IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11125-2021(O& M)
Date of decision: 01.04.2022

Anil Kumar Gupta and others ...Petitioners

Versus

State of Punjab .....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Bikramjit Aroura, Advocate for the petitioners.

Mr. Ajay Pal Singh Gill, DAG Punjab.

Mr. Vipin Mahajan, Advocate for the complainant.

HARNARESH SINGH GILL, J.

Through the instant petition under Section 438 Cr.P.C., the petitioner seeks anticipatory bail in case FIR No. 35 dated 17.02.2021 registered under Sections 420 IPC, at Police Station City Gurdaspur, District Gurdaspur.

As per the contents of the FIR, an agreement to sell was executed between the petitioners (sellers) and the complainant (buyer) on 18.04.2019 regarding the sale of the land measuring 56.93 marlas situated in front of Bus Stand, Dinanagar, for a total sale consideration of Rs.4,61,00,000/-; that an amount of Rs.86,00,000/- as earnest money, was paid by the complainant to the petitioners; that as per the recital of the agreement to sell, the said land was mortgaged with the Hindu Cooperative Bank; that the loan of Rs.2,50,00,000/- was to be cleared by the petitioners within a period of 18 months and thereafter, they were to execute the sale deed in favour of the complainant; that in October, 2020, the complainant asked the petitioners to execute the sale deed, but he assured that it would be so done soon; on 21.01.2021, the petitioners told the complainant that the sale deed would be executed on or before 20.04.2021 and upon the demand of the petitioners, a further amount of Rs.20 Lakh was paid to the petitioners and in this way, the total earnest money became Rs.1,06,00,000/-; but the complainant came to know that on account of default on the part of the petitioners, the Bank had taken the possession of the land, fixed the auction of the property for 22.01.2021 and accordingly, sold the same.

It is submitted by the learned counsel for the petitioners that as the loan account in question was already declared NPA by the Bank firstly in the year 2012 and subsequently in 2017 and the Bank had initiated the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, against the said property. It is further submitted that complainant-. -Barinder Singh was asked to pay the balance sale price, as per the terms of the agreement dated 18.04.2019 so that the loan amount could be cleared and when he did not do the same, then a legal notice dated 20.12.2020 was issued to him by petitioner No.1-Anil Kumar Gupta; that despite issuance of the legal notice, when the balance sale consideration was not paid, petitioners No.1 and 2 were compelled to file a Civil Suit for rescinding of the agreement to sell dated 18.4.2019, in the Civil Court at Gurdaspur; that besides, the petitioners had also made a detailed representation dated 27.01.2021 to the Director General of Police, for the protection of their life and liberty, as the complainant in connivance with DSP-Lakhbir Singh, Akash Mahajan, Financer, had entered a criminal conspiracy to cheat and defraud the petitioners and that the petitioners have filed CRWP-1469-2021 for the protection of their life and liberty in which status report was called and the same is listed for hearing today itself.

It is further submitted that the petitioners had made their sincere efforts to settle the matter with the Bank and in this process, they had also filed CWP-18906-2020 titled as 'Annapurna Agro Tech. and others Vs. State of Punjab and others'; that in the said petition on 07.12.2020, learned counsel for the petitioners agreed to deposit Rs. 3 crore on or before 31.12.2020 with the Bank and thus, the Hon'ble Division Bench was pleased to order that no coercive action shall be taken by the Bank; that as said huge amount could not be arranged and deposited as noticed above, the Bank took possession of the property and sold the same in auction for Rs. 3,90,00,000/-.

On the strength of the aforesaid submissions, it is argued that the dispute, if any, is civil in nature and the complainant has unnecessarily, illegally and unwarrantedly given it colour of criminal proceedings.

On the other hand, learned State counsel assisted by the learned counsel for the complainant state that the petitioners have cheated and played a fraud upon the complainant and thus, obtained an amount of Rs.1,06,00,000/-; that there was no recital in the agreement to sell that the bank's loan was to be cleared by the complainant;

that at no point of time, the petitioners brought it to the notice of the complainant that they were not in a position to clear the loan, but rather kept on assuring that the sale deed would be so registered soon; that believing the version of the petitioners, the complainant had paid the petitioners an additional amount of Rs.20 lakh on 21.01.2021 in the presence of Siddarth Gupta and Ashish Gupta; that it was on account of the acts of commission and omission on the part of the petitioners that the Bank took the possession of the property and had sold the same in auction. It is further vehemently contended that it does not appeal to the common prudence as to how the petitioners could compel the complainant to make the payment of the balance sale consideration by way of a legal notice issued to him by the petitioners, when admittedly, as per the recital of the agreement to sell, the loan was to be cleared by the petitioners and an NOC was to be obtained by them before execution of the sale deed in favour of the complainant. So much so, it is further argued that in order to create a ground to save themselves from the clutches of the criminal proceedings, petitioner Nos. 1 and 2 have very cleverly filed a Civil Suit for the rescinding of the agreement to sell.

I have heard the learned counsel for the petitioners and learned State counsel as also learned counsel for the complainant at length and have also considered the documents on record.

The execution of the agreement to sell dated 18.04.2019 is not in dispute. Payment of earnest money of Rs.86,00,000/- at the time of execution of the said agreement to sell is also not disputed. Payment of Rs.20 lakh statedly made on 21.01.2021 is, though disputed by the petitioners, but the same being not relevant at this stage, need not be gone into. What is required to be seen, is whether the petitioners had an intention to cheat the complainant so as to find out if a civil dispute has been converted into a criminal case, as the counsel for the petitioners has vehemently argued that a pure civil dispute has been given the cloak of criminal proceedings.

As per the recital of the agreement to sell dated 18.04.2019, loan regarding the subject property, mortgaged with the Bank, was to be cleared by the petitioners and having obtained NOC, they were to get the sale deed registered in favour of the complainant. It is also mentioned in the said agreement that balance amount was to be received by the sellers (petitioners), at the time of registration of the sale deed. Admittedly, the petitioners could not clear the loan. Rather, they had filed CWP-18906-2020. In the said petition, the Division Bench on 07.12.2020, was pleased to pass the following order (only relevant part extracted):-

> "..........Counsel for respondents No. 4 to 6 has very fairly stated that in case the petitioners deposit a sum of Rs.3.00 crores on or before 31.12.2020 as undertaken by them, the Bank will defer further coercive action till the next date but it must be made clear that in case the money is not deposited as undertaken, then the Bank will be free to take action against the petitioners.
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> Counsel for the petitioners has very fairly accepted this. It is, therefore, directed that in case the petitioners deposit a sum of Rs.3.00 crores on or before 31.12.2020 with respondent Nos. 4 to 6 further coercive action shall not be taken by respondents No. 4 to 6, till the next date....."

There is no denying that the petitioners were not able to arrange the said amount, which led to taking possession of the property in question by the Bank and ultimately its sale in an auction.

The conduct of the petitioners does not entitle them the relief of anticipatory bail. From the documents on record, it appears that it was because of their conduct that the possession of the property was taken by the Bank and its consequent sale in an auction for Rs. 3,90,00,000/-. In the agreement in question, there was no condition that the loan amount was to be cleared by the complainant. The petitioners had also undertaken in the civil writ petition filed by them to deposit Rs.3.00 crore on or before 31.12.2020. It is not the case of the petitioners, except until issuance of the legal notice on 20.12.2020, that they had ever brought to the notice of the complainant the factum regarding NPA proceedings and ultimate consequences. Thus, it can be said that may be at the time of execution of the agreement to sell, there might not be any criminal intent on the part of the petitioners, but their subsequent conduct, clearly shows otherwise.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

01.04.2022
ds

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No