

114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28496-2023
Decided on : 21.07.2023

Surinder Kaur & another

..... Petitioners

Versus

State of Punjab & another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Hitesh K. Sammi, Advocate
for the petitioners.

Manjari Nehru Kaul, J.(Oral)

1. Instant petition has been filed under Section 482 Cr.PC for quashing of FIR No.09 dated 09.01.2022 under Sections 406, 420 and 120-B IPC registered at Police Station Bilaspur District Yamuna Nagar and subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner *inter alia* contends that a perusal of the allegations levelled in the FIR in question (Annexure P-1) indicate that it is essentially a dispute of civil nature between the parties, which has been intentionally given a criminal colour. Learned counsel submits that as per the allegations, petitioners had executed an agreement to sell with respondent No.2-complainant on 03.08.2019 with respect to their property situated at Bilaspur for a sale consideration of Rs.36,00,000/- pursuant to which an amount of Rs.35,00,000/- was received as earnest money from the complainant. Though the date of execution of the above-

mentioned sale deed had been fixed for 28.10.2019, however, it was not executed and allegedly, the petitioners had instead entered into an agreement to sell with another person namely Yogesh Kumar qua the same property and from whom they had taken a sum of Rs.9,00,000/- as earnest money. Learned counsel further submits that even assuming for the sake of arguments, though not conceded, that the allegations levelled in the FIR are true, no offence much less of cheating is made out against the petitioners as the agreement to sell dated 11.01.2018 with Yogesh Kumar already stood cancelled with the consent of both the parties on 10.12.2021. It has still further been submitted that even otherwise, since the matter stood settled between the parties, the complainant had become greedy and wanted double the amount of earnest money, which would be a matter to be decided by a Civil Court.

3. While drawing the attention of this Court to agreement to sell dated 11.01.2018 (Annexure P-2) learned counsel submits that no doubt another agreement to sell qua the same property had been executed for a sale deed of Rs.24,00,000/-, however, it was also a matter of record that it stood cancelled on 10.12.2021 and earnest money also stood refunded. Hence, once the agreement to sell stood cancelled, no case much less of fraud was made out against the petitioners. Learned counsel has thus, asserted that in case the complainant was aggrieved, the only effective remedy available to him would be to file a suit for specific performance.

3. Heard learned counsel for the parties and perused the relevant material available on record.

4. *Prima facie* the allegations against the petitioners are of having entered into an agreement to sell qua the same land with two different parties and also having received earnest money from both of them. As per the submissions made, the complainant had also filed a complaint under Section 138 of Negotiable Instruments Act for dishonour of a cheque, which was given by the petitioners as a refund of the earnest money. However, whether the money in question had been returned to the complainant or not by the petitioners as a refund of the earnest money, can not be gone into at this stage while deciding the petition under Section 482 Cr.PC.

5. Since powers of this Court under Section 482 Cr.PC are wide, they have to be exercised with a great deal of circumspection. This Court cannot be expected to embark upon an inquiry qua the genuineness or otherwise, of the allegations levelled in the FIR as the same would be appreciated when evidence is adduced by both the parties. Accordingly, the present petition stands dismissed.

6. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

21.07.2023

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Whether speaking/reasoned:
Whether reportable :

(MANJARI NEHRU KAUL)
JUDGE

Yes/No
Yes/No