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THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.49007 of 2024
Date of Decision: 22.11.2024

Sushil Mandal and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Rajesh Bansal, Advocate
for the petitioners.

RAJESH BHARDWAJ, J. (ORAL)

1. Instant petition has been filed praying for the quashing of FIR No.0657, dated 01.10.2022, under Sections 120-B, 406, 420, 467, 468, 471 of Indian Penal Code, 1860, registered at Police Station Krishana Gate, Thanesar, District Kurukshetra (Annexure P-1) along with all subsequent proceedings arising therefrom. Further prayer has been made for staying the further proceedings before the learned trial Court during the pendency of the present petition.
2. Succinctly the facts of the case are that the complainant/ respondent No.2, namely, Sita Ram lodged the present FIR against both the petitioners, Umesh Sahni and Veena Devi on the allegations that accused, Umesh Sahni was known to him, who introduced



himself to the petitioners. It was told to him that a total land measuring 0 Kanal 14 marla, which is limited to the street in the east, in the west the land of Salair, in the north belongs to another owner and in the South the house belongs to Singara whose full owner was Seema Devi i.e. petitioner No.2. They wanted to sell that plot. Three accused went and showed him the plot. The petitioners showed registered sale deeds and mutation of the plot in their name. As per Jamabandi for the year 2015-16, Seema Devi was the owner of the plot. The deal for the sale of this plot was fixed at the rate of Rs.16,00,000/-. He gave separate cheque of Rs.5,00,000/-, Rs.4,65,000/- and Rs.1,35,000/- in the name of petitioner No.2 and thus a total amount of Rs.11,00,000/- as an earnest money was given by him. Agreement to sell was written which was signed by Sushil Mandal i.e. petitioner No.1 and Seema Devi-petitioner No.2 as the owner. The witnesses also signed on the agreement. The date of registered sale deed was written as 09.12.2021. However the sale deed was not executed by the sellers on the pretext that they could not get the plot marked on spot. He made calls to the petitioners on their mobile numbers but they did not go at the place for the further necessary action. He thereafter sent a legal notice to the accused but they refused to take notice of the same. On inquiry, it was found that the accused had showed Jamabandi for the year 2015-16 in which she was the owner of 404 square meters. According to the registered sale deed No.8511 dated 17.01.2019, the accused persons had already sold



101 square meters to Smt. Kailash Rani wife of Sh. Krishna Lal resident of Thanesar. It was alleged that even though the accused was not the owner of 101 square yards but still, he has usurped money by creating fake valuable documents by occupying 404 yards. It was alleged that the accused in connivance with each other had usurped Rs.11,00,000/- for the plot of 404 square meters with the intention of extorting money from him. Request was made to take the legal action against the accused. On the registration of FIR, the investigation commenced.

3. Learned counsel for the petitioners has vehemently contended that the petitioners have been falsely implicated in the present case. He has submitted that from the bare reading of the allegations made in the FIR, it is apparent that the dispute among the parties if at all is of purely a civil nature. He has submitted that regarding the transfer of area of 200 square yards out of the property under the alleged agreement to sell in favour of Shree Purvanchal Chhath Purav Maha Sabha, Jyotisar, Tehsil Thanesar has been complied with vide sale deed No.5983, dated 17.03.2021, however the same is under challenge and the civil suit is pending before the learned Civil Judge (Senior Division), Kurukshetra. He has submitted that the complainant had already initiated the civil proceedings by filing the civil suit before the learned Civil Judge, Kurukshetra under the Specific Relief Act for possession by way of specific performance of Agreement to Sell dated 19.01.2021 and petitioner No.2, namely,



Seema Devi has already put in appearance through her counsel. He has submitted that from the allegations made in the FIR, no prima facie case is made out under Sections 420, 406, 467, 468, 471, 120-B of IPC. He has relied upon the judgment passed by Hon'ble the Supreme Court in "**Anil Mahajan vs. Bhore Industries Limited**", 2006(4) RCR (Criminal) 834; "**Mahendra KC vs. State of Karnataka**", Criminal Appeal Nos.1328-1333-2021 decided on 12.11.2021; "**Mitesh Kumar J. Sha vs. State of Karnataka and others**", 2021(4) RCR (Criminal) 573; "**Prof. R. K. Vijayasarathy and another vs. Sudha Seetharam and another**", (2019) SCC Online SC 208 and by this Court in "**Manisha Goyal vs. State of Punjab**", 2006(1) RCR (Criminal) 162. He has further relied upon the law settled by Hon'ble the Supreme Court in following cases:

- a. Madhavrao Jiwaji Rai Scindia and another Vs. Sambhaji Rao Chandroji Rao Angre and others, AIR 1988 SC 709.
- b. State of Haryana and others Vs. Ch.Bhajan Lal and others, AIR 1992 SC 604.
- c. Satish Mehra Vs. Delhi Administration and another, 1996(9) SCC 766.
- d. Amalendu Pal Vs. State of West Bengal, Criminal Appeal 2091/2009 decided on 11.11.2009 by the Hon'ble Supreme Court.
- e. Parveen Pradhan Vs. State of Uttaranchal, Criminal Appeal No.1589/2012, decided on 04.10.2012 by the Hon'ble Supreme Court.
- f. Vaijnath Kondiba Khandke Vs. State of Maharashtra, Criminal Appeal No.765/2018, decided on 17.05.2018 by the Hon'ble Supreme Court.
- g. M. Arjunan Vs. The State Rep by its Inspector of Police, Criminal Appeal No.1550/2018, decided on 04.12.2018 by the Hon'ble Supreme Court.
- h. Daxaben Vs. State of Gujarat, SLP (CRL)-1132-1155/2022 decided on 29.07.2022 by the Hon'ble Supreme Court.



i. Mariano Anto Bruno Vs. Inspector of Police, Criminal Appeal No.1628/2022, decided on 12.10.2022 by the Hon'ble Supreme Court.

4. Learned counsel for the petitioners has submitted that as per the law settled, the issue involved in the present case purely being of civil nature, the FIR is not maintainable and thus, prosecution of the petitioners is nothing but an abuse of the process of the Court. He has thus submitted that the impugned FIR deserves to be quashed.

5. Notice of motion to official respondent at this stage.

6. On asking of the Court, Mr. Sumit Jain, Addl. A.G., Haryana appears and accepts notice on behalf of respondent No.1-State. He has vehemently opposed the submissions made by learned counsel for the petitioners. He has submitted that there are specific allegations made by the complainant regarding entering into the agreement to sell with the complainant by concealing the material fact that the petitioners have already sold the part of land regarding which the petitioners had entered into agreement to sell. He has submitted that the allegations made by the complainant have been substantiated during the investigation and thus, the challan has been presented. He has submitted that the issue involved in the present case is totally the disputed question of facts which can be adjudicated during the trial. He has thus submitted that the petition being devoid of any merit, deserves to be dismissed.

7. Heard.



8. The Court has heard learned counsel for the parties and perused the record with their able assistance.

9. The precise submission made by learned counsel for the petitioners is that the issue involved in the present case is purely of a civil nature and thus the FIR is not maintainable. However from the bare reading of the allegations made in the FIR, it is apparent that though the dispute is regarding sale of the land which is allegedly owned by petitioner No.2. After determining the sale consideration amount, the complainant had given an earnest money of Rs.11,00,000/- to the petitioners. However on inquiry it was found that the part of this land had already been sold by the petitioners. Thus it was alleged that the petitioners had concealed this very fact at the time of entering into the agreement to sell and hence the complainant was defrauded to usurp the earnest money. The investigation is already complete and the challan is presented which would show that the *prima facie* allegations made by the complainant are established. The argument raised by learned counsel for the petitioners is a disputed question of facts.

10. The Apex Court in “*State of Haryana and others vs. Bhajan Lal and others*”, 1992 Supp(1) SCC 335 held as under:

“107 In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following



categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,*



providing efficacious redress for the grievance of the aggrieved party.

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

108 *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the p reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”*

11. There is no dispute to the proposition of law settled in the judgments cited by learned counsel for the petitioners, however the same are distinguishable on the facts of the present case and are of no help to the case of the petitioners.

12. Thus this Court under its inherent jurisdiction cannot go into the issue involved in the case which can be determined only by the trial Court after the appreciation of evidence before it. Hence this Court does not find any merit in the present petition and thus, the same is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

22.11.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No