

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

**CRM-M-14241-2017
Date of Decision: 13.02.2023**

Ram Avtar Gupta

... Petitioners

Versus

State of Haryana and another

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by:- Mr. Adarsh Jain, Advocate for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

Mr. R.S Athwal, Advocate for respondent No.2.

KARAMJIT SINGH, J.

The present petition under Section 482 of Cr.P.C. has been filed by the petitioner/accused seeking quashing of FIR No.749, dated 18.10.2016 registered under Sections 406, 420, 120-B IPC, Police Station Central Faridabad, Annexure P-1, and all the subsequent proceedings arising thereof.

On receipt of notice of motion the State counsel appeared on behalf of respondent No.1 while complainant/respondent No.2 also appeared through his counsel.

The State filed reply by way of affidavit of Atma Ram, Assistant Commissioner of Police, Central Faridabad. Separate reply was filed on behalf of respondent No.2 contesting the present petition.

Rejoinder was filed on behalf of the petitioner to the aforesaid written reply(s).

The brief facts of the case are that FIR, Annexure P-1, was registered on the basis of complaint lodged by respondent No.2 Suraj Bhan Chauhan, wherein he has stated that accused No.2 Mahesh approached him with a proposal of good deal with regard to sale of land by the petitioner who is stated to be the owner of total land measuring 67 Kanal 11 Marla. On the basis of said offer petitioner and Mahesh agreed to sell 31 Kanals of land out of aforesaid total area to the complainant and the land was also shown to the complainant by both the accused persons. The deal was settled as per which the accused persons agreed to sell the said 31 kanal of land to the complainant for sale consideration of Rs.24,21,875/- and accordingly agreement to sell dated 7.1.2005 was executed between the parties and Rs.5,00,000/- was paid as earnest money by the complainant to the accused and the sale deed was to be executed and registered on or before 4.5.2005. No objection certificate was required to be obtained by the proposed vendors before the execution of the sale deed, from the Town and Country Planning Department. However, the accused persons failed to get no objection certificate from the concerned authorities by the stipulated date i.e. 4.5.2005. Thereafter, petitioner sent a false legal notice dated 8.5.2005 wherein he stated that he was no longer having any authority to execute the sale deed as the previous owners have canceled the General Power of Attorneys (GPAs) which were earlier executed by them in favour of the petitioner. However, this fact was denied by the previous owner in his affidavit dated 24.6.2005 and they denied having canceled any GPA. Thereafter, the complainant filed

suit for specific performance of agreement to sell dated 7.1.2005 and the said suit is recently decided by the Court of Civil Judge (Senior Division), Faridabad. The accused persons were having mala fide intention since very beginning to defraud the complainant and they took Rs.5 lakhs from the complainant in order to cause wrongful loss to him. That at the time of execution of the agreement to sell dated 7.1.2005, the accused persons proclaimed themselves to be the owner of the property in question and they never disclosed that they were acting on behalf of the land owners being GPA holders. That the said fraud was committed by the accused persons in order to deceive the complainant. Consequently, the impugned FIR, Annexure P-1, was registered on 18.10.2016.

The counsel for the petitioner while challenging the FIR, Annexure P-1, has submitted that the agreement to sell dated 7.1.2005 was executed without any mala fide intention by the accused persons including the petitioner. The counsel for the petitioner has further contended that at the time of registration of the FIR, the complainant did not disclose material facts to the police. Actually the complainant lodged private criminal complaint against the accused persons including the petitioner in which similar allegations were made to the effect that the petitioner and other accused entered into an agreement to sell dated 7.1.2005 with dishonest intention to commit fraud and the accused persons caused wrongful loss of Rs.5,00,000/- to the complainant. The counsel for the petitioner has further contended that in the said criminal complaint the petitioner along with the other accused persons was summoned for offences punishable under Sections 406/420/120-B IPC vide order dated 1.6.2007 (Annexure P-3). The

petitioner and other accused persons filed revision petition against the summoning order and the same was allowed vide order dated 20.07.2009, Annexure P-4, and the matter was remanded back to the trial Court to reconsider the material on record produced by the complainant and to ascertain whether from the subsequent conduct of the accused persons dishonest intention at the time of agreement to sell can be recorded or the case is of mere breach of agreement with or without mala fide intention. Thereafter the trial Court in compliance of the aforesaid order, Annexure P-4, reconsidered the facts and circumstances of the case and finally came to the conclusion that the case is merely of breach of agreement and accordingly, the criminal complaint was dismissed by the Court of Judicial Magistrate 1st Class vide order dated 11.04.2012, Annexure P-5.

The counsel for the petitioner has further submitted that the dispute being of civil nature, the complainant filed civil suit seeking specific performance of agreement to sell dated 7.1.2005, against the petitioner and some other persons. The said civil suit was contested by some of the defendants and finally the said suit was partly decreed for recovery of Rs.5,00,000/- along with interest vide judgment and decree dated 12.08.2014, Annexure P-8 and the entire decretal amount including interest was deposited on 1.9.2014 in the Court concerned and the copy of the treasury challan is placed on record.

The counsel for the petitioner has further submitted that as the complaint filed on the basis of same allegations, already stands dismissed, the impugned FIR which is filed after more than 10 years of the execution of agreement to sell dated 7.1.2005 is not at all legally maintainable, specially

when the dispute between the parties is of civil nature and has been decided by the Civil Court.

The present petition is contested by the State counsel as well as counsel for respondent No.2.

The counsel for respondent No.2 has argued that the petitioner was having dishonest intention from the very beginning and he committed fraud and took Rs.5,00,000/- from the complainant in order to cause wrongful loss to him. The counsel for respondent No.2 has further contended that the petitioner is a lawyer by profession and owners of land in question appointed the petitioner as their GPA holder vide Annexures R2/2 and R2/3 and he issued false notice to the complainant to show that he was unable to execute the sale deed by the stipulated period as the said GPAs stand canceled by the owners of the land in question. The counsel for respondent No.2 has submitted that the actual owners of the land later on gave an affidavit that he had never canceled the GPA given by him in favour of the petitioner and thus making it clear that the petitioner refused to execute the sale deed on false premises. The counsel for respondent No.2 has further contended that this fact is also proved from the judgment dated 1.8.2017, Annexure R-2/4, passed by the Appellate Court. That the first Appellate Court allowed the appeal filed by the complainant against judgment dated 12.8.2014, Annexure P-8, and decreed the suit and held that the complainant is entitled to get symbolic possession by way of specific performance of the agreement to sell in respect of land measuring 18 Kanals 1 Marla. The counsel for respondent No.2 has further submitted that till date the said decree passed by the Appellate Court is not satisfied as sale deed to the

extent of land measuring 15 Kanal 07 Marla is executed out of total land measuring 18 Kanal 1 Marla and the owners have already disposed of the remaining land by transferring the same in name of one Tayab Khan vide agreement dated 19.09.2018 and further Tayab Khan has also transferred the same to some other persons vide agreement dated 12.11.2018 whose copies are placed on record. It is further contended that only because a civil remedy is available to the complainant that itself cannot be a ground to quash a criminal proceedings.

I have considered the submissions made by counsel for the parties.

In the instant case the execution of agreement to sell dated 07.01.2005 (Annexure R-2/1) is not disputed by both the parties.

The said agreement to sell was executed by the petitioner regarding land measuring 31 Kanals belonging to Ashok Kumar, Uday Bhan and Girish Kumar, being their GPA holder, in favour of respondent No.2 at the rate of Rs.6.25 lacs per acre and he received Rs.5 lacs as earnest money and the sale deed was agreed to be executed by 4.5.2005.

The other uncontroverted facts having bearing on the present case are as under:-

The petitioner and land owners failed to honour the terms and conditions of agreement to sell dated 07.01.2005, on which respondent No.2 filed criminal complaint dated 16.09.2006 (Annexure P-2), in which the summoning order was passed by the learned trial Court vide order dated 01.06.2007 (Annexure P-3). Being aggrieved, the petitioner and other

accused persons filed revision petition and the same was allowed vide order dated 20.07.2009 (Annexure P-4) and the matter was remanded back to the learned trial Court. Pursuant to order (Annexure P-4), the learned trial Court revisited the entire matter and finally dismissed the criminal complaint (Annexure P-2) vide order dated 11.04.2012 (Annexure P-5) with the observation that the present case is one of mere breach of agreement. Against the said order respondent No.2 filed revision petition but the same was dismissed by the Court of Additional Sessions Judge, Faridabad vide order dated 16.11.2012 (Annexure P-6). It appears that no further challenge was made to the said order of the revisional Court by respondent No.2.

Further on the basis of the agreement to sell dated 07.01.2005, respondent No.2 also filed a suit for specific performance (Annexure P-7) on 11.03.2008 and the Court of learned Civil Judge (Jr. Divn.), Faridabad partly decreed the said suit with costs for recovery of Rs.5 lakhs along with interest vide judgment and decree dated 12.08.2014 (Annexure P-8). Immediately thereafter the petitioner deposited entire decreetal amount worth Rs.9,83,000/- in the Court concerned vide e-challan dated 01.09.2014.

The appeal filed by respondent No.2 against the said judgment and decree was allowed vide judgment dated 01.08.2017 (Annexure R-2/4) and respondent No.2 is held entitled for symbolic possession by way of specific performance of the agreement to sell in respect of land measuring 18 *Kanal* 01 *Marla* and accordingly defendants/ respondents therein were directed to execute the sale deed in respect of said land in favour of respondent No.2 (appellant therein) on receipt of balance sale consideration.

In the meantime, impugned FIR (Annexure P-1) was registered against the accused persons including the petitioner on the basis of the written complaint dated 04.12.2015 lodged by the respondent No.2.

The settled legal position is as follows:-

Several disputes of civil nature may also contain the ingredients of criminal offences and if so will have to be tried as criminal offences, even if they also amount to civil disputes as has been held by the Hon'ble Supreme Court in **G. Sagar Suri Vs. State of U.P. (2000) 2 SCC 636**. Further, it is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. Furthermore, if the intention to cheat has developed later on, the same cannot amount to cheating, as has been held by the Hon'ble Supreme Court in **Hridya Ranjan Parshad Verma Vs. State of Bihar & Anr. (2004) 4 SCC 168**.

This being the position on record and settled position of law, it appears that at the time of execution of agreement to sell dated 7.1.2005, the petitioner was GPA holder of the actual land owners and was duly authorized to sell the land on behalf of the principal (the land owners) as is evident from Annexure R-2/2 and Annexure R-2/3 and accordingly, he entered into an agreement to sell dated 7.1.2005 and received Rs.5,00,000/- as earnest money from respondent No.2. So, apparently it appears that at the time of entering into aforesaid contract the petitioner had not made any false representation regarding the ownership of the land in question or his authorization to sell the same. Also it is no one's case that the aforesaid

earnest money of Rs.5,00,000/- was kept with him or misappropriated by the petitioner. So prima facie there is nothing available on record to show that the petitioner had fraudulent or dishonest intention at the time of entering into aforesaid contract.

Undoubtedly breach of contract would amount to cheating only if intention to cheat was existed at the very inception. If such intention developed subsequently, the same would not amount to cheating. In the instant case the counsel for respondent No.2 has contended that petitioner served false notice to respondent No.2 after the execution of agreement to sell dated 7.1.2005 wherein he informed respondent No.2 that the land owners have cancelled the earlier GPAs which were there in his favour. From the perusal of Annexure P-8 and Annexure R-2/4 it appears that in the civil suit filed by respondent No.2, the land owners took plea that they never authorized petitioner to sell the land in question. However, this plea was not believed by the Appellate Court which decreed the suit filed by respondent No.2 for specific performance of agreement to sell dated 7.1.2005. Further, from the perusal of Annexures R-2/2 and R-2/3, it is prima facie established that at the time of execution of aforesaid agreement to sell, the petitioner was duly authorized by the land owners to sell the land on their behalf. It is also evident that immediately after passing of the judgment and decree dated 12.08.2014, Annexure P-8, the petitioner deposited the entire decretal amount worth Rs.9,83,000/- in the Court concerned on 1.9.2014 vide e-challan whose copy is available on record. Thus showing the bona fide of the petitioner even at the later stage i.e. after about 9 years of the execution of agreement to sell.

It is pertinent to note that at the first instance respondent No.2 filed criminal complaint dated 16.9.2006, Annexure P-2 on the basis of the agreement to sell dated 7.1.2005 against the petitioner and the land owners and the said complaint was finally dismissed in year 2012 as is evident from Annexures P-4, P-5 and P-6. The respondent No.2 filed civil suit for specific performance of the agreement in question in 2008, after filing of the above said criminal complaint. On the civil side respondent No.2 has got appropriate relief vide judgment dated 1.8.2017, Annexure R-2/4. Admittedly, the decree passed by the Appellate Court has been executed to substantial extent and now only dispute between the parties is with regard to execution of sale deed regarding land measuring 2 Kanals 14 Marlas.

Further in the instant case the FIR in question was registered in 2016 after lapse of about 9 years of the execution of agreement to sell and by that time the earnest money of Rs.5,00,000/- along with interest was already deposited by the petitioner in the Court concerned as has been already discussed above. Furthermore, it appears that at the time of registration of the FIR, the respondent No.2 had not disclosed to the police regarding dismissal of his earlier criminal complaint (Annexure P-2) by the Court of competent jurisdiction, which was also based on the same agreement to sell.

It is also noteworthy to mention that nowadays, there is a tendency that civil disputes are being given colour of criminal disputes, to take advantage of a relatively fast relief in criminal cases in contrast to civil disputes. The Hon'ble Supreme Court in *Criminal Appeal No.1285 of 2021, Mitesh Kumar J. Sha Vs. the State of Karnataka and others* decided on 26.10.2021 clearly observed that such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.

In the light of the above, this Court is of the view that the facts mentioned in the FIR (Annexure P-1), even if assumed to be true, do not make out any offence under Sections 406, 420 and 120-B IPC. Consequently, the prosecution qua the petitioner is liable to be quashed as its continuance would amount to misuse of the process of law.

In view of the discussion above, the instant petition is allowed and the impugned FIR (Annexure P-1) and all the proceedings arising thereof are quashed qua the petitioner.

13.02.2023
P. Chawla/ Jiten

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No