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**(2011) 03 P&H CK 0405**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CRM No. M-1100 of 2011

Rupesh Arora and Another

APPELLANT

Vs

The State of Punjab

RESPONDENT

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**Date of Decision:** March 4, 2011

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 420, 465, 467, 468, 471

**Hon'ble Judges:** S.S. Saron, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

S.S. Saron, J.

This petition has been filed seeking pre-arrest bail in a case registered against the Petitioners who are the sons of Mahant Ramparkash seeking pre-arrest bail in case FIR No. 199 dated 24.08.2010 registered at Police Station Tarn Taran for the offences under Sections 420, 465, 467, 468 and 471 IPC.

2. The FIR, in the case, has been registered on the complaint of Mahant Chamkaur Singh, who has alleged that the property of Dharam-Arth has been misappropriated by the Petitioners. It is alleged that the property of Dera Addan Shahi Dharamshala, Katra Hari Singh, Amritsar and Dera Addan Shahi Dharmashala, Tikana Bhai, Tarn Taran is the property of Bhai Kanhaya Sewa Panthi Sect. The management of the same is done by the Mahants appointed to the Gaddi from time to time. There is a Will of Mahant Ramparkash (father of the Petitioners), which has been attached. The Petitioners have no right to the property of the Deras. However, Anoop Dass (Petitioner No. 2) in the year, 1975 leased out the property of Tarn Taran Dera unauthorizedly to Gurmukh Dass, Sanjeev Kumar and Kamlesh Rani. On 09.02.1996, Pushpa Rani (mother of the Petitioners) executed an illegal sale deed of property of Tarn Taran Dera at Delhi in favour of Gurmukh Singh, Sanjeev Kumar and Kamlesh Rani. The said sale deed was witnessed by the Petitioners. The Petitioners constituted HUF of the property of the Dera for the purposes of misappropriation

and executed illegal registered sale deeds. A case with regard to the property was decided against them on 08.04.2009 by the Civil Court at Amritsar. The registered sale deed and lease deeds were cancelled. It is also stated that the Punjab Government had ordered that the religious property of the Dera should not be sold but the persons had misappropriated the religious properties.

3. Learned Counsel for the Petitioners has contended that the dispute is purely civil in nature and no offence is made out against the Petitioners. The question of ownership, it is submitted, is subject to the decision of the Civil Court. It is accepted that although the civil suit filed by Sewa Panthi Addan Shahi Sabha (registered) against the Petitioners, their mother-Pushpa Rani and others has been decreed in favour of the Plaintiff-Sewa Panthi Addan Shahi Sabha vide judgment and decree dated 08.04.2009. However, appeal titled Rupesh Arora and Anr. v. Sewa Panthi Addan Shahi and others is pending in the Court of Additional District Judge, Amritsar and operation of the impugned order has been stayed vide order dated 02.06.2009 (Annexure P-4). Reliance has been placed on Md. Ibrahim and Ors. v. State of Bihar and Anr. 2009(4) RCR 369 to contend that where an accused had sold property of the owner claiming himself to be owner, the accused can be said to have cheated the purchaser and not the owner and the purchaser can file a complaint u/s 420 IPC and not the owner.

4. In response, learned Counsel for the State has submitted that the Petitioners have sold the property of the Dera and committed the offence of cheating and misappropriation of the Dera properties. It is submitted that the purchasers of the property acted in collusion with the Petitioners. Besides, the purchasers Mahant Gurmukh Das and others filed an application for pre-arrest bail i.e. CRM No. M-27984 of 2010, which has been dismissed by this Court vide order dated 04.10.2010 (Annexure P-14). The said purchaser-Mahant Gurmukh Dass and others then filed Special Leave to Appeal Petition bearing SLP (Criminal) No. 8634 of 2010 in the Hon'ble Supreme Court of India against the order dated 4.10.2010 (Annexure P14), which has been dismissed on 09.11.2010. It is submitted that the sale deed of the Dera property was executed on 09.02.1996 by Pushpa Rani (mother of the Petitioners) at Delhi and the Petitioners signed the same as attesting witnesses. The ratio of the judgment in Md. Ibrahim and others case (Supra), it is submitted, is not applicable as it is a case of misappropriation of the Dera property in collusion with the purchasers of the property and not a case of mere cheating.

5. I have given my thoughtful consideration to the contentions of learned Counsel for the parties and with their assistance gone through the record. The Petitioners are the attesting witnesses to the sale deed dated 09.02.1996 which was executed by their mother-Pushpa Rani. In pursuance of the said sale deed, land measuring 11 Kanals 1 Marlas situated in District Amritsar, has been sold. In the sale deed, it is recited that the said property pertains to Mahant Ram Paraksh and after his death, the said property stood transferred in the name of Anoop Dass (Petitioner No. 2) in

the revenue record, HUF. The vendor-Pushpa Rani acquired the said property through Court decree passed in Civil Suit No. 172 of 1980 by the learned Sub Judge Ist Class, Amritsar and the property had been leased in favour of Pushpa Rani since long as a lessee. The vendee paid the leased amount to the vendor till date. The vendor had also assured the vendee that the property was free from all types of encumbrances; besides, the vendor needs the money and she sold the property for a sum of Rs. 1 lac and the ownership was delivered to the vendee. The Petitioners are signatories to the said sale deed as witnesses. The property, however, as per the revenue records is owned by the Dera. The Punjab Government has issued a notification dated 07.12.1987 to the effect that the property of the Trust and Dera cannot be transferred. The sale deed was got executed at Delhi to avoid the notification dated 07.12.1987 of the Punjab Government. An enquiry into the matter was conducted by DSP and it is after enquiry that the FIR was registered. During enquiry it was established that the property belongs to the Dera. The application for pre-arrest bail of the purchasers of the property namely Mahant Gurmukh Dass and others has been dismissed by this Court in terms of order dated 04.10.2010 (Annexure P-14) passed in CRM No. M-27984 of 2010. The SLP bearing SLP (Criminal) No. 8634 of 2010 has also been dismissed by the Hon'ble Supreme Court of India on 09.11.2010. The case of Md. Ibrahim and Ors. (supra) referred to by the learned Counsel for the Petitioners, would be inapplicable to the facts of the present case as the property has been obtained by the Petitioners and sold by misappropriation of the Dera properties. The father of the Petitioners was the Mahant of the Dera and the property was not shown to be in his name and he managed the property of the Dera only as Mahant or Mohatmim. The Petitioners represented that the property was their HUF property and they got a decree passed in Civil Suit No. 172 of 1980 by which the property was given to their mother-Pushpa Rani and through Pushpa Rani, it was sold to Mahant Gurmukh Dass and others. The purchaser in the present case it has been alleged acted in collusion with the Petitioners. Therefore, it is not a case where only the purchaser was deceived in the present case, the purchaser himself is an accused and is alleged to have colluded with the Petitioners for the purchase of the property.

6. In the facts and circumstances, no ground for grant of concession of pre-arrest bail to the Petitioners is made out.

7. The criminal miscellaneous petition is accordingly dismissed. Nothing observed or stated herein shall be construed as an expression of opinion on the merits of the case and the learned investigating authorities and the Court, as the case may be, shall consider the case on the basis of material before it and un-influenced by any observations made herein.