

CRM-M-22214-2022

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

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Date of decision: 23.05.2022

Subhash

...Petitioner

Versus

Zile Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Tarun Aggarwal, Advocate,
legal aid counsel (HCLSC)
for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present petition is to the order dated 12.01.2021 (Annexure P-7) passed by the learned Addl. Sessions Judge, Panipat, vide which revision preferred by the petitioner against the judgment dated 27.10.2016 passed by the learned Judicial Magistrate Ist Class, Panipat, has been dismissed.

Brief facts of the case are that the petitioner-complainant filed a complaint against the respondents with the averments that respondent No.1 had executed an agreement to sell dated 02.02.2010 in favour of the complainant with regard to 10 marla land and received an amount of Rs.1,50,000/-; that possession of the land had also been delivered at that time; that sale deed of the said land was to be executed at the sweet Will of the complainant for the reason that respondent No.1 had mortgaged the said land with the bank; and that after clearance of the loan, the petitioner-complainant requested respondent No.1 for the execution of the sale deed,

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but he did not turn up.

It is further alleged that the complainant came to know that respondent No.1 executed a *Dastbardarinama* vide vasika No.98 dated 20.04.2011 in favour of respondent No.2 and thereafter, respondent No.2 had executed a registered sale deed dated 01.06.2011 in favour of respondent No.3, for a sale consideration of Rs.3,35,000/-; that all the respondents had committed fraud with the complainant, and that the complainant had filed an application before the Superintendent of Police, Panipat, for taking action against the respondents, but to no avail.

Learned Magistrate, after considering the evidence led by the complainant, dismissed the complainant vide order dated 27.10.2016.

Aggrieved against the order dated 27.10.2016, the petitioner preferred the revision before learned Addl. Sessions Judge, Panipat, which was also dismissed vide impugned order dated 12.01.2021.

Still aggrieved, the petitioner has filed the present petition.

I have heard the learned counsel for the petitioner.

Learned counsel for the petitioner contends that after having received the entire sale consideration, respondent No.1 had executed an agreement to sell of the land in favour of the petitioner, but in order to cheat the latter, the former had executed *Dastbardarinama* vide vasika No.98 dated 20.04.2011 in favour of respondent No.2, and that thereafter, respondent No.2 had executed a registered sale deed dated 01.06.2011 in favour of respondent No.3, for a sale consideration of Rs.3,35,000/.

Learned counsel for the petitioner further contends that the respondents in collusion with each other, had played a fraud upon the

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complainant and that at the stage of summoning the accused, the Magistrate has to evaluate as to whether there is sufficient ground to proceed against the accused. The Magistrate is not required to weigh the evidence so meticulously as is required to do during the course of main trial. He further contends that both the courts below have erred in law while passing the impugned orders.

I have heard the learned counsel for the petitioner.

A perusal of the record would show that the petitioner-complainant is himself a witness to the sale deed No.494 dated 01.06.2011, executed by respondent No.2 in favour of respondent No.3. When the petitioner himself is a witness to one of the sale deeds, he cannot alleged that he had been cheated by respondent No.2 in collusion with respondent No.3.

Moreover, the dispute is essentially civil in nature and the petitioner, if so advised, may file a suit for specific performance qua the agreement to sell. However, there is no averment in the complaint that the petitioner has also instituted civil proceedings against the respondent. The petitioner has only filed the complaint under the impression that entangling a person in a criminal case ups the chances of a quicker settlement. While exercising the power under Section 482 Cr.P.C., this Court should keep a wary eye for the cases which are essentially of civil nature, but have been given a cloak of criminal offence. In this backdrop, the initiation of criminal proceedings against the respondents would amount to an abuse of process where a civil dispute is sought to be given the colour of a criminal wrong doing.

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Learned counsel for the petitioner has failed to show as to what material evidence had not been appreciated by the courts below.

In view of the above discussion, this Court does not find any merit in the present petition.

Dismissed.

23.05.2022
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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