

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRM-M-6323-2020
Date of Decision- 16.09.2024

GAJRAJ NAGAR

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Onkar Rai, Advocate for the petitioner.

SANDEEP MOUDGIL, J

1. The petitioner, in the present petition, prays for quashing of FIR No.123 dated 06.03.2019, Annexure P-1, under Section 420, 467, 468 and 471 of the Indian Penal Code, registered at Police Station Ballabgarh Sadar, District Faridabad, as respondent No.2 had earlier filed complaint, Annexure P-2, which was enquired into by the Economic Crime Wing, Ballabgarh, Faridabad and on the basis of report of Tehsildar, Annexure P-3, as regards title of land and on the basis of detailed enquiry, Annexure P-4, it was found that the complaint was instrument to pressurize the petitioner in order to get back money, as such, the present FIR is sheer abuse of process of law and is liable to be quashed.

2. It is contended by the learned counsel for the petitioner that as per allegations in FIR, petitioner induced the respondent No.2 for buying land measuring 8 kanals 02 marlas situated in village Neemka, District

Faridabad, and respondent no.2 paid Rs.30 lacs through cheque to another accused named Deepak Kumar and executed an agreement to sell dated 14.03.2016, but the petitioner and said Deepak Kumar did not execute the sale deed. The same set of allegations were leveled by respondent No.2 earlier also in his complaint regarding which an inquiry was conducted by Economic Crime Wing, Ballabgarh Zone, Faridabad and it was found that petitioner and Deepak Kumar are ready to execute a sale deed even today in favour of respondent No.2 but he is not willing to get registry of the land effected in his name but wants his money back and in order to put pressure on the petitioner, complaint was made.

3. It is further contended that the petitioner and respondent No.2 are close relatives and known to each other because petitioner is the nephew of the complainant and their houses area also adjoining. The land in dispute is also near by the house of respondent no.2 and latter was very well aware of the fact that Ramesh Sharma of his village has been cultivating and possessing the land since long and the ownership is in the name of Deepak. Further, respondent No.2 is also aware that the rate of land is very high because projects of big companies are also there near the land in question. It is for this reason, the deal of land was settled at very low price but due to the greed of handsome money from the cultivator, complainant wants eviction of Ramesh Sharma and agreement to sell dated 14.03.2016 was executed. Even despite best efforts of Deepak Kumar, aforesaid, who is the owner of the land and also of the petitioner, respondent No.2 refused to get executed the sale deed and filed the complaint dated 06.11.2017 against the petitioner and others.

3. Learned counsel for the State has admitted that the enquiry of complaint dated 06.12.2017 was conducted by the Economic Crime Wing and report regarding title of land was obtained from the office of Tehsildar, Faridabad. It is also submitted that the present FIR has been registered after the complaint was received from the office of Deputy Commissioner of Police, Faridabad, and the matter is under investigation. He has referred to the reply filed by the Assistant Commissioner of Police, Tigaon, District Faridabad, on behalf of the State and has submitted that on receipt of the complaint, an enquiry was made and a report was obtained from the office of Tehsildar, Sub Tehsil Tigaon, District Faridabad whereby it was reported that Deepak is share-holder of 8 kanals 2 marls out of total land of 39 kanals 13 marlas comprised in Mustkil No.38, Khasra No.4-5, 12-19, 22/1, Mustkil No.14-3-26, Khasra No.17/2-3/2-7/2 but the land in Mustkil No.1-14-3-26, Khasra No.12-19-22/1, 23/2, 17/2, 3/2. 7/2/2/ had already been acquired by the Haryana Urban Development Authority before the Mutation No.3831, 3825, 3885. A report was obtained from the Land Acquisition Officer, Faridabad and it was reported by Memo No.5333 dated 23.10.2018 that the aforesaid Khasra No.1/12/19min, 14/17/2 was acquired vide Award No.28 dated 04.02.2011. This land is in respect of Sector 76, 77 and 78. The possession of the land was obtained on 04.02.2011. It was also reported by Memo. No.5334 dated 23.10.2018 that the land in Khasra No.1/19, 22/1, 23/2, 3/3/2, 26/7/2/2 was acquired by Award No.10 dated 27.08.2010 and the possession was taken. The enquiry revealed that Deepak Kumar and petitioner Gajraj Nagar in order to cheat the complainant/respondent No.2 – Subhash obtained a sum of Rs.30,00,000/- by making forged agreement whereas, the land was already been acquired by the Land Acquisition

Officer, Haryana Urban Development Authority, Faridabad. It is only after making enquiry, the present FIR has been registered. Therefore, a clear cut case of cheating and fraud is made out against the petitioner and the present petition is liable to be dismissed.

4. Learned counsel for the complainant/respondent No.2 has submitted on the basis of reply that co-accused Deepak had entered into an agreement to sell dated 14.03.2016 with respondent No.2 to sell 8 kanals 2 marlas of land situated at village Neemka, Sub-Tehsil Tigaon, District Faridabad, @ Rs.1,95,00,000/- per acre and an amount of Rs.30,00,000/- was paid by way of blank cheque by respondent No.2 which was credited in favour of M/s Jai Durga Enterprises on 16.03.2016 in which the co-accused namely Deepak is proprietor and thereafter on the same very day, i.e., 16.03.2016, the amount of Rs.28 lacs was transferred in the account of Nagar Cassettes from the account of M/s Jai Durga Enterprises and the proprietor of Nagar Cassettes is the petitioner. The answering respondent No.2 also came to know from Halqa Patwari that part of the land of the agreement to sell dated 14.03.2016 has already been acquired by Govt. of Haryana vide notification dated 30.08.2008 and thereafter the part of the land has been transferred in favour of Govt. of Haryana vide rapat No.133 dated 27.08.2010 and 04.02.2011. It is further stated that the land which Deepak intended to sell is not free from all encumbrances and the title of land is disputed, therefore, the petitioner and co-accused have cheated the respondent No.2. Hence, FIR has been rightly got registered and accordingly, the present petition is liable to be dismissed.

5. Before proceeding with the order, it will be necessary to sum up the controversy between the parties. The dispute between the parties is that

Deepak, the owner of the land measuring 8 kanals 02 marlas situated in village Neemka, District Faridabad, entered into an agreement to sell the said land comprised in Araj Khewat No.401, Khatauni No.604, Mu.No.38, Killa No.4(8-0), 5(8-0), Mu. No.1 Kila No.12(5-5), 19(7-17), 22/1 (5-17), Mu. No.14 Killa No.17/2(1-3), Mu. No.1, Killa No.23/2(1-0), Mu.No.3 Killa No.3/2(1-0), Mu.No.26 Killa No.7/2/2(0-17), Mu. No.26 killa No.13/1(0-14) vide intkal No.3831, 3825, 3884, which is part of total land measuring 39 kanals 13 marlas, vide Agreement to Sell, dated 14.03.2016, Annexure R-2/2. The present petitioner has signed the said Agreement to Sell as Witness No.2. The complainant/respondent has alleged that the petitioner in connivance with the original land owner – Deepak instigated him to purchase the said land, which according to the knowledge gathered by him, had already been acquired by the State of Haryana vide notification dated 30.08.2008 and was transferred in favour of the State vide rapat No.1133 dated 27.08.2010 and 04.02.2011. It is also the allegation of the complainant that out of 30 lacs of rupees which he paid by way of cheque, an amount of Rs.28.00 lacs was transferred from the account of M/s Jai Durga Enterprises, belonging to co-accused Deepak, into the account of Nagar Cassettes, belonging to the present petitioner. As such, the allegation against the present petition is at most of connivance with the original land owner/co-accused Deepak.

6. It is the case of the petitioner that the complainant/respondent No.2 had earlier also in the year 2017 made a complaint to the police (Commissioner of Police, Faridabad) which on enquiry conducted by the Economic Crime Wing, Faridabad, was found to be false on the basis of report, Annexure P-3, of Tehsildar, Faridabad, and it was held vide detailed

report, Annexure P-4, that the complainant wants his money back as such the complaint is a pressure tactic. But now again the complainant/respondent no.2 has made a complaint in 2020 on the basis of which present FIR, Annexure P-1, has been registered by the police.

7. However, the stand of the State and the respondent No.2, as stated above, is that the co-accused Deepak has agreed to sell the land which has already been acquired by the State Govt. in the year 2008 and rapat was entered in 2011. Meaning thereby, co-accused Deepak was not the owner of the land in question and petitioner being a signatory to the Agreement to Sell is also liable to be prosecuted as an accused.

8. Now coming to the role of the petitioner in this case, it is seen that the petitioner is only a signatory to the Agreement to Sell as a witness and that being so, no liability or responsibility can be fastened on a witness because a witness is not supposed to know the title of land before signing a document. Further, there is no allegation against the petitioner that he is the owner of the land in question and sold the same despite a defective title of land. It appears that the complainant/respondent No.2 has implicated the petitioner because of the reason that out of amount of Rs.30.00 lacs, amount of Rs.28.00 lacs was transferred in his account from the account of co-accused Deepak, which cannot be agitated by the complainant/respondent No.2 as the petitioner and co-accused – Deepak are running own Proprietor firms and in course of their business dealings the money has been transferred from the account of one firm (M/s Jai Durga Enterprises) to the account of second firm (Nagar Cassettes) and not from the individual personal account of second individual's personal account. However, this may also cannot be

alleged to be connivance and instigation, as the complainant is alleging in the present case against the petitioner.

9. Before parting with this order, it is deemed appropriate to refer to the earlier detailed enquiry report of the year 2017, Annexure P-5, which depicts that :

“ The investigation of the attached complaint has been carried out by Deputy Supdt. Mainpal Singh Economic Crime Wing Faridabad, during enquiry it has been found that both parties i.e. complainant and accused are known to each other. The Gajraj through whom the deal of the land has been done, he is nephew of complainant and their houses are also adjoining. The disputed land is very near to the house of complainant Subhash and complainant Subhash was very well aware about this fact that for the long time Ramesh Sharma of the same village is cultivator and possessing the land and ownership is in the name of Deepak at the spot, rate of the land is high because there are projects of big companies near the land, due to it the deal of the land from Deepak the name of complainant Subhash is clearly depicted in the Khana No.5 as cultivator in the land as per jamabandi for the year 2005-06. Thereafter, due to some reason, the complainant refused to get purchase the land, thereafter, Deepak has executed GPA of his land in favour of Gajraj. The both of them even today are ready to get execute the registry to Subhash but the complainant is not wanted to get execute the registry of this land rather the complaint has been filed just to pressurize the accused in order to get back his

amount. There is no truth in the allegations levelled by the complainant and in this regard, the advice was also taken from Tehsildar Sahib which is attached herewith. From the enquiry of complaint, no commission of offence is found. I am agree with the enquiry report, therefore, it is recommended that the complaint be filed in the office. Report is submitted to you.”

10. Therefore, the above report specifically provides that the complainant does not want to get the registry executed because of land of big companies being nearby and due to this, there being huge difference in price of land. The report also provides that the complainant has filed the complaint in order to get back his amount. Thus, the intention of the complainant in filing the complaints repeatedly is to get back his money and in his effort, he is pressurising the petitioner in whose firm’s account, Deepak, the land owner, had transferred an amount of Rs.28.00 lacs, out of total amount of Rs.30.00 lacs, from his firm’s account, whereas the main grouse of the complainant has to be against the original owner of the land, named Deepak rather than the present petitioner. There is no allegation of fabrication of any document against the petitioner as such no offence under Section 420, 467, 468 and 471 IPC is made out against the present petitioner.

11. The State and the complainant in their respective replies to the present petition have pressed upon the executing an Agreement to Sell with respect to the land which is covered by the notification issued in the year 2008 for the acquisition of land under the Land Acquisition Act, which is not relevant to the present case because there is no such allegation against the present petition. The allegation is of alluring and inducing only against the petitioner by the complainant because of petitioner having signed the Agreement to

Sell as a witness but the complainant has failed to take note of the fact that there is another witness named Shah Mal also who had signed the Agreement to Sell dated 14.03.2016, Annexure R-2/1, but the complainant has not alleged anything against the said witness because if the petitioner, according to him, is an accused then Shah Mal is also equally liable for the commission of offence and has to be co-accused with Deepak. Further, perusal of the earlier complaint of 2017 and the present complaint of the year 2020 of the complainant would show that the main request of the petitioner is for return of his money, as such, the complainant wants his money back at any cost. The complainant had no reason to allege against the petitioner as such he has attempted to implicate the petitioner falsely by levelling allegation of instigation against him.

12. The petitioner, vide CRM-25872-2020, has prayed stay of further proceedings by placing Annexures P-6 to P-16 on record. The State was directed to file reply to the application, vide order dated 28.10.2020, however, no reply has been filed either by the State or by the complainant to this application. Non-filing of reply shows acceptance of those documents from Annexures P-6 to P-19 and accordingly, application stands allowed and the documents Annexures P-6 to P-16 are taken on record.

13. Consequently, the complainant cannot raise any grouse against the petitioner in respect to entering into an Agreement to Sell of a land with defective title and of a against the petitioner, as is evident from the facts and circumstances of the present case.

14. Resultantly, the petitioner has been able to make out a case in his favour for quashing of present FIR No.123 dated 06.03.2019, Annexure P-1, under Section 420, 467, 468 and 471 of the Indian Penal Code,

registered at Police Station Ballabgarh Sadar, District Faridabad, and accordingly, the present petition is allowed and the above referred FIR, Annexure P-1, is hereby ordered to be quashed qua the present petitioner.

16.09.20224
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable :Yes/No