IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-M-50877-2022

Date of Decision : March 02, 2023

Sandeep Gupta and another .... Petitioners

vs.

State of Haryana and others .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Rajesh Goswami, Advocate
for the petitioner.

Mr. Karan Sharma, DAG, Haryana.

* * *

GURBIR SINGH, J. :

This is a petition under Section 482 Cr.P.C. filed by the petitioners with a prayer to set aside the order/report dated 13.01.2022, vide which the application for further investigation in the pending complaint was declined by respondents no.4 and 5 in a mechanical manner without conducting any further investigation, on the basis of previous conclusions based on whims and surmises. It is further prayed that directions be issued to respondents, especially to respondents no.3, 4 and 5 for conducting fair and impartial further investigation in complaint dated 18.06.2021 filed by the petitioners.

Learned counsel for the petitioners has contended that the petitioners were induced by the partners of a firm namely M/s Consumer Services Corporation, having its office at New Delhi to purchase property of the aforesaid firm and they entered into an Agreement to purchase the property of the firm i.e. No.365, carved out of Khasra No.365, situated within the Lal Dora of Village Sultanur, Tehsil Mehrauli (now known as Saket), New Delhi in the land measuring 1200 sq.yds. The said deal was being materialized through a property broker namely Virender Pal Singh, who was duly appointed by the aforesaid partnership firm. Earlier also, a deal of the above said firm was finalized through the above said property broker by petitioner no.2. Having previous experience, the petitioner offered to purchase the aforesaid property for Rs.6,00,00,000/- (Rupees Six Crores only) but the deal was finalized at Rs.7,20,00,000/- (Rupees Seven Crores and Twenty Lakhs only). The other salient features of this deal were as under :-

> *a. Total Sale price was settled as Rs.7,20,00,000/- (Rupees seven crores and twenty lacs only).*
>
> *b. Rs.50,00,000/- (Rupees fifty lacs only) to be paid as token amount forthwith (i.e. in the month of February 2015 itself).*
>
> *c. Rs.2,00,00,000/- (Rupees two crores only) to be paid in the month of April 2015.*
>
> *d. Rs.1,50,00,000/- (Rupees one crore and fifty lacs only) to be paid in the month of June, 2015.*
>
> *e. Rs.1,50,00,000/- (Rupees one crore and fifty lacs only) to be paid in the month of July, 2015.*
>
> *However, the petitioners have paid Rs.2,00,00,000/- (Rupees two crores only) in the month of July, 2015*
>
> *f. That the remaining sale consideration out of the total settled sale consideration was to*

> *be cleared by September 2015 at the time of execution of Sale deed.*

The vendors were not willing to convert the deal into a written document for their internal taxation purposes and accepted only one demand draft of Rs.50,00,000/- (Rupees Fifty Lakhs only) which was token amount to be kept as expression of interest for sale/purchase of the property. So, the deal remained paperless during the financial year ending 31.03.2015. In order to settle the commitment, the petitioners transferred a sum of Rs.6,00,00,000/- (Rupees Six Crores only) through RTGS in the Bank Account of the vendor firm on different dates. The remaining sale consideration was to be paid at the time of execution of the sale deed. When the vendor firm could not get success in its plan to extract the amount of remaining sale consideration, which was just 18% of sale consideration, they deferred the execution of sale deed. In the meantime, there had been outbreak of COVID-19 Pandemic, which also consumed more than a year. The partners of the vendor firm started changing their colours. Initially, the petitioners tried to resolve the matter through the property broker and other commonly known persons, but to no avail. The petitioners were constrained to file a complaint dated 18.06.2021 (Annexure P-1) against the partners of vendor firm before the office of Commissioner of Police, Gurugram. The statements were recorded. The respondent firm, filed a written response (Annexure P-4), in which certain facts were admitted and stand taken was that oral Agreement between the parties stood terminated in September 2015 by efflux of time and finally on 15.09.2021 (Annexure P-9), as per recommendations of respondent no.3 – Commissioner of Police, Gurugram, on the basis of enquiry conducted by the EOW-II, Gurugram, the complaint was filed on the ground that the matter was found to be of civil nature. A copy of Enquiry Report dated 03.09.2021 prepared by Sub Inspector Umesh Kumar of EOW-II, Gurugram and endorsed by Inspector Bijender Singh (In-charge of EOW-II, Gurugram), is annexed as Annexure P-10. In view of the afore-mentioned Enquiry Report, the complainant moved application for further investigation dated 20.12.2021 (Annexure P-11). The same was filed on the basis of inquiry conducted by the same Sub Inspector who opined that the matter was of civil in nature but this time, endorsed by a different Inspector. Copy of Enquiry Report dated 13.01.2022 is Annexure P-12.

Learned counsel for the petitioners has further argued that the enquiry was conducted in a hasty and irresponsible manner. The vendor firm raised the objection that Gurugram police had no jurisdiction to investigate the present matter as the property was situated in Delhi but Gurugram police did not clarify the said issue. The police did not even call the documents of the partners of vendor firm, which were in their possession. They did not even enquire about the Circle rate/Collector rate. The police did not even enquire about the rate of construction, area of construction and its value. The police did not even record the statements of the valuer who had allegedly prepared the Valuation Report. The Income Tax Returns of the vendor firm were not even called for. The police did not even interrogate any of the partners of the vendor firm. The partner of the vendor firm accepted Rs.50 lakhs as token money and thereafter, continued to receive crores of rupees, while there was huge difference of price band of the property. The exchange of messages, chats and whatsapp messages between the parties were not clarified. It was not cleared as to when there was no consensus on the settled price of the property under sale, then how an agreement could have been stated to be completed even orally. There is no explanation why huge amount of Rs.6 crores was retained under the garb of earnest money. The said amount was spread in two financial years but the income tax returns were not examined and how the said amount was summarised by the vendor firm in their Balance Sheet and Income Tax Returns. In the absence of technical interrogation, the complaint could not have been closed or it could be held that it was a civil dispute. It was a wide open case of cheating and misappropriation of funds by the partners of the vendor firm. Therefore, respondents no.3, 4 and 5 be directed to conduct fair and impartial further investigation in the matter.

Learned State Counsel, on the other hand, has submitted that the complaint filed by the petitioners was thoroughly inquired into. It was found that it was a civil dispute. So, the complaint was closed. The petitioners filed another complaint for further investigation. Thereupon, SI Umesh Kumar gave the report (Annexure P-12) and recommended therein for the filing of the complaint as the matter was of civil nature. The relevant extract of his report reads as under :-

> ***"Extract of Investigation :***
> *Sir, the investigation of this complaint has been conducted by me (Sub-Inspector-Umesh Kumar). With respect to the present complaint, it is humbly submitted that in this reference the same Complainants have already made one complaint*

> *bearing No.7785/CP/22/BPT dt. 29.06.2021 and that complaint was investigated by me (Sub-Inspector-Umesh Kumar). After the investigation of complaint, and upon finding that no cognizable offence has been committed and the matter is in the nature of civil dispute, the report has already been submitted to the higher officials (copy is enclosed herewith).*
>
> *Therefore, the present complaint does not require any separate police action/investigation. Hence, it is recommended that the present complaint be closed and consigned to record room. The report is submitted.*
>
> ***Sd/-***
>
> *(SI Umesh Kumar)*
> *EOW-II, Gurugram*
> *Date : 13.01.2022"*

In support of his contentions, learned State counsel has relied upon a judgment of Hon'ble Supreme Court in the case of **State of West Bengal vs. Sandip Biswas** reported as **2022 Live Law (SC) 1024** wherein it is held that the High Court does not have the power to direct the investigation to be conducted in a particular manner. It is further submitted that if the petitioners were not satisfied with the Enquiry Report, they could invoke the concerned Criminal Court of competent jurisdiction for action as per law. There is no illegality in the order passed by respondent no.3.

Heard.

It is the case of the petitioners that they had entered into an agreement for the purchase of a property and paid token money of Rs.50

lakhs. The agreement was oral. It was not reduced into writing. A total sum of Rs.6 crores was paid by the petitioners as per the agreement in the account of the vendor firm. The enquiry, which was conducted by respondent no.3, was not proper, therefore, complaint was moved for further investigation. The enquiry was marked to the same Sub Inspector, who closed the matter without conducting any enquiry, on the basis of earlier report that the matter was of civil nature.

As per provisions of Section 154 Cr.P.C., on receipt of information which discloses the commission of cognizable offence, the Police is bound to register FIR in the cases in which no preliminary inquiry is permissible and to investigate the matter. I draw support from case titled **Lalita Kumari vs, Govt. of UP and others** reported as **2014 (2) SCC 1**. Such power is also given to a Judicial Magistrate under Section 156(3) Cr.P.C.

Section 156(3) Cr.P.C. reads as under :-

> *"Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."*

In the case in hand, on the first complaint, the police, on the basis of preliminary inquiry, came to the conclusion that no cognizable offence was made out. The proper course for the petitioner was to avail alternative remedy before Judicial Magistrate, who was empowered under the Cr.P.C. and was having jurisdiction to deal such matters. Second application on same facts for further investigation is not maintainable. So, no further direction can be given to the police to further investigate the matter, on the second complaint of the petitioners.

Accordingly, finding no merit in the present petition, the same is hereby dismissed. The petitioner is free to invoke the jurisdiction of learned Jurisdictional Magistrate, as per law.

March 02, 2023 **(GURBIR SINGH)**
monika **JUDGE**

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*