

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

202

CRM-M-31481-2013 (O&M)

Date of decision: 21.04.2023

Mahender Gir and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. G.S. Sidhu, Advocate
for the petitioners.

Mr. Chetan Sharma, AAG, Haryana.

Mr. B.S. Mittal, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioners have invoked the inherent jurisdiction of this Court under section 482 of the Cr.P.C. for quashing of complaint number 217-10/12 dated 27.04.2010 (Annexure P-1) under Sections 143, 147, 420, 406, 467, 468, 471, 149 and 120-B of the IPC titled as 'Daulat Ram Vs. Dharam Chand and others' along with summoning order dated 18.02.2013 (Annexure P-2) and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioners submits that on a bare perusal of the allegations levelled in the complaint (Annexure P-1) it is abundantly evident that no offence whatsoever is made out against the petitioners and thus, a false and fabricated case has been planted upon them. He further submits that the petitioners were neither a party to the agreement to sell in question dated 29.10.2009 which was executed

between the complainant and co-accused Dharam Chand, nor any money had been paid to the petitioners in lieu thereof. It has been argued that the complainant has levelled allegations against co-accused Dharam Chand and Khushal Chand of having committing fraud upon him, however, no such allegation, had been levelled against the petitioners of having either defrauded the complainant of an amount of ₹45 lakhs much less of having connived with the co-accused in the commission of the crime in question. Learned counsel has submitted that the petitioners have been dragged in the case in question only because they happened to be witnesses to a writing dated 18.06.2009 wherein it had been stated that the possession of the land in question had already been given to accused Khushal Chand by accused Dharam Chand on the said date. Learned counsel has vehemently argued that on the basis of the above document dated 18.06.2009 which was witnessed by the petitioners, no offence much less under Section 420 of the IPC is made out against the petitioners. Learned counsel has still further submitted that the petitioners are bonafide subsequent purchasers of the land in question vide registered sale deed No.3229 dated 19.02.2010 (Annexure P-3) for which they had paid sale consideration in the sum of ₹54,75,000/- to accused Dharam Chand and the same had been done only after they had carefully checked and scrutinized the relevant revenue records wherein accused Dharam Chand had been shown as the owner of the land in question, at the relevant time.

3. Learned counsel for the petitioners has also brought to the attention of this Court that the civil suit which was filed by the complainant for specific performance of the agreement to sell qua the

land in question had since been dismissed by the Trial Court and the appeal filed by the complainant against the dismissal of the civil suit for specific performance too had been dismissed as a result the civil suit, had attained finality. It has been submitted that even in the aforementioned civil suit the petitioners were held to be bonafide purchasers.

4. Learned counsel for the petitioners has, therefore, vehemently argued that the ingredients to attract the mischief of offences under Section 420/120-B of the IPC were clearly amiss in the case in hand and, therefore, the complaint in question along with subsequent proceedings including the summoning order dated 18.02.2013 deserved to be quashed.

5. Learned counsel for respondent No.2 while controverting the submissions and prayer made by the counsel opposite, has argued that all the accused including the petitioners had connived with each other and defrauded the complainant of a huge sum of money of ₹45 lakhs. Learned counsel has submitted that the fraudulent intent of the petitioners was writ large and discernible from the fact that they had witnessed a writing dated 19.06.2009 wherein possession of land in question had been given to accused Khushal Chand by accused Dharam Chand. Learned counsel has submitted that despite the petitioners having knowledge of the agreement to sell between the complainant and co-accused Dharam Chand, qua the land in question, they had intentionally witnessed the above said document dated 18.06.2009. It has been vehemently argued that prima facie an offence under Section

420/120-B of the IPC is made out against the petitioners and thus, the prayer of the petitioners be declined.

6. I have heard learned counsel and perused the relevant material on record..

7. Before proceeding further, it would be apposite to reproduce provisions of Section 420 of the IPC which read as under:-

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

8. A perusal of the above said provision reveals that in order to attract the mischief of an offence under Section 420 of the IPC it is necessary that as a consequence of the alleged cheating, the accused should have dishonestly induced the person so deceived, to deliver any property to any person, or to make, alter or destroy any valuable security. Besides this, the other essential ingredient of the offence under Section 420 is *mens rea* which must be present right at the inception of the transaction pursuant to which a person has been cheated. It must be borne in mind that mere failure to keep up a promise subsequently would not invite the mischief of cheating as provided under Section 420 of the IPC.

9. Adverting to the case in hand, admittedly neither the petitioners were party to the original agreement to sell dated 27.10.2009 between the complainant and accused Dharam Chand nor were they

paid any money by the complainant in lieu thereof. Even as per the complainant, all allegations with respect to the fraud and cheating have been specifically levelled against accused Dharam Chand, Khushal Chand, Karnail Singh, Babu Ram, Bagicha Ram, Jogindro Bai, Jamna Bai, Mahindro Bai, Balwan Singh Lamba and Partap Singh. Learned counsel for respondent No.2, no doubt, has referred to the writing dated 19.06.2009, which was witnessed by the petitioners, however, this Court fails to find any nexus whatsoever between the said writing and the alleged offence of cheating under Section 420 of the IPC, as the petitioners were not even signatories to the same, much less beneficiaries. Moreover, the complainant is not even a party to the said writing. It is not even the case of the complainant that it was the petitioners who had tried to deceive him by dishonestly inducing him to deliver any property to the co-accused. The allegations in the complaint must at least spell out the basic ingredients for commission of an offence under Section 420 of the IPC, which in the case in hand clearly missing, and thus this Court cannot be expected to draw conjectures qua the commission of said offence.

10. In view of the above, the instant petition is allowed and the complaint in question and all subsequent proceedings arising therefrom including summoning order dated 18.02.2013 (Annexure P-2) are quashed qua the petitioners.

21.04.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No