

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

283

CRM M-59463 of 2023
Date of Decision:19.12.2023

Surinder Singh

...Petitioner

Versus

State of Punjab

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. G.S.Virk, Advocate, for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Shehbaz Thind, Advocate for the complainant.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 438 of the Cr.P.C. with a prayer to grant pre-arrest bail to him in case FIR No.201 dated 19.08.2023 registered under Sections 420 and 120-B of IPC at Police Station Jamalpur, District Ludhiana.

2. The FIR in the present case was registered on the basis of the complaint submitted by Paramjit Singh son of Ashwani Kumar. As per him, vide agreement to sell dated 09.03.2021, Surinder Singh accused/petitioner agreed to sell the land comprised in Khasra No.13/14, 16/1, 25, 18//4/1, 5/1, 14//24/3, 17//4/2, 24//3/1, 3/2/2, 25/1/2/1, 2/2/1, Khata No. 43/44 out of Plot No. 16 measuring 400 square yards as per the Jamabandi for the year 1991-1992 situated at

village Mundia Khurd, Hadbas No. 240, Tehsil and District Ludhiana to the complainant and his brother for a total sum of Rs. 27 lacs. Surinder Singh accused received a sum of Rs. 22 lacs from the complainant on different dates and got registered the sale deed of the property executed on 21.05.2021 in favour of the complainant and his brother. While executing the sale deed, Surinder Singh, accused acted as the General Power of Attorney of Kamikar Singh and Kashmira Singh. The complainant and his brother cleaned the plot, however, all the accused locked the main gate of the plot and told the complainant that the plot did not belong to them and their plot was at some other place. The accused also restrained the Patwari to transfer the said plot in favour of the complainant and his brother. The complainant came to know that a fraud has been played with him and he made a complaint to the Police Commissioner Ludhiana regarding the theft committed by the accused. On this, Surinder Singh accused/petitioner alongwith other accused entered into a compromise with the complainant side and promised to return a total amount of Rs.25 lacs including the expenses to the complainant side and handed over five cheques to the complainant and his family members. However, all the cheques were dishonoured on presentation in the bank as Surinder Singh, accused/petitioner had stopped the payment of the amount of the said cheques. Surinder Singh was a professional criminal, against whom, one more case bearing FIR No. 82 dated 10.04.2022 under

Sections 420, 447, 511 and 120-B IPC already stood registered at Police Station Jamalpur, Ludhiana and several complaints were pending against him. The complainant also came to know that the same plot had been sold by the accused many times to different other persons as well. In fact, the complainant, his brother and father were working as masons and the accused had committed the fraud with them and robbed them of their lives' hard earned money. They had also taken loan from the bank to pay to the accused. During the course of investigation, it was also found that Surinder Singh, accused had sold the land/plot to the complainant, while acting as GPA holder of Kamikar Singh and Kashmira Singh. Even in the sale deed dated 21.05.2021 executed in favour of the complainant, it was clearly mentioned that the original owner was alive and the GPA given by him had not been cancelled. It was also mentioned that the money had been paid to Kashmira Singh and Kamikar Singh out of the money received by Surinder Singh accused/petitioner, whereas, Kamikar Singh had already died in the year 2013 and Surinder Singh and Kashmira Singh both the accused already know that. With these broad allegations, the FIR was registered against the petitioner and other accused.

3. Learned counsel for the petitioner submits that in the present case, a civil dispute has been given the colour of criminal offence. In fact, a civil dispute was pending between the parties

pertaining to Plot No. 16 and the petitioner being the power of attorney holder of the owners of the plot had executed a sale deed in favour of the complainant side and the possession of the plot has already been handed over to the complainant at the time of the execution of the sale deed. However, when the dispute arises between the parties, the petitioner had filed a civil suit titled as “**Kashmira Singh Vs. Paramjit Singh and another**” in the Court of Civil Judge, Senior Division, Ludhiana. When the notices were served on the complainant, he got the present FIR registered against the petitioner and others. Still further, out of the total sale consideration, the complainant side had only paid Rs. 22 lacs and the remaining amount was to be paid at the time of the sanction of the mutation. However, the complainant did not make the payment and the FIR is an instrument of misuse of process of law. Still further, the police did not follow the mandatory provisions of Section 41 of the Code of the Criminal Procedure and the petition is liable to be allowed by this Court. Apart from that, one more FIR No. 82 dated 10.04.2022 under Sections 420, 447, 511 and 120-B IPC Police Station Jamalpur, District Ludhiana was registered against the petitioner. However, vide order dated 19.04.2023, this Court had quashed the said FIR.

4. On the other hand, learned counsel appearing on behalf of the State of Punjab assisted by the learned counsel for the complainant has vehemently opposed the submissions made by the

learned counsel for the petitioner on the ground that the petitioner is the principal accused. In fact, vide agreement to sell dated 09.03.2021, Surinder Singh, petitioner/accused had agreed to sell the land in question for a total sum of Rs. 27 lacs and received a sum of Rs. 22 lacs from the complainant side. He also executed a registered sale deed dated 21.05.2021 in favour of the complainant and his brother. In the sale deed dated 21.05.2021, the petitioner had projected himself as the power of attorney holder of Kashmira Singh and Kamikar Singh whereas Kamikar Singh owner of the land had already expired in the year 2013. Thus, the GPA of Kamikar Singh in favour of the petitioner was no more valid and the plot was illegally sold by the petitioner to the complainant side. He further submits that in the present case, the possession of the land was not handed over to the complainant side and when the complainant went to the plot, he could not get the possession. Even, the accused side told that the plot was somewhere else. Apart from that, the complainant side requested the petitioner to return his amount or to give him a plot but he was threatened by the present petitioner. Apart from that, the petitioner had sold the same plot to different persons at different times. Still further, the petitioner has not only deprived the complainant side of the plot and their hard earned money but also filed a frivolous civil suit (Annexure P-2) against the complainant. In fact, the civil suit was filed by the petitioner, just to create false defence in the FIR, which

was likely to be registered against him at that time, from the complainant side. Still further, learned State counsel stated that the provisions of Section 41 of the Cr.P.C. had been strictly complied with and the petitioner was evading his arrest and the custodial interrogation of the petitioner was required to know the involvement of other accused and to recover the documentary evidence from him.

5. I have heard the learned counsel for the parties and perused the record.

6. In the present case, it is evident that the petitioner had sold the plot in question vide registered sale deed dated 21.05.2021 to the complainant and his brother and while selling the plot, the petitioner had acted as GPA of Kashmira Singh and Kamikar Singh. The petitioner also represented to the complainant that both Kashmira Singh and Kamikar Singh were alive and the part of the sale consideration was transferred to them. However, it was found that Kamikar Singh had already died in the year 2013 and the petitioner was not entitled to sell the land to the complainant. Even, as per Section 55 of the Transfer of the Property Act, it is duty of the seller before the completion of the sale to disclose the material defects in the property or in the seller's title thereto; to produce the title deed, to answer the questions as to title; to execute conveyance; to take care of property between agreement to sell and sale deed and to pay outgoing. The seller is under a legal duty to disclose to the buyer every material

defect in the property or in his own title thereto. These duties arise with respect to these defects, of which, the seller is, and the buyer is not aware and which the buyer could not with ordinary care discover. In the instant case also, the present petitioner was well aware of the fact that he was not the lawful GPA of the owner of the property and by projecting a wrong picture, he had committed the fraud with the complainant side. Even, the complainant and his family members, who are masons had believed the words of the petitioner and the petitioner had robbed them of their hard earned money. Even the complainant side had taken loan from the bank to pay to the present petitioner. Apart from that, from the record, it was evident that the provisions of Section 41 of the Cr.P.C. were duly complied with by the State.

7. Still further, the complainant was not only cheated by the petitioner, but the petitioner also burdened the complainant side with a false and frivolous civil suit (Annexure P-2). Even, it was mentioned in the sale deed that the possession of the land had been handed over to the purchaser, but the possession was not actually delivered to the complainant and his family members at the spot and it was informed by the accused that plot existed somewhere else. Apart from that, the same property had been sold by the accused to different persons by showing different numbers of the plot in question. Apart from that, in the present case, the custody of the petitioner is required

to recover the documentary evidence as well as to know the involvement of other accused in the present case. Thus, keeping in view the gravity of the matter and other circumstances, the present petition is liable to be dismissed.

8. Dismissed.

19.12.2023	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No