

2024.PHHC.094882



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

CRM-M-2690-2023 (O&M)
Date of Decision : 15.07.2024

GAUTAM ARORA

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. K.S.Dadwal, Advocate,
for the petitioner.

Mr.Pardeep Bajaj, DAG, Punjab.

Mr. Saurav Bhatia, Advocate,
for respondent no.2.

KULDEEP TIWARI, J.(Oral)

CRM-27234-2024

1. For the good and valid reasons assigned in the application, same is allowed subject to all just exceptions, and additional affidavit of petitioner alongwith Annexures P-10 to P-18, are taken on record.

CRM-M-2690-2023

2. The petitioner claiming himself to be the victim of fraud filed the instant petition by invoking the inherent jurisdiction of this Court envisaged under Section 482 Cr.P.C. to seek quashing of FIR bearing No.02, dated 22.04.2022, under Sections 419, 420, 465, 467, 468, 471 and 120-B IPC, registered at Police Station NRI, District Moga

(Annexure P-7), and all subsequent proceedings arising therefrom, including final report filed under Section 173 Cr.P.C. dated 20.7.2022 (Annexure P-8), as well as the order of framing of charge dated 29.09.2022 (Annexure P-9).

3. The thrust of the arguments for seeking relief (*supra*), is that the petitioner is a *bona fide* purchaser, and it is apparent from the undisputed facts.

4. He further submits that there is no allegation against the petitioner in the FIR. He also submits that on coming to know that the petitioner without any intention has become a part of a fraudulent transaction, he admitted the claim of respondent no.2/complainant in a civil proceedings which led to the cancellation of the sale deed in favour of the petitioner and the property in dispute was re-transferred and again mutated in favour of the complainant.

5. Before embarking upon the process of adjudicating issue(s) as raised through the instant petition it is apt at this place to mention that Sharanpreet Kaur (respondent no.2), Tarlochan and Narinder Chawla, who are Non-Resident Indians (NRI), set the prosecution agency into motion by filing a written complaint to the SHO concerned, NRI Cell, Moga, for registration of the FIR against the present petitioner.

6. The gist of the allegations as made in the complaint which became basis of the instant FIR reads as under:-

“To The Station House Officer, NRI Cell, Moga. Sub: Application for registration of the criminal case against 1) Gurwinder Singh S/o Kirpal Singh S/o Samunder Singh R/o House No.520, Jalandhar Bypass, Jalandhar Near Singh Sabha, Gurudwara, Dharamkot Road, Distt. Moga, 2) Harpal Singh S/o Ajit Singh R/o Village Alamwala Kalan (Baghapurana), Distt. Moga, 3) Puran Singh, Lambardar, Moga

and their associates u/S 420/465/467/468/471/120-B IPC & other relevant sections. Respected Sir. The applicants namely 1) Sharanpreet Kaur @ Sharan Kaur Khaira D/O S: Tarlochan Singh 2) Tarlochan Singh s/o S.Surmukh Singh S/o S.Sher Singh Both R/o Village Takhan Vadh, Distt. Moga @ At present both R/O 1130 Bibbs Road, #10 Voorhees New, Jersey 08043, USA, Contact No (856) 404 7098, Email ID: sharan.khaira@dla. sharanpkaur@gmail.com 3) mil; Narinder Chawla S/o Moti Chawla R/o % 302, Orchid Wide, 10th Road, Village Khar, Mumbai-400052 and at present R/o Brookdale Living, 1 Brendenwood Drive, Apt A-108, Voorhees, New Jersey, 08043 USA, most submit as under! 1. That the respectfully applicants are presently living in United America at States of the aforementioned addresses. The applicant Sharanpreet Kaur aka Sharan Kaur Khaira is serving in America department of Defense. 2) in That the applicants are the joint registered owners and in possession of the property/land measuring 4 Kanal comprising in Khasra No.176//2/1/2, 2/2/2 8/2/2, 9, 12/1, Khata No.23/85/2750, as per Jamabandi for the year 2002-2003 situated at Village Moga Mehla Singh-II. Distt. Moga as per registered sale deed bearing wasika no.9223 dated 09.01.2009 duly registered with the office of Sub Registrar Moga The applicants Sharanpreet Kaur and Tarlochan Singh are the owner of 3 Kanal of land and the applicant Narinder Chawla is the owner of 1 Kanal Land and in this way, all the applicants are the owners of total 4 Kanal of land. After the purchase of the property, the mutation in the revenue record was also sanctioned in favour of the applicants in the revenue record. That the applicant Sharanpreet Kaur aka Sharan Kaur Khaira is living in USA since her early childhood alongwith her father i.e. applicant Tarlochan Singh and the applicant Narinder Chawla is living in USA for more than 15 years. They occasionally visit India and not this frequently. At the time of purchase of this property, the applicants visited India. The said above property is being managed by relative of the applicant Sharanpreet Kaur aka Sharan Kaur Khaira and Tarlochan Singh namely Amrik Singh Hira S/o S.Hari Singh and he used to look after their property. That few days ago, one neighbourer to the aforesaid property of the applicants, asked Amrik Singh Hira S/o Hari Singh about the sale of their property. Amrik Singh Hira told him that the applicants have not sold their property so far, but he told Amrik Singh Hira that he has seen some persons while visiting the property of the applicants. Thereafter, after due enquiry, Amrik Singh Hira came trying to to know that some persons are grab the property of the applicants. Thereafter, Amrik Singh Hira disclosed these facts to the applicants. Thereafter, on the instructions of the applicants, Amrik Singh Hira checked the revenue record of the property from the Halqa Patwari of Village Moga Mehla Singh- II and he got astonished when he came know that in the revenue record, to the aforesaid property of the applicants has been shown to be sold to accused Gurwinder Singh s/o Kirpal Singh S/o Samonder Singh by the applicants on the basis of one sale deed bearing registration no.2956 dated 28.10.2015 vide mutation no.27997. Thereafter Amrik Singh Hira obtained the certified copy of the sale deed bearing registration no. 2956 dated 28.10.2015 and came to know that the suit property has been shown to be sold by the applicants to the accused Gurwinder Singh on dated 28.10.2015 inspite of the fact that the applicants in the year 2015 never visited India even for a single day. After pursuing the certified copy of the sale deed, the applicants got astonished, because the sale deed is purely a forged and fabricated document, which was never ever executed by the applicants. The

applicants never signed this sale deed, even the photographs appended on the endorsement of the sale deed are not, of the applicants. rather all these persons are culprits and accused persons who impersonated themselves to be applicants and presented themselves before the office of Sub-Registrar, in place of the applicants and even, they did not dare to sign this sale deed by forging the signatures of the applicants. The signatures showing on the sale deeds are not of the applicants. In fact, 'it has been signed by the accused persons. In the said sale deed, the accused Harpal Singh S/o Ajit Singh and Puran Singh Lamberdar of Village Moga stood as marginal witnesses and signed the sale deed. Even they both are also connived in this conspiracy. The said sale deed has shown to be drafted deed by one Inderjit Singh of Dhaloke, Distt. Moga. The accused persons hatched criminal conspiracy in order to grab this valuable property of the applicants knowingly well that the applicants are the permanent residents of America and cannot visit their property frequently. As already stated above, the applicants never executed this document. nor signed the same, nor ever appeared before the office of Sub Registrar, for the execution and registration of the sale deed. The sale deed is purely a forged and fabricated document. Thereafter, on the basis of this forged sale deed dated 28.10.2015, the accused persons managed to get the mutation no.27997 sanctioned in the name of the accused Gurwinder Singh in the revenue record. Now, the applicants came to know that the accused persons have also further sold the property of the applicants to some other person, who persons in order is also the accused to title. this fraud is rotate not a chain of committed by a single person, rather it is a conspiracy and fraud of a team of land grabber / land mafia who always keep their eyes upon the valuable lands of Non-Residence Indian, who could not look after their property in regular course. The applicants neither sold their land nor received any sale a consideration.....”

7. A perusal of the above complaint reflects the following facts:

- i. That respondent no.2/complainant and others, who are resident of America, purchased the property measuring 4 kanals in District Moga;
- ii. Taking the benefit of their absence, the property in question was, by impersonation and in conspiracy, sold to co-accused-Gurwinder Singh son of Kripal Singh vide registered sale deed dated 28.10.2015, and the mutation No.27997, dated 26.11.2015, in this regard was also entered in the revenue record;
- iii. It further reflects from the perusal of the FIR as well as the investigation that respondent no.2/complainant and others, were not present in India at the time of registration;

ii. The photographs on the sale deed are of some person other than respondent no.2/complainant.

iv. This land was subsequently, i.e. after 7 years of the allegedly forged sale deed, sold to the present petitioner through a registered sale deed dated 19.07.2021 (Annexure P-4).

8. In asking for the relief (*supra*), learned counsel for the petitioner, submits that the petitioner is in fact a *bona fide* purchaser as at the time of sale deed the petitioner had seen the previous sale deed which was shown to have been executed by respondent no.2/complainant, Tarlochan Singh and Narinder Chawla, on dated 28.10.2015, in favour of co-accused-Gurwinder Singh and, and thereupon a mutation was sanctioned in favour of Gurwinder Singh, and an entry was also made in the subsequent revenue records.

9. He further submits that after verification of entire revenue record and the sale deed (*supra*), an agreement to sell was entered into on dated 30.06.2021, and thereafter, the sale deed (*supra*) was got executed in favour of the petitioner and after paying the sale consideration of Rs.10,50,000/-, therefore, in all aspects and above admitted facts, the petitioner is clearly a *bona fide* purchaser and is protected under Section 41 of the Transfer of Property Act, 1882.

10. He further submits that there is no allegation that the petitioner has hatched any conspiracy with other co-accused, who in fact cheated the present petitioner. Even in the *jamabandi* for the year 2017-2018, co-accused-Gurwinder Singh son of Kipral Singh, is shown to be the owner of the property, therefore, the petitioner has all reasons to

believe, the co-accused-Gurwinder Singh, as the original owner, and he was not aware about the fraud committed by him. In order to substantiate his case, he placed reliance upon the revenue record which is attached as Annexures P-10, P-11 and P-12.

11. He further submits that after the purchase of property the petitioner constructed the boundary walls and also installed a gate there. The petitioner came to know about the fraud played upon him only after the registration of the instant FIR, and thereupon on inquiry, it revealed that he has been duped by the co-accused, by executing a fraudulent sale deed in his favour.

12. He next submits that although at the first instance the petitioner had filed a suit for injunction restraining respondent no.2 herein (the complainant), from interfering his possession, however, subsequently, respondent no.2/complainant and others, also filed a suit for declaration thereby assailing the sale deed of Gurwinder as well as sale deed executed in favour of petitioner-Gautam Arora, upon which present petitioner approached the respondent no.2/complainant and others, and informed that he was neither aware of the fraud nor was a party thereto. He showed his willingness to forgo his claim to sale deed as the instant litigation may spoil his career. Consequently, the matter was compromised between the present complainant and the petitioner, whereby the parties were agreed that the sale deed in favour of present petitioner-Gautam Arora, be cancelled and FIR registered *qua* him may be quashed. Further the statements of the parties were also recorded *qua* compromise, before the learned Civil Judge (Jr.Divn.), Moga, whereupon,

the latter decreed the suit on the basis of the compromise vide judgement and decree dated 04.10.2023 (Annexure P-14).

13. He further submits that in pursuant to the aforesaid judgement and decree, upon an application dated 18.12.2023, made to the Tehsildar Moga, the concerned Patwari on 07.03.2024, entered the mutation and ownership in the name of respondent no.2/complainant-Sharanpreet Kaur, and others vide Annexure P-16.

14. He further submits that present petitioner filed a petition bearing No.CRM-M-44445-2023, seeking quashing of the instant FIR on the basis of compromise, wherein the statements of the parties concerned were also recorded, however, the same being a partial compromise with the present petitioner only, could not disposed of, as such like matter has been referred to the Division Bench.

15. On the other hand, learned State counsel opposes the grant of relief (*supra*), to the present petitioner and it is only after completion of trial innocence or guilt of the present petitioner can be established.

16. Learned counsel appearing on behalf of the respondent no.2/complainant admits the factum of compromise. He further admits that the land in question has now been re-trasferred in favour of respondent no.2/complainant and others who were the original owners, and even the mutation has been sanctioned.

17. This Court has examined the rival submissions made learned counsel for the parties and is of the view that the instant petition deserves to be allowed on the following grounds:-

i. It transpires from the perusal of the FIR that the petitioner has no role whatsoever in the initial transaction of the land in question wherein respondent no.2/complainant was impersonated, and after hatching a conspiracy the land was sold to the co-accused-Gurwinder Singh son of Kirpal Singh, vide registered sale deed dated 28.10.2015. In fact the petitioner has come into picture after about 7 years of the said fraudulent transfer of the land i.e. 19.07.2021, the co-accused-Gurwinder Singh sold the land in question to the present petitioner after accepting the sale consideration amount of Rs.10,50,000/-. Prior to that all revenue entries were in favour of co-accused-Gurwinder Singh, therefore, there was no reason for the present petitioner to believe that the sale deed dated 28.10.2015, which was entered into in favour of co-accused-Gurwinder Singh, is in fact a result of impersonation/fraud.

ii. After coming to know about the fraud being played upon the present petitioner by the co-accused-Gurwinder Singh, the petitioner has voluntarily offered to return the land to the original owners i.e. respondent no.2/complainant and other two persons, and thereupon he suffered a statement in the civil suit which resulted in passing of the judgment and decree dated 14.04.2023, and thereupon the land was re-mutated in favour of the respondent no.2/complainant. This fact was admitted by respondent

no.2/complainant also, who extended her no-objection with regard to quashing of the instant FIR.

18. In view of the above facts it transpires that the petitioner is infact a *bona fide* purchaser of the land and has no role in execution of initial sale deed dated 28.10.2015, which resulted in impersonation and fraud upon respondent no.2/complainant.

19. Consequently, FIR bearing No.02, dated 22.04.2022, under Sections 419, 420, 465, 467, 468, 471 and 120-B IPC, registered at Police Station NRI, District Moga (Annexure P-7), and final report filed under Section 173 Cr.P.C. dated 20.7.2022 (Annexure P-8), as well as the order of framing of charge dated 29.09.2022 (Annexure P-9), alongwith all consequential proceedings arising therefrom, are hereby **quashed**.

20. All pending application(s), if any, also stands disposed of.

July 15, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No