have cheated him as there was some loan on the land, however, there was no loan on the land and that is why, the police registered the FIR only under

Sections 379, 427 and 447 IPC.

Counsel for the petitioners has further submitted that the agreement to sell was never registered and therefore, if the complainant/proposed vendee states that he has taken the possession of the land in pursuance of the agreement to sell as per the provisions of Section 17(1)(a) of the Registration Act, the same requires compulsory registration and no such registration was got done by the complainant.

Counsel for the petitioners has also argued that as per the latest Jamabandi/Girdawari (Annexure P7), the petitioner No.1 continues to be in possession of the land and at no point of time, the possession was delivered to the complainant as neither the balance payment was made nor the complainant appeared before the Sub-Registrar to get the sale deed executed, though, the petitioner on both the two dates as agreed in the agreement to sell appeared before the Registrar and got her presence marked.

Counsel for the petitioners has further submitted that it is a pure dispute of civil nature as the complainant wanted to carve out a colony by selling the plots and in that process, he got the agreement to sell executed, however, having failed to abide by its own terms and conditions, as per the forfeiture clause of the agreement to sell, the amount stood forfeited and even the limitation to file a specific performance or recovery of amount is lapsed.

Counsel for the petitioners has submitted that where the dispute is purely is of civil nature on the basis of the agreement to sell, the criminal prosecution is not maintainable.

In reply, counsel for the State on the basis of the affidavit

of the Deputy Superintendent of Police, Sub-Division Nabha, has stated about the investigation conducted in the case and stated that the FIR was registered on a complaint given by respondent No.2 that the petitioner has stolen the bricks, etc. lying on the plot and has taken the possession from respondent No.2. It is further stated in the affidavit dated 08.08.2016 that the case was fixed for framing of the charge.

Counsel appearing for respondent No.2, as per the reply, has argued that on an earlier occasion, the petitioners filed CRM-M No.30539 of 2015, which was withdrawn by the petitioners on 17.12.2015, to enable the petitioners to raise all the pleas taken in the petition before the trial Court at the stage of consideration of charges, in accordance with law and, thus, it is submitted that this second petition is not maintainable. It is also submitted that later on, vide order dated 17.08.2016, this Court has directed the trial Court to proceed further as per law, during pendency of this petition.

On merits, it is submitted that the petitioners have entered into an agreement to sell dated 30.12.2010 and the buyers were to pay two installments of Rs.75.00 lacs each on 30.05.2011 and 31.12.2011 and the final date for registration of the sale deed was 30.05.2012. It is further stated that after the proposed buyer took the possession of the land and the other shareholders started raising dispute regarding demarcation and possession and it also came to the notice that some land has been taken on loan, however, no details of the land, name of the Bank, year, etc, is mentioned.

Counsel for respondent No.2, has further submitted that it is also stated in the reply that the petitioners have stolen the brick,

which were lying on the plot. It is also stated that an FIR No.14 dated 24.02.2014 under Section 36(1) and 36(3) of the Punjab Apartment and Property Regulation Act, 1995 was registered at Police Station Bhadson, District Patiala against respondent No.2 – Gurinder Singh and others with regard to the land, in question, for trying to develop an illegal colony without taking No Objection Certificate from PUDA. It is, lastly, stated that as there was a recital in the agreement to sell that the possession has been given at the time of agreement to sell, the petitioners have stolen the bricks lying on the land and has committed the offence.

In response, counsel for the petitioners has relied upon the endorsement dated 16.04.2012 vide which no dues certificate was issued by the Oriental Bank of Commerce on clearing the loan account, which is 03 years prior to the date of agreement to sell.

The counsel for the petitioners has argued that the petitioner No.1 is the owner in possession of the land and therefore, no offence under Section 379 IPC is made out. It is also stated that the possession was never given to the complainant and therefore, Section 447 IPC is also not made out. Counsel for the petitioners has further submitted that even before the Civil Court, the respondent No.2 and his partners failed to get any interim injunction and, therefore, the suit for permanent injunction was withdrawn and as per the latest revenue record, the petitioner No.1 continues to be in possession of the property.

Counsel for the petitioners has relied upon the judgment ***“Satishchandra Ratanlal Shah vs State of Gujarat and another”***, **2019(2) RCR (Criminal) 145**, wherein the Hon'ble Supreme Court has

held that breach of promise and cheating would depend upon fraudulent inducement and *mens rea* and by holding that unless there is an intention on the part of the accused, the offence is not proved, quashed the FIR.

Counsel for the petitioners has further referred to the judgment ***“All Cargo Movers (India) Private Limited vs Danesh Badarmal Jain”***, 2007(14) SCC 776, wherein the Hon'ble Supreme Court has held that while deciding a petition under Section 482 Cr.P.C., for the purpose of finding out as to whether the allegations are *prima facie* correct Court can taken into consideration the admitted documents.

Similar is the view taken by the Hon'ble Supreme Court in ***“Surya Lakshmi Cotton Mills Limited vs Rajvir Industries Limited”***, 2008(13) SCC 678, wherein it was held that though disputed questions of facts are not required to be gone into by the Court in a petition under Section 482 Cr.P.C., but the documents of unimpeachable character can be taken into consideration. It is also held that the fraudulent or dishonest intention must be at the inception and not at a later stage. In both the cases, the Hon'ble Supreme Court has quashed the FIRs.

Lastly, counsel for the petitioners has relied upon the judgment ***“Bhajan Lal vs State of Haryana”***, 1992 SCC (Criminal) 426, wherein the Hon'ble Supreme Court has held as under:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Counsel for the petitioners has further relied upon the judgment **“Inder Mohan Goswami vs State of Uttranchal”, 2007(4)**

RCR (Criminal) 548, wherein the Hon'ble Supreme Court has held that there is a growing tendency to convert purely simple disputes into criminal cases because civil remedies are time consuming. In this case also, after an agreement to sell was entered into between the parties and the complainant failed to pay the balance amount and got the FIR registered under Sections 467 and 420 IPC, the same was quashed by the Hon'ble Supreme Court.

After hearing the counsel for the parties, I find merit in the present petition, for the following reasons:-

(a) It is a common case of the parties that on 30.12.1992, 02 agreements were executed by the petitioner for selling his land to respondent No.2/complainant @ Rs.2400/- per sq. yds and received the earnest money of Rs.75.00 lacs and 90.00 lacs.

The respondent No.2, in pursuance to the 02 agreement to sell never appeared before the Sub-Registrar on the 02 subsequent agreed dates i.e. on 30.05.2011, when the second installment was to be paid and on 30.05.2012 i.e. the stipulated date when the sale deed was to be executed.

The petitioners, on the other hand, appeared before the Sub-Registrar and got their presence marked by way of 02 separate affidavits to show their bona fide that they are ready and willing to execute the sale deed in favour of the proposed seller but the seller did not come forward to get the sale deed executed.

(b) The fact that at a subsequent stage, the complainants never filed any suit for specific performance of the agreement to sell despite the fact that 03 years limitation from the date of stipulated date i.e. 30.05.2012, stand expired itself reflect that the purchaser was neither ready nor willing to get the sale deed executed.

(c) It is also admitted case of the parties that no extension in the agreement to sell was ever agreed between the parties.

(d) The FIR was registered on 09.11.2014 with the allegations that after the agreement to sell was executed, the possession was delivered to the complainant and the petitioners i.e. the seller have forcibly taken back the possession.

A perusal of the record i.e. Jamabandi for the subsequent year, relied upon by the petitioners, which carries presumption of truth reflects that the possession always remained with the petitioners and was never handed over to the complainant.

(e) Even otherwise, the agreement to sell was never got registered with the Sub-Registrar and therefore, in terms of Section 17(1-E) of the Registration Act, 1908, the same is not admissible in evidence and cannot be relied upon by the complainant for the purpose of proving of fact that the possession was delivered to him whereas to the contrary, the revenue

record supports the case of the petitioners that they continued in possession of the land and therefore on the face of it, the offence under Sections 379/427/447 IPC is not made out.

(f) Even otherwise, the complainant has filed a simplicitor suit praying for decree of permanent injunction restraining the petitioners from interfering in the possession of the land on the basis of the aforesaid agreement to sell, however, the suit was got dismissed as withdrawn as no injunction was granted and as observed earlier, no suit for specific performance was ever filed till date.

(g) Even as per the default clause of the agreement to sell, in case of default by the seller i.e. the petitioners, the complainant had a right to recover double the earnest money and again, no suit for recovery of the earnest money was filed much less even no notice in this regard was given.

On the contrary, in view of the default clause the proposed buyer i.e. the complainant having failed to get the sale deed executed within the time framed, the earnest money was to be forfeited, also goes in favour of the petitioners.

(h) Apparently, it is an admitted case that the complainant got the agreement to sell executed with a purpose of carving out a colony i.e. to sell plots in the agricultural land after obtaining No Objection

Certificate from Punjab Urban Development Authority (PUDA), however, the purchaser failed to procure any such permission from PUDA and this is the apparent reason that respondent No.2 never pursued his civil remedy to get the sale deed executed in his favour as he was not ready and willing to purchase the land.

(i) Even the contents of the civil suit as referred to above, in para 2 of the plaint, are contrary to the averments of the agreement to sell which also show that there was no default on the part of the petitioners in execution of the sale deed.

(j) In view of the judgment of the Hon'ble Supreme Court in All Cargo Movers (India) Private Limited's case (supra) and Surya Lakshmi Cotton Mills Limited's case (supra), the plaint filed by the complainant before the Civil Court as well as the revenue documents i.e. the Jamabandi which carries presumption of truth, apart from the admitted agreement to sell between both the parties, can be looked into to decide the controversy between the parties.

(k) From the bare perusal of the FIR, the report under Section 173 Cr.P.C. as well as the order framing charges, it is apparent that though the allegations of cheating were also levelled in FIR, however, neither the police submitted the report under Section 173 Cr.P.C. under Sections 415/420 IPC nor charges were framed by

the trial Court in this regard as report was submitted under Section 427/447/379 IPC.

(l) Even the reply by way of affidavit of the Deputy Superintendent of Police, Circle Nabha, do not reflect that any offence of cheating is made out and it is only stated that the petitioners failed to get the sale deed executed in favour of the complainant and then by entering in the said land and stealing the bricks lying therein, committed the offence under Section 379.

(m) The objection raised by the counsel for the complainant that the first quashing petition was dismissed as withdrawn before this Court with liberty to raise all the pleas at the time of framing of charge, do not come in the way of the petitioner as now the charges have been framed by the trial Court and the argument of the petitioner is that the admitted documents of the petitioner were not considered.

Accordingly, in view of the above and in the light of judgment of Hon'ble Supreme Court of India in *Bhajan Lal's case (supra)*, the present petition is allowed and the FIR No.80 dated 09.11.2014 registered under Sections 379/427/447 IPC at Police Station Bhadson, District Patiala, and all other subsequent proceedings arising therefrom are quashed.

(ARVIND SINGH SANGWAN)
JUDGE

28.09.2021
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No