

2025:PHHC:053998



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

**CRM-M-28175-2013
DECIDED ON: 25.04.2025**

HARINDERPAL SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.C.Sharma, Advocate for the Petitioner.
Mr. Rajiv Verma, DAG, Punjab
Mr. Kulbir Singh Sekhon, Advocate
for the Respondent No.2

SANDEEP MOUDGIL, J

1. The petitioner, in the present petition, prays for quashing of FIR No.187 dated 18.12.2006, under Section 420 of the Indian Penal Code, registered at Police Station Mehna, District Moga, and subsequent proceedings arising therefrom on the basis of submissions facilitated in the present quashing petition.

2. The allegations in the FIR are that the present petitioner entered into an agreement to sell dated 22.12.2005 and took rupees 6 lacs as earnest money and promised to execute the sale deed on or before 1.05.2006 but ultimately did not execute the sale deed. Further, it is alleged in the FIR that the petitioner concealed the pendency of civil suit between him and his sister from the complainant.

3. It is contended by the learned counsel for the petitioner that the dispute regarding the agreement to sell dated 22.12.2005 has already been settled

by the civil court wherein it has been observed that the agreement to sell was not entered into to transfer the land or title or execution of sale deed but it was simply entered into to keep it as a surety of rupees 6 lacs which was given by the complainant to Harinderpal Singh-present petitioner therefore no intention of cheating can be seen on the part of the petitioner.

4. It is further contended that the complainant has already lost the suit for specific performance of the execution of agreement dated 22.12.2005 regarding which the aforementioned FIR has been registered and the learned Civil Suit has granted alternative relief I.e for recovery of Rs.6 lacs along with interest on this amount @12% per annum from the adte of agreement till institution of suit and @6% per annum from the date of institution of suit till realization to the complainant.(Annexure P-2).

5. It is vehemently argued that the civil court has clearly observed vide order dated 5.08.2010 that the agreement to sell is required to be seen as a whole and further it is observed that in case, the present petitioner repays the amount within stipulated period, the agreement will be deemed as canceled.

6. Learned counsel for the State while referring to reply by way of an affidavit dated 22.11.2013 submits that Respondent no.2 had moved an application before the SSP, Moga with the allegation that the present petitioner had entered into the agreement to sell his land measuring 16 kanals situated in the area of village Chuhar Chak for Rs.10 lacs vide agreement dated 22.12.2005 but the same was not executed by the petitioner and instead he filed a civil suit through his sister regarding property in question. Therefore, a clear cut case of cheating and fraud is made out against the petitioner and the present petition is liable to be dismissed.

7. Heard learned counsel for the parties at length.

8. Before proceeding with the order, it will be necessary to sum up the controversy between the parties. The dispute between the parties as alleged in the FIR that the present petitioner entered into an agreement to sell dated 22.12.2005 and took rupees 6 lacs as earnest money and promised to execute the sale deed on or before 1.05.2006 but ultimately did not execute the sale deed. Further, it is alleged in the FIR that the petitioner concealed the pendency of civil suit between him and his sister from the complainant. However, from perusal of the record in hand, it is evident that the complainant has already lost the suit for specific performance of the execution of the agreement dated 22.12.2005 with an observation that in case, Harinderpal Singh-present petitioner repays the amount within stipulated time period i.e. 1.05.2006, the agreement will be deemed as canceled. This observation shows that the intention of the petitioner was not to sell his land, rather the agreement was executed in order to secure the amount. Further, even the appeal filed by the complainant against the aforementioned judgment has also been dismissed vide its order dated 24.04.2012(Annexure P-4).

9. It is a settled proposition of law that mere non-performance of an agreement to sell by itself does not amount to the offence of cheating. In the instant petition, Respondent no.2 had clearly availed the adequate remedy which has been dismissed by the appellate court. Therefore, registration of FIR only appears to be an arm-twisting mechanism to pressurize the petitioner to execute the agreement. Every civil wrong cannot be converted into a criminal wrong and the respondent no.2 has tried to abuse the criminal machinery for ulterior motives.

Moreover, an offence under section 420 IPC requires:-

- (i) Fraudulent or dishonest inducement,
- (ii) Intention to deceive, and

(iii) Dishonestly inducing the person to deliver property or alter valuable security.

In the instant petition, no iota of evidence can be made out on the basis of the complaint wherein the complainant did not reveal any elements or ingredients necessary to constitute the offence of cheating. The act of the petitioner at best constitutes a civil wrong and does not call for any criminal action against them. A civil wrong cannot be given a criminal colour merely to coerce the petitioner in registering the sale agreement. The Judicial process cannot be used as a tool to enforce specific performance of an agreement.

10. The Apex Court in case titled *Radhyeshyam & ors vs State of Rajasthan & Anr 2024 LiveLaw(595)* has led that “ *Mere non registration of the sale or its refusal cannot amount to cheating. The delivery of the advance payment towards consideration was made in furtherance of an Agreement to Sell and it is not the case of the respondent that he was in anyway deceived or duped to make such payments to the appellants*”.

11. Resultantly, the petitioner has been able to make out a case in his favour for quashing of present FIR No.187 dated 18.12.2006 under Section 420 of the Indian Penal Code, registered at Police Station Mehna, District Moga, and accordingly, the present petition is allowed and the above referred FIR is hereby ordered to be quashed qua the present petitioner.

12. Ordered accordingly

25.04.2025
Meenu

(SANDEEP MOUDGIL)
JUDGE

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