

CRM-M-34034-2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34034-2018
Date of decision : 09.05.2023

GEETA BALA & OTHERS

... Petitioners

Versus

STATE OF PUNJAB & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rakesh Chopra, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, D.A.G, Punjab
for respondent No.1.

Mr. Atul Lakhanpal, Senior Advocate assisted by
Mr. Arvindpal Singh Grover, Advocate
for respondent No.2.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the FIR No.188 dated 24.10.2016 (Annexure P-1) registered under Section 420 of the IPC at Police Station Fatehgarh Sahib, the report under Section 173 Cr.P.C. (Annexure P-2) and all subsequent proceedings arising therefrom.

2. The allegations as discernible from the FIR No.188 dated 24.10.2016 (Annexure P-1) and the report under Section 173 Cr.P.C. (Annexure P-2) are that one Gian Chand was the owner of 4 kanals 5 marlas (85 kanals) of land situated on Punjab National Bank, Road Near Vishwakarma Mandir, Brahman Majra, Sirhind, District Fatehgarh Sahib. He had entered into an agreement to sell dated 25.04.2011 with the complainant-Sanjiv Kumar son of Chetan Dass for a total

consideration of Rs.76,37,500/-. Rs.15,00,000/- had been paid in cash to Gian Chand. In furtherance of the agreement to sell, Gian Chand had executed a sale deed dated 02.09.2011 with respect to land measuring 17 marlas in favour of the complainant. Thereafter, the said Gian Chand had passed away. The remaining land (68 marlas) were inherited in equal shares by Basant Kaur wife of Gian Chand, Geeta Bala (petitioner No.1) daughter of Gian Chand, Greesh Kumar (petitioner No.2) son of Gian Chand, Muneesh Kumar (petitioner No.3) son of Gian Chand and Parveen Kumar (non-petitioner) son of Gian Chand. Thereafter, Basant Kaur, Geeta Bala, Greesh Kumar and Muneesh Kumar had executed sale deeds of their respective shares in favour of the complainant. However, Parveen Kumar (non-petitioner) had stated that with respect to a 7 ½ marla plot, a case was pending with one Nirmal Singh and the sale deed would be executed in favour of the complainant after the dispute with Nirmal Singh had been resolved. It was the case of the complainant that though the case was decided in January, 2016 with Nirmal Singh, Parveen Kumar (non-petitioner) had not executed a sale deed in favour of the complainant despite his earlier undertaking. On the contrary, Parveen Kumar (non-petitioner) had executed a sale deed in favour of his daughter Akansha Makhija for the said 7 ½ marlas of land on 21.08.2016. Thus, despite receiving the entire payment all the accused in connivance with each other had not executed the sale deed for the entire land pursuant to the agreement to sell dated 25.04.2011.

3. The learned counsel for the petitioner contends that there is no evidence that an agreement to sell dated 25.04.2011 had been

executed by Gian Chand in favour of the complainant. However, taking the allegations to be correct, the petitioners along with their mother Basant Kaur (died on 15.05.2017) had sold their respective shares to the complainant. As per the prosecution case, it was only Parveen Kumar (non-petitioner) who while executing a sale deed regarding a part of the land in his share in favour of the complainant had executed a sale deed with respect to the remaining 7 ½ of marlas of land in favour of his daughter instead of the complainant despite an undertaking purportedly given by him to the complainant that he would sell the 7 ½ marlas as well when the case with Nirmal Singh was decided. The offence if at all had been committed by Parveen Kumar (non-petitioner) alone and not by the petitioners. He contends that a civil suit for specific performance has been filed by Sanjiv Kumar (complainant) in which the petitioners are proforma respondents (Annexure P-6) whereas the petitioners have filed a suit for permanent injunction against the complainant and Parveen Kumar (Annexure R2/1). Therefore, absolutely no offence whatsoever was made out at least qua the petitioners and FIR and the report under Section 173(2) Cr.P.C. were liable to be quashed qua them.

4. The learned State counsel while referring to the reply dated 28.01.2019 contends that pursuant to the registration of the FIR an investigation was conducted and a report under Section 173(2) Cr.P.C. was submitted. *Prima facie*, the offence had been established qua all the accused and therefore, there was no ground for quashing of the FIR and the report under Section 173(2) Cr.P.C.

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5. On the other hand, the learned Senior counsel for respondent No.2-complainant while referring to the reply dated 13.11.2018 and the affidavit dated 23.07.2021 contends that the offence was well-established. Though, the petitioners had executed sale deeds of their respective shares in favour of the complainant, however, in conspiracy with the petitioners, Parveen Kumar (non-petitioner) had refused to execute a sale deed of 7 ½ marlas despite the dispute having been settled with Nirmal Singh in January, 2016. On the contrary, Parveen Kumar had executed a sale deed in favour of his daughter. Even otherwise, since disputed questions of fact had arisen, the present petition for quashing of the FIR and the report under Section 173 Cr.P.C. was liable to be dismissed.

6. I have heard the learned counsel for the parties at length.

7. Before proceeding further in the matter, it would be apposite to refer to the provisions of Indian Penal Code. These are as under:-

Section 415, reads as under:-

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.”

Section 420, reads 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. Coming back to the facts of the instant case, admittedly, Gian Chand was the owner of 51 biswas (4 kanals 5 marlas of land/85 marlas). He had entered into an agreement to sell (original not available) with the complainant on 25.04.2011. Pursuant to the said agreement, on 02.09.2011 a sale deed with respect to 17 marlas had also been executed in favour of the complainant. Thereafter, Gian Chand had passed away. The remaining 68 marlas had been inherited by the five legal heirs of Gian Chand namely, Basant Kaur (wife since deceased), Geeta Bala (petitioner No.1), Greesh Kumar (petitioner No.2), Muneesh Kumar (petitioner No.3) and Parveen Kumar (non-petitioner). Thus, each of the legal heirs became owners to the extent of 13.7 marlas approximately. All the petitioners along with Basant Kaur had sold their respective shares to the complainant. Even, Parveen Kumar (non-petitioner) had executed a sale deed with respect to part of the land coming to his share. With respect to 7 ½ marlas, there had been a dispute with Nirmal Singh and Parveen Kumar (non-petitioner) had purportedly undertaken to sell the said land to the complainant on the settlement of the dispute.

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However, after the case with Nirmal Singh had been decided in January, 2016, the said 7 ½ marlas of land were sold by Parveen Kumar (non-petitioner) to his daughter. Thus, it is established beyond any doubt that it was only Parveen Kumar (non-petitioner) who had refused to execute the sale deed with respect to 7 ½ marlas of land in favour of the complainant. So far as the other petitioners were concerned, despite disputing the agreement dated 25.04.2011, they have acted upon it and executed respective sale deeds. The argument of the learned Senior counsel for respondent No.2-complainant that Parveen Kumar (non-petitioner) by not executing the sale deed in favour of the complainant and instead selling the land to his daughter acted in conspiracy with the petitioners is not borne out from any evidence on the record. It is an unsubstantiated allegation. In fact, the report under Section 173(2) Cr.P.C. also does not explain as to how and in what manner, the petitioners could be liable along with the non-petitioner (Parveen Kumar).

9. In view of the aforementioned discussion, absolutely no offence whatsoever has been committed by the petitioners. In fact, the petitioners could not be said to have induced the complainant to part with any valuable consideration so as to make out an offence under Section 415 IPC punishable under Section 420 IPC .

Therefore, the continuance of the proceedings qua the petitioners emanating out of FIR No.188 dated 24.10.2016 and the report under Section 173(2) Cr.P.C. (Annexure P-2) would be nothing but an abuse of the process of the Court.

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10. Keeping in view the aforementioned discussion, the FIR No.188 dated 24.10.2016 (Annexure P-1) registered under Section 420 IPC at Police Station Fatehgarh Sahib, the report under Section 173 Cr.P.C. (Annexure P-2) and all subsequent proceedings arising therefrom are quashed qua the petitioners only.

(JASJIT SINGH BEDI)
JUDGE

09.05.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No