
Before Surya Kant, J.

MOHINDER KAUR,—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

CRIMINAL MISC. NO. 24440/M OF 2006

14th February, 2007

Code of Criminal Procedure, 1973—S. 482—Quashing—Dispute regarding execution of sale deed—Civil suit pending between parties—Registration of FIR u/s 406/420 IPC—Complainant admitting receipt of legal notice and telegram sent by petitioner—Complainant himself extending date of execution of sale deed—Dispute between parties is purely of civil nature—Initiation of criminal proceedings is a clear abuse of process of law—Petition allowed, FIR and proceedings arising therefrom quashed.

Held, that neither in the reply to this petition nor during the course of hearing respondent No. 2 has disputed the receipt of legal notice or the telegram. In fact, the receipt thereof is duly admitted by respondent No. 2 in his reply to the legal notice. Thus, the precise nature of dispute which arose between the parties is as to whether or not respondent No. 2 was in a position to pay Rs. 10 lacs as a part of the sale consideration to the petitioner, firstly on 10th September, 2004 and thereafter on or before 10th December, 2004. This issue is directly and substantially involved in the civil suit pending between the parties.

(Para 18)

Further held, that the fact that respondent No. 2 got an unusual lengthy period of one year for execution of the sale deed, also indicates that he was not in a position to arrange huge amount of the total sale consideration of more than Rs. 1 crores. It further strengthens the petitioner's plea that respondent No. 2 was unable to pay the part of the agreed sale consideration and, thus, failed to perform his part of the contract. There can be no escape but to hold that the dispute is purely of civil nature and initiation of criminal proceedings in relation thereto is a clear abuse of the process of law.

(Para 20 and 21)

Puran Singh Hundal, Advocate, *for the petitioner.*

B. S. Baath, Assistant Advocate General, Punjab for
respondents No. 1.

Ankur Mittal, Advocate, for respondent No. 2.

ORDER

SURYA KANT, J.

(1) In this petition under section 482 Cr. P.C., the petitioner has sought quashing of FIR No. 127/2005, dated 3rd September, 2005, under sections 406/420 IPS, registered at Police Station Dakha, District Ludhiana and the proceedings, if any, arising out therefrom.

(2) The facts may be briefly noticed.

(3) The petitioner is a 60 years old widow. She, being owner in possession of agricultural land measuring 4 acres situated at village Bhanohar, P.S. Dakha, District Ludhiana, entered into an agreement to sell dated 27th September, 2004 (Annexure P2) with respondent No. 2 to sell the said land to him at the rate of Rs. 26,50,000 per acre. Out of the total sale consideration of Rs. 1.06 crores, the petitioner was paid earnest money of Rs. 15 lacs by respondent No. 2 on 27th September, 2004. It was stipulated in the agreement that respondent No. 2 shall further pay a sum of Rs. 10 lacs to the petitioner by 10th November, 2004, whereas the balance amount of sale consideration was to be paid at the time of execution of the sale deed, for which the last date agreed upon between the parties was 25th October, 2005.

(4) It is alleged that respondent No. 2 failed to make further payment of Rs. 10 lacs by 10th November, 2004, he therefore, approached the petitioner for extension of time of which the petitioner agreed and both the parties made the following endoresment on the agreement to sell itself :—

“Today, i.e. 10th November, 2004 the period of part payment which was to be paid to me has been extended to 10th December, 2004 with the consent of both the parties. The remaining terms and conditions will remain the same as before.”

(5) It is the petitioner's case that respondent No. 2 failed to pay the amount of Rs. 10 lacs by the extended date of 10th December, 2004 also, therefore, the petitioner served him with a notice dated

13th December, 2004 (Annexure P-3) asking him to make the said payment within one more week. Respondent No. 2, however, did not make the payment despite the said notice.

(6) On 20th December, 2004, the petitioner sent a telegram to respondent No. 2 (Annexure P-4) informing him that since he had failed to pay the agreed amount of Rs. 10 lacs within the stipulated period, the agreement dated 27th September, 2004 stood cancelled.

(7) Thereafter, respondent No. 2 sent a reply dated 21st December, 2004 (copy Annexure P-5) to the above-mentioned legal notice, taking the plea that he never refused to make payment of Rs. 10 lacs and in fact the same was offered by him several times to the petitioner but she did not receive the same on the plea that she had not so far got the documents of title completed in her favour. It was also claimed that respondent No. 2 was still ready and willing to perform his part of the agreement.

(8) On 1st June, 2005, the petitioner sold her land to a third party and executed the sale deed.

(9) On 27th August, 2005, respondent No. 2 filed a civil suit for possession by way of specific performance of the agreement to sell dated 27th September, 2004 (copy Annexure P-6) in respect of the subject land and also sought a declaration that the sale deed dated 1st June, 2005 executed by the petitioner was illegal, null and void and ineffective *qua* his rights. He also sought a decree of permanent injunction against the subsequent vendee.

(10) The petitioner is contesting the above stated suit and has already filed a written statement dated 26th September, 2005 (Annexure P-7). Admittedly, the civil suit is still pending.

(11) Meanwhile, respondent No. 2 got the impugned FIR registered against the petitioner, the relevant contents of which read as follows :—

“...She agreed to execute the sale deed of the said property in favour of the complainant on or before 25th October, 2005. The complainant several times approached the accused No. 1 with a request to receive the amount from him as per the terms of the agreement and to execute the sale deed of said property in favour of the complainant but she always avoided to do so, in fact the accused No. 1 was having

mala fide intention at the time of execution of the agreement to sell in favour of the complainant and she in connivance with accused No. 2 and 3 hatched up a criminal conspiracy with each other to cheat the complainant and to cause wrongful loss to him and wrongful gain to themselves and with this motive, instead of executing the sale deed of the property in question in favour of the complainant in terms of agreement to sell dated 27th September, 2004, the accused No. 1 sold the said property to accused No. 3 and in this regard she executed a sale deed dated 1st June, 2005 in their favour. This act has been done by all the accused in connivance with each other to cheat the complainant. In fact, the accused No. 1 and 2 were having *mala fide* intentions when accused No. 1 executed an agreement to sell the property in question in favour of the complainant and both the accused No. 1 and 2 induced the complainant to part with the amount of Rs. 15 lacs as advance money. The accused No. 1 having the knowledge that she has agreed to sell the property to the complainant has further sold it to the accused No. 3. The factum of agreement to sell having been executed by accused No. 1 in favour of complainant is also in the knowledge of accused No. 3 but all the accused in connivance with each other have played fraud with the complainant and have cheated him.....”

(12) The sole foundation of the above stated FIR appears to be some recital in the sale deed dated 1st June, 2005 executed by the petitioner in favour of the subsequent vendee wherein it is stated that the said sale deed was executed pursuant to an alleged “oral agreement to sell” entered into between the petitioner and the subsequent vendee even prior to the agreement to sell dated 27th September, 2004 which the petitioner executed in favour of respondent No. 2, complainant.

(13) Impugning the FIR in question, the petitioner has raised two fold contentions. Firstly, it is argued tht the dispute between the parties is purely of civil nature and in relation thereto a civil suit has already been filed by respondent No. 2. It is contended that the impugned FIR is a device to arm-twist the petitioner to accede to respondent No. 2’s prayer in the civil suit, even when he himself

breached the contract between the parties. The second contention is that the petitioner never refused to execute the sale deed in favour of respondent No. 2 for the reason that she had already entered into an "oral agreement to sell" in respect of the same land with the subsequent vendee.

(14) According to the petitioner, no such "oral agreement to sell" was ever executed between her and the subsequent vendee nor there is even *iota* of evidence that a part of sale consideration had been received by her pursuant to any such agreement. It is explained that the petitioner was in dire need of money to pursue academic career of her daughter who was studying in MBBS course.

(15) In order to strengthen his contention, Learned Counsel for the petitioner relies upon the following judgments :—

- (i) **Murari Lal Gupta versus Gopi Singh (1).**
- (ii) **Anil Mahajan versus Bhor Industries Ltd. and another, (2).**
- (iii) **Arun Kumar and another versus State of Punjab and another, (3).**

(16) On the other hand, Learned Counsel for respondent No. 2 is primarily harping upon the recitals in the sale deed dated 1st June, 2005 and argues that since the petitioner had already entered into an "oral agreement to sell" with the subsequent vendee, the amount of Rs. 15 lacs received by her as earnest money, was a clear attempt to cheat respondent No. 2 as he was induced to make the said payment on a false plea that the land was free from all types of incumbrances. He, too has relied upon the following judgements in support of his contention :—

- (i) **M/s Indian Oil Corporation versus M/s NEPC India Ltd. and Another (4).**
- (ii) **M/s Medohi Chemicals and Pharma Pvt. Ltd. versus Biological E. Ltd. (5).**

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- (1) (2006) 2 S.C.C. (CrI.) 430
 - (2) (2006) 1 S.C.C. (CrI.) 746
 - (3) 2006 (3) R.C.R. (CrI.) 793
 - (4) 2006 (3) R.C.R. (CrI.) 740
 - (5) 2000 (2) R.C.R. (CrI.) 122

(17) After hearing Learned Counsel for the parties, I am of the considered view that the only issue which requires determination is as to whether or not the dispute between the parties is of civil nature.

(18) It may be noticed at the outset that neither in the reply to this petition nor during the course of hearing, learned Counsel for the respondent No. 2 has disputed the receipt of legal notice (Annexure P-3) or the telegram (Annexure P-4). In fact, the receipt thereof is duly admitted by respondent No. 2 in his reply to the legal notice (Annexure P-5). Thus, the precise nature of dispute which arose between the parties is as to whether or not respondent No. 2 was in a position to pay Rs. 10 lacs as a part of the sale consideration to the petitioner, firstly on 10th September, 2004 and thereafter on or before 10th December, 2004. This issue is directly and substantially involved in the civil suit pending between the parties.

(19) Neither in the FIR nor in his reply, respondent No. 2 has demonstrated that he had sufficient funds at his disposal to discharge the said liability within the stipulated period. The fact that respondent No. 2 sought extension in time, which was granted to him by the petitioner for the said payment, by itself is a strong circumstance to demolish the plea taken by respondent No. 2 that he had been ready and willing to make the said payment. The vendor had agreed to sell the land as she was in dire need of money.

(20) The fact that respondent No. 2 got an unusual lengthy period of one year for execution of the sale deed, also indicates that he was not in a position to arrange huge amount of the total sale consideration of more than Rs. 1 crores. It further strengthens the petitioner's plea that respondent No. 2 was unable to pay the part of the agreed sale consideration and thus, failed to perform his part of the contract.

(21) In sum and substance, there can be no escape but to hold that the dispute is purely of civil nature and initiation of criminal proceedings in relation thereto is a clear abuse of the process of law. Any further observation, at this stage, may unnecessarily prejudice either of the parties in the pending civil suit.

(22) Consequently, and for the reasons aforestated, this petition is allowed ; the impugned FIR and the proceeding arising therefrom are hereby quashed.