

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.115

CRM-M-9246-2023 (O&M)

Date of decision : 28.02.2023

Smt. Nirmal Gaur

..... Petitioner

VERSUS

Smt. Sushma Rani and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. U.K. Agnihotri, Advocate, for the petitioner.

SUDHIR MITTAL, J. (Oral)

Aggrieved with non-execution of sale deed, the petitioner had got an FIR registered against the vendors. In the said FIR, the police submitted a cancellation report to which the petitioner filed objections. The same were treated as a complaint and the accused persons were summoned vide order dated 23.01.2015.

This order was challenged by the accused persons by way of a revision petition and the same has been allowed vide order dated 14.11.2022 passed by the Sessions Court, Kurukshetra. Thus, the present petition has been filed for quashing of the said order.

Learned counsel for the petitioner has submitted that the accused had entered into an agreement to sell dated 10.01.2006 in favour of the petitioner and other with regard to 10 kanals and 13 marlas of land. Earnest money amounting to Rs.15 lacs was paid, but sale deed was not executed. Sometime later, the accused persons filed a suit for injunction against the prospective vendees for restraining them from interfering in the lawful possession of the vendors. This suit was compromised vide written compromise dated 01.10.2011, according to which, 02 kanals and 05 marlas

compromise, entire land measuring 10 kanals and 13 marlas was sold vide sale deed dated 03.11.2011 in favour of respondents No.1 to 3. This clearly shows that the compromise was entered into with the intention of mis-appropriating the earnest money and for cheating the petitioner and others. The trial Court had rightly summoned the accused persons and the revisional Court has erred in reversing the said order.

A perusal of the order dated 14.11.2022 passed by the Sessions Court as well as a copy of the compromise placed on record as Annexure P6 shows that if, either party violated the terms of the agreement, a sum of Rs.5 lacs was fixed as liquidated damages. Thus, the Sessions Court has rightly held that it is a simplicitor case of breach of agreement and no criminality was involved.

Learned counsel for the petitioner has further submitted that at the stage of summoning only existence of a *prima facie* case is to be seen. The facts aforementioned clearly reveal existence of a *prima facie* case and the revisional Court was not justified in reversing the order of summoning passed by the trial Court.

It is true that at the stage of summoning only the existence of the *prima facie* case is to be seen. Thus, the question arises, whether, a *prima facie* case exists, even if, the facts as stated by the complainant are taken to be true? In my considered opinion that is not so. The original agreement to sell is dated 10.01.2006 and the compromise between the parties is dated 01.10.2011. The same was arrived at in a suit for injunction filed by the vendors. The vendees never filed a suit for specific performance of the agreement to sell. This shows that the vendees themselves were

unable to execute the sale deed. The fact that a settlement was reached further shows that the vendors were still willing to execute the sale deed, but non-execution thereof clearly implies that there was some default on the part of the vendees. Liquidated damages have also been specified for violation of the compromise dated 01.10.2011. All these factors examined together lead to inescapable conclusion that there was no criminal intention involved and invoking of the criminal jurisdiction of the Court was an abuse and mis-use of the criminal law.

For the reasons aforementioned, the petition has no merit. It is, accordingly, dismissed.

(SUDHIR MITTAL)
JUDGE

28.02.2023
Ramandeep Singh

Whether speaking / reasoned	Yes
Whether Reportable	No