



CRM-M-8688-2019

-1-

202

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

CRM-M-8688-2019

Date of Decision:- 05.08.2024

Jitender Kumar Oberoi and Others

...Petitioners

Versus

State of Haryana and Another

...Respondents

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Dhruv Gupta, Advocate
for the petitioners.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Mr. Shekhar Verma, Advocate
for respondent No. 2-HDFC Bank.

AMARJOT BHATTI, J.

1. Petitioners Jitender Kumar Oberoi, Vinod Bala and Gurmeet Kaur have filed petition under Section 482 Cr.P.C. for quashing of FIR No. 160 dated 09.07.2017 under Section 406, 420, 467, 468, 471, 120-B of IPC, registered at Police Station Mullana, District Ambala along with other subsequent proceedings arising out of it and in alternate any other direction which the Court may deem fit in the interest of justice.

2. As per the facts of case, aforesaid FIR was registered on the complaint of Housing Development Finance Corporation Limited (HDFC Ltd.) that Jitender Kumar Oberoi, Vinod Bala, Gurmeet Kaur and Gurminder Singh in conspiracy with each other defrauded complainant.

**CRM-M-8688-2019**

-2-

Jitender Kumar along with his mother Vinod Bala approached their Branch at Ambala for Housing Loan of ₹20 lacs to purchase semi constructed residential house of 200 Sq. Yards situated in Village Mullana, Tehsil Barara, District Ambala. Loan was raised to purchase the house and to complete construction. They placed on record one agreement to sell dated 13.08.2016 in their favour executed by owner Gurmeet Kaur daughter of Daler Singh. On the basis of this document, loan was processed as per rules and it was disbursed in their favour by way of two cheques, one cheque amounting to ₹9,90,000/- and another cheque amounting to ₹10,10,000/-, both dated 30.08.2016. Loan agreement and other documents were signed and executed by borrowers. Sale deed was executed in the presence of empanelled lawyer on 01.09.2016 and receipt was obtained from the office of Sub Registrar. Thereafter, loan amount was released in favour of seller Gurmeet Kaur. Registered sale deed was expected to be available on the same day but it could not be procured. Gurmeet Kaur encashed the cheques. Later on, it was revealed that prior to execution of sale deed, learned Civil Court had passed status quo order in a civil suit filed by Gurminder Singh against the seller. Sub-Registrar refused to register the sale deed in view of status quo order. In this way, aforesaid accused persons committed fraud and criminal breach of trust to the tune of ₹20 lacs. With these allegations, present case was registered.

3. Learned counsel for petitioners argued that Gurmeet Kaur petitioner No. 3 is the absolute owner of suit property and it was free from all encumbrances. Petitioner No. 2 applied for loan facility from

**CRM-M-8688-2019**

-3-

complainant bank i.e. HDFC Limited and petitioner No. 1 son of petitioner No. 2 stood as a surety/guarantor for his mother. Gurminder Singh filed a civil suit against Gurmeet Kaur – petitioner No. 3 on account of matrimonial dispute and managed to obtain status quo order. Ultimately, said civil suit was dismissed in default by the Court of learned Additional Civil Judge, Senior Division, Ambala vide order dated 21.12.2017, which is Annexure P-2. Thereafter, sale deed was presented before the complainant bank by way of security and petitioner No. 1 was making payment of loan amount regularly. There was no intention on the part of petitioners to commit fraud or cheat respondent No. 2. Therefore, continuation of criminal proceedings in said FIR will not serve any purpose. Hence, the petition.

4. Learned counsel for respondent No. 2 opposed the petition and filed reply by way of affidavit confirming the facts detailed in FIR. It is pointed out that Gurminder Singh was also arrayed as one of the accused, who is not party to present petition for quashing of FIR and subsequent proceedings arising therefrom. Civil suit filed by Gurminder Singh against Gurmeet Kaur petitioner No. 3 was dismissed in default vide order dated 21.12.2017. It was not decided on merits. Therefore, it can be revived at any time. Present petition for quashing of FIR cannot be entertained in absence of Gurminder Singh.

5. Learned counsel representing State filed status report regarding the facts detailed in FIR. It is pointed out that answering respondent is having no knowledge about registration of sale deed on 11.10.2018, as the

**CRM-M-8688-2019**

-4-

same is not produced before Investigating Officer. Petitioners were having knowledge of status quo order dated 09.08.2016 and with dishonest intention of cheating, agreement to sell was executed to procure the loan. Supplementary status report dated 01.08.2024 is filed, which is taken on record. In this status report, it is clarified that during investigation Gurminder Singh was not attributed any specific role. Therefore, he was found innocent. It is further clarified that Gurminder Singh was not challaned in aforesaid FIR.

6. I have considered the arguments and have gone through the record. As per the facts of case, Vinod Bala petitioner No. 2 approached HDFC Limited, Ambala Branch for raising loan to purchase a house and to complete its construction on the basis of one agreement to sell dated 13.08.2016 executed by Gurmeet Kaur petitioner No. 3. Petitioner No. 1 Jitender Kumar Oberoi stood as a guarantor for his mother Vinod Bala petitioner No. 2. Loan was processed and sale deed was executed and presented in the office of Sub Registrar, Mullana, District Ambala in the presence of empanelled lawyer. However, sale deed was not registered on account of status quo passed by learned Additional Civil Judge, Senior Division, Ambala in a civil suit No. 1229 of 2016 filed by Gurminder Singh against his wife Gurmeet Kaur who is petitioner No. 3. Ultimately, said civil suit was dismissed in default on 21.12.2017, Annexure P-2. Sale deed was duly registered and admittedly it was presented before respondent No. 2 as collateral security. It has also come on record that petitioner No. 2 is paying EMI, though, it is claimed by respondent No.2 that there is some

CRM-M-8688-2019

-5-

laps in payment of loan amount. So far as recovery of loan is concerned, respondent No. 2 can proceed as per the remedy available to him, as per law.

7. So far as registration of present FIR and subsequent proceedings are concerned, from the aforesaid facts, there does not appear any element of malafide intention to cheat or defraud respondent No. 2. Gurminder Singh who had filed civil suit against his wife Gurmeet Kaur was found innocent. In the light of this, no useful purpose would be served to continue with proceedings in aforesaid FIR. Therefore, I find merits in petition filed by petitioners and same is accordingly allowed and FIR No. 160 dated 09.07.2017 under Section 406, 420, 467, 468, 471, 120-B of IPC, registered at Police Station Mullana, District Ambala along with other subsequent proceedings arising out of it, are hereby quashed.

8. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

05.08.2024

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(AMARJOT BHATTI)

JUDGE

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