
(2007) 02 P&H CK 0136

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 24440-M of 2006

Mohinder Kaur

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: Feb. 14, 2007

Acts Referred:

- Penal Code, 1860 (IPC) - Section 406, 420

Citation: (2007) 20 CriminalCC 825

Hon'ble Judges: Surya Kant, J

Bench: Single Bench

Advocate: Puran Singh Hundal, for the Appellant; B.S. Baath, Asstt. Advocate General, Punjab for Respondent No. 1 and Mr. Ankur Mittal for the Respondent No. 2, for the Respondent

Final Decision: Allowed

Judgement

Surya Kant, J.

In this petition u/s 482 Cr.P.C. the petitioner has sought quashing of FIR No. 127/2005 dated 03.09.2005, under Sections 406/420 IPC, 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 27.09.2004 (Annexure P-2) 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 27.09.2004. 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 25.10.2005.

4. It is alleged that respondent No. 2 failed to make further payment of Rs. 10 lacs by 10.11.2004, he, therefore, approached the petitioner for extension of time to which the petitioner agreed and both the parties made the following endorsement on the agreement to sell itself:-

Today, i.e. 10.11.2004 the period of part payment which was to be paid to me has been extended to 10.12.2004 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 10.12.2004 also, therefore, the petitioner served him with a notice dated 13.12.2004 (Annexure P3) 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 20.12.2004, the petitioner sent a telegram to respondent No. 2 (Annexure P4) informing him that since he had failed to pay the agreed amount of Rs. 10 lacs within the stipulated period, the agreement dated 27.09.2004 stood cancelled.

7. Thereafter, respondent No. 2 sent a reply dated 21.12.2004 (copy Annexure P5) 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 01.06.2005, the petitioner sold her land to a third party and executed the sale-deed.

9. On 27.08.2005, respondent No. 2 filed a civil suit for possession by way of specific performance of the agreement to sell dated 27.09.2004 (copy Annexure P6) in respect of the subject land and also sought a declaration that the sale-deed dated 01.06.2005 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 26.09.2005 (Annexure P7). 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 25.10.2005. 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 Nos. 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 27.09.2004, the accused No. 1 sold the said property to accused No. 3 and in this regard she executed a sale-deed dated 01.06.2005 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 Nos. 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 Nos. 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 01.06.2005 executed by the petitioner in favour of the subsequent vendee wherein it is stated that the 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 27.09.2004 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 that 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 v. Gopi Singh, 2006 (2) SCC 430;

(ii) Anil Mahajan v. Bhor Industries Ltd. and Another, 2006 (1) SCC 746;

(iii) Aran Kumar & Another v. State of Punjab & Another, 2006 (3) CCC 848 (P&H) : 2006 (3) RCR 793.

16. On the other hand, Learned Counsel for respondent No. 2 is primarily harping upon the recitals in the sale-deed dated 01.06.2005 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 encumbrances. He, too, has relied upon the following judgments in support of his contention:-

(i) M/s. Indian Oil Corporation v. M/s. NEPC India Ltd. and Another, 2006 ACJ 04 (S.C.) : 2006 (3) CCC 640 (S.C.) : 2006 (3) RCR 740;

(ii) M/s. Medical Chemicals & Pharma Pvt. Ltd. v. Biological E. Ltd., 2000 ACJ 480 (S.C.) : 2000 (2) RCR 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 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 P3) or the telegram (Annexure P4). In fact, the receipt thereof is duly admitted by respondent No. 2 in his reply to the legal notice (Annexure P5). Thus, the precise nature of dispute which arose between the parties is as to whether or not respondent No. 2 was a position to pay Rs. 10 lacs as a part of the sale consideration to the petitioner, firstly on 10.09.2004 and thereafter on or before 10.12.2004. This issue is directly and substantial 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 afore-stated, this petition is allowed; the impugned FIR and the proceedings arising therefrom are hereby quashed.