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

**CRM-M No. 46874 of 2019
Date of Decision :25.05.2023**

Harinder Singh and Another

... Petitioners

Versus

State of Punjab and Another

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Ms. Monika, Advocate for
Mr. Parampreet Singh Paul, Advocate
for the petitioners.

Mr. Mohit Thakur, AAG, Punjab.

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SANJIV BERRY, J.

Present petition has been filed under Section 482 Cr.P.C. for quashing of the order dated 28.11.2017 passed by the Judicial Magistrate Ist Class, Rupnagar (Annexure P-3) and order dated 22.04.2019 (Annexure P-5) passed by learned Additional Sessions Judge, Rupnagar whereby revision petition preferred by the petitioner-complainant has been dismissed.

2. Brief facts of the case are that respondent no.2 claimed himself to be owner in possession of the plot entered into an agreement to sell with the petitioners on 07.06.2011 and received ₹2,00,000/- as earnest money from the petitioners. As per the terms and conditions of the agreement the

sale deed was to be executed on or before 11.09.2011. Being holiday on 11.09.2011, petitioners came present on 12.09.2011 before the Sub-Registrar, Morinda for the execution of the sale deed and marked their presence by way of an affidavit about willingness to perform their part of the agreement but the respondent did not turn up to execute the sale deed. Aggrieved petitioner filed a civil suit for specific performance of the agreement to sell dated 07.06.2011 before learned Civil Judge, (Sr. Division) Rupnagar. Despite notices, respondent No.2 did not turn up, the suit was decreed on 12.08.2015 in favour of the petitioners (Annexure P-1). The learned Court further directed the petitioners to deposit the balance sale consideration so that the sale deed could be executed. On 30.09.2015 it came to the notice of the petitioners that the respondent No.2 was not actual owner of the property in question and respondent No.2 cheated the petitioners by entering false agreement to sell, the petitioners filed criminal complaint (Annexure P-2) under Section 420 IPC before the learned Addl. Chief Judicial Magistrate Ist Class, Rupnagar but the same was dismissed on 28.11.2017 (Annexure P-3). Aggrieved of the same, petitioners filed criminal revision before the learned Additional Sessions, Judge, Rupnagar (Annexure P-4). However, the criminal revision was also dismissed vide judgment dated 22.04.2019 (Annexure P-5). Hence, the petitioners preferred the present petition seeking quashing of the impugned orders (Annexure P-3) passed by the learned Judicial Magistrate Ist Class, Rupnagar and (Annexure P-5) passed by the learned Additional Sessions Judge, Rupnagar.

3. Heard.

4. Learned counsel for the petitioners, *inter alia* contends that neither the learned Judicial Magistrate nor the learned Additional Sessions Judge while exercising their powers have not properly appreciated the facts and circumstances of the case and have wrongly dismissed the complaint. He submitted that a case against the accused is made out for committing offence under Section 420 IPC, but this aspect has been ignored, hence he prayed for quashing of the aforesaid orders.

5. After considering the submissions made by learned counsel for the petitioner and the documents placed on record, it transpires that the case put forth by the complainant in a *nutshell* is that the accused-respondent No.2 had agreed to sell the plot in question to the petitioner and received ₹2,00,000/- as the earnest money. It is the case put forth by the petitioners that on the stipulated date, the respondent No.2 did not appear before the Sub-registrar, Morinda. Then the petitioners filed the civil suit for specific performance of the agreement which was decreed on 12.08.2015 by the learned Additional Sessions Judge, Rupnagar (Annexure P-1). On 30.09.2015, the petitioners came to know that the respondent No.2 was not the owner of the property and filed a criminal complaint under Section 420 IPC before the trial Court. The petitioners while adducing the preliminary evidence before the learned Judicial Magistrate have categorically stated that when the accused did not turn up for the execution of sale deed, the petitioners approached the accused and he disclosed that the title of the property was not with him. Admittedly, it is on the basis of disclosure by the accused, the petitioners preferred a suit for mandatory injunction directing the respondent No.2 to obtain the necessary documents from the actual

owner which, however, was withdrawn by them. It is, therefore, clear that the petitioners were aware of the fact that the respondent No.2 was not the owner of the property from the very beginning and it is only thereafter that the petitioners preferred a suit for mandatory injunction which was later withdrawn and then filed the suit for specific performance which was decreed (Annexure P-1). Therefore, the version put forth by the petitioners that they came to know only after passing of the judgment and decree (Annexure P-1) about the respondent No.2 not having the title of the property is nothing but an afterthought. Therefore, it is concluded that the petitioners were aware of the respondent No.2 being not the owner of the property at the very beginning.

6. Caveat emptor is the settled proposition of law meaning thereby 'let the buyer beware'. While entering into the agreement it is incumbent upon the buyer to verify the clear title of the seller. In the present case, the petitioners, admittedly got aware of the fact that the respondent No.2 was not having title of the property as per his own disclosure and firstly, filing the civil suits for mandatory injunction directing the respondent No.2 to obtain necessary documents of title and subsequently filing suit for specific performance, shows that the petitioners were well aware of the fact that the respondent No.2 was not having the title of the property which in any case was the duty and responsibility of the buyer i.e. the petitioners to verify the title before entering into the sale agreement. In this manner the respondent No.2 has not concealed the factum of his not having the title deed at the very initial stage. Once, on the basis of the said agreement the petitioners have got their right determined through judgment of the civil Court, proceeding

with the criminal complaint is not necessitated as, the dispute is of a civil nature, which has been given the colour of criminal offence.

7. In order to make out a case for summoning of respondent No.2 in the aforesaid complaint the petitioners were required to establish by leading preliminary evidence that there had been a dishonest intention to deceit on his part and on this aspect, the petitioners while leading the preliminary evidence before the learned Judicial Magistrate have failed to bring on record any such dishonest intention. The petitioners were aware that respondent No.2 was not having title over the property at the very initial stage, therefore, the learned Courts below have passed the impugned orders judiciously and the same does not suffer from any infirmity so as to call for interference by this Court.

8. Resultantly, finding no merit in the petition the same is hereby dismissed.

(SANJIV BERRY)
JUDGE

25.05.2023
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |