

(2010) 10 P&H CK 0349

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M- 40742 of 2007

Paramjit Singh and Others

APPELLANT

Vs

Gurmeet Singh Wadalia and
Another

RESPONDENT

Date of Decision: Oct. 26, 2010

Acts Referred:

- Chandigarh (Sale of Sites and Building) Act, 1950 - Section 11D
- Criminal Procedure Code, 1973 (CrPC) - Section 192, 202, 482
- Penal Code, 1860 (IPC) - Section 120B, 380, 420, 454, 467

Hon'ble Judges: Sabina, J

Bench: Single Bench

Judgement

Sabina, J.

Petitioners have filed this petition u/s 482 of the Code of Criminal Procedure for quashing of complaint (Annexure P-6) and summoning order dated 17.3.2007 (Annexure P-7) passed by the Judicial Magistrate, 1st Class, Chandigarh summoning the Petitioners, under Sections 420/120B of the Indian Penal Code ("IPC" for short).

2. The case of the complainant, as stated in the complaint (Annexure P-6), reads as under:

1. That the complainant is law abiding citizen. He is in possession of ground floor as per registered Lease Deed cum Agreement to sell which was duly registered at office of Sub Registrar, U.T., Chandigarh vide S. No. 175, Book No. 11, Volume No. 133, dated 8.4.2003.

2. That the accused Nos. 1 to 3 are co-owners of the said house.

3. That the complainant has taken the said accommodation on lease Deed agreement to sell dated 8.4.2003 between complainant and accused persons. The said Lease was for three years, commencing from 1.4.2003 to 31.3.2006. The rent

settled was Rs. 15,000/- p.m. The complainant paid Rs. 578688/- in cash in advance in lieu of the rent of entire three years.

4. That during negotiations for leasing out ground floor of the said house to the complainant, the accused persons also showed their interest in selling the said house. The complainant agreed to purchase the said house. It was settled between complainant and accused persons that total consideration in lieu of said house would be Rs. 6250000/-, out of which Rs. 12,00,000/- was to be paid as earnest money. The said clause was also incorporated at para No. 4 in the lease deed.

5. That accordingly, as per lease deed, complainant paid Rs. 12,00,000/- to accused persons through three cheques each of Rs. 4,00,000/- in favour of accused Nos. 1, 2 and 3. The details of said cheques are mentioned below:

i) Cheque No. 007526 dated 8.4.2003 Rs. 4,00,000/-.

ii) Cheque No. 007527 dated 8.4.2003 Rs. 4,00,000/-.

iii) Cheque No. 007528 dated 8.4.2003 Rs. 4,00,000/-.

All the said cheques were drawn on HSDC, Sector 9, Chandigarh and the remaining amount of Rs. 50,50,000/- was payable at the time of registration of the sale deed of the said house. The said sale deed was agreed to be registered. After expiry of lease deed i.e. 31.3.2006. This clause is also mentioned at para No. 4 of the lease deed. The said cheques were duly encashed by accused persons.

6. That at the time of agreement, accused persons assured complainant that the said property was free from any encumbrances. As per agreement, accused persons also agreed to hand over the possession of first floor of the said House No. 1544, Sector 18/B, Chandigarh to the complainant on 25.6.2003 and accordingly, duplicate keys of the first floor were handed over to the complainant. Accused persons also received a sum of Rs. 67,000/- from the complainant in lieu of house hold articles lying on the first floor.

7. That as per agreement, accused persons were to receive the remaining amount of Rs. 50,50,000/- at the time of registration of the sale deed which was to take place on the expiry of period of lease deed i.e. After 31.3.2006 but accused persons started pressurizing and demanding more advance from the complainant. Therefore, complainant was left with no option but to issue three cheques of Rs. 1,00,000/- each in favour of the three accused. Complainant issued cheque Nos. 125600, 125681 and 125682 all dated 12.3.2004 drawn on Oriental Bank of Commerce, Sector 17-B, Chandigarh. The said cheques were duly encashed by the accused persons.

8. That after 8.4.2003, the prices of property in Chandigarh had shot up. Due to this accused persons became dishonest and they tried to back out from the said agreement in every possible way. They tried to persuade complainant many times to

revoke the said agreement and take back his advance given for the house, but complainant refused to back out from the said contract. Accused persons threatened complainant telephonically on number of occasions and in the month of October and November, 2004 accused persons came to the said house with anti social elements and threatened the complainant to leave the house or he has to face the dire consequences.

9. That the complainant apprehending his illegal dispossession from the said house by the accused persons filed a suit for permanent injunction restraining the accused persons from interfering in the peaceful possession of the complainant. The said civil suit was pending in the court of Ms. Kiran Bala, Civil Judge, Jr. Division, Chandigarh. On 11.11.2004 the Hon"ble Court directed the parties to maintain status quo regarding possession.

10. That on 11/04 complainant contacted concerned official of Estate Officer, Chandigarh in order to inform his regarding the order of grant of status quo by the Hon"ble Court. The official of Estate Office informed complainant that the disputed property was ordered to be resumed by Estate Officer due to the misuse of the said property by accused and the litigation regarding same was pending.

11. That an enquiry, complainant came to know that the disputed property was resumed by the Assistant Estate Officer, U.T., Chadigarh vide order dated 4.1.1980. Accused filed revision petition (Revision Petition No. 9 of 1982) against the said order before Chief Commissioner, U.T., Chandigarh but the same was dismissed vide order dated 25.9.1984. Against the above said two orders dated 4.1.1980 and 25.9.1984 accused No. 2 filed Civil Writ Petition No. 18800 of 1997 in the Hon"ble High Court of Punjab and Haryana and the same was dismissed by Hon"ble Division Bench of Punjab and Haryana High Court by order dated 6.10.1998. While dismissing the said petition, Hon"ble High Court held that accused No. 2 is entitled to invoke the provisions of Section 11D of Chandigarh (Sale of Sites and Building) Act, 1950. In accordance with the Hon"ble High Court orders, accused No. 2 filed an application u/s 11-D of Chandigarh (Sales of Sites and Building) Act, 1950 before Estate Officer, U.T., Chandigarh. The Estate Officer, U.T., Chandigarh vide order dated 14.1.2000 ordered that the property will be restored back to the accused subject to the payment of Rs. 4186589/ - besides other penalties. Against the said order dated 14.1.2000, accused Nos. 2 and 3 filed a revision petition. The said revision petition was dismissed vide order dated 9.8.2000. Accused No. 2 filed writ petition No. 13192 of 2000 before Hon"ble High Court of Punjab and Haryana challenging the order dated 9.8.2000 which is still pending.

12. That the order of Estate Officer, dated 14.1.2000 vide which accused persons were directed to pay Rs. 4186589/ - and other penalties for the restoration of the disputed property still stands. In such circumstances, till this order is set aside or amount is paid by accused or accused get clearance after paying dues, accused persons cannot in any circumstances alienate the property in question. The said act

was in the knowledge of accused persons at the time when they entered into agreement with complainant for leasing and selling the said property and at the time of receiving advance of Rs. 12.00 lacs for the sale of the property and thereafter, at the time of receiving Rs. 3,00,000/- as advance for the sale of said property and Rs. 67,000/- in lieu of house hold articles lying on the first floor. Accused persons despite knowing fully well that they had no right to sell or lease out the said property or to enter into agreement of sale with complainant, still received total sum of Rs. 15,67,000/- from complainant by concealing the true status of said property.

13. That complainant sent complaint u/s 420 read with Section 120B against accused persons of SSP, Chandigarh but no action was ever taken.

14. That complainant apprehending dishonest intention of accused persons of dispossessing the complainant from the said property by backing out from the said agreement or by unfair means, got certified copy of the Lease Deed dated 8.4.2003 from the office of Sub Registrar, U.T., Chandigarh.

15. That accused No. 1 lodged FIR in retaliation as a pre emptive measure against complainant and his wife. (FIR No. 235 dated 4.12.2004 Underr Section 454, 380, 467, 471, 420, 120B IPC, P.S. Sector 19, Chandigarh.

16. That the complainant got examined signatures of accused No. 1 affixed on lease deed with the specimen signatures of accused No. 1 from the handwriting experts. The said hand writing experts opined that signatures present on lease deed dated 8.4.2003 and specimen signature are of same persons i.e. accused No. 1.

17. That the lease deed dated 8.4.2003 is registered document. The said deed was registered document. The said deed was registered in the presence of accused persons and was singed by them after thoroughly going through each and every page of said deed.

18. That accused persons have not been able to explain that if they were not interested in selling the property in dispute and if they had not entered into any such agreement as contained in lease deed, then why they had accepted three cheques of Rs. 4,00,000/- each and later on three cheques of Rs. 1,00,000/- each and encashed them which is established from the statements of accounts of the complainant. Accused person have also not been able to give any explanation for accepting Rs. 67,000/- in lieu of property lying on the first floor of the said house.

19. That the accused persons had no right to alienate the property which was resumed by the Estate Office, when they entered into agreement on 8.4.2003.

20. That accused persons with dishonest intention misrepresented to the complainant about the said house that the said house was free from any encumbrance and there was no defect in the title of the property and received Rs. 15,67,000/- from complainant as advance of the said property thereby cheating the

complainant, due to which complainant suffered losses. Accused persons never made any serious efforts to obtain NOC from Estate Officer after payment of the dues/ penalties imposed by the Estate Office for restoring back the said house and instead lodged a false criminal case against complainant and his wife. Accused persons have cheated the complainant.

21. That the comparison of registered lease deed with the lease deed handed over by accused persons to the IO of FIR No. 235/2004 of P.S. Sector 19, Chandigarh and which was later on relief by the Investigating Officer for registration of FIR against the complainant bears no signatures of complainant on forth page of the lease deed.

22. That the accused are trying to wriggle out of the agreement with the complainant because in the meantime, the prices of the real estate have increased and in order to avoid the imminent possibility of resumption of property by the Estate Officer, U.T., Chandigarh.

23. That the negotiations between the complainant and accused took place at Hotel Solitaire at Manimajra, Chandigarh prior to the execution of lease deed/ agreement to sell, where all three accused misrepresented to the complainant that the property in question was totally free from encumbrance and that they were fully empowered/entitled to lease out and sell the said house in question. The perusal of relevant statement of account of complainant establishes that accused persons have encashed cheques worth Rs. 12,00,000/- and Rs. 3,00,000/-. Therefore, the accused has committed offences u/s 420, 120B IPC.

It is therefore, respectfully prayed that the accused persons may kindly be summoned and tried for the offences mentioned above, in the interest of justice.

3. Learned senior counsel for the Petitioners has submitted that the Petitioners had leased out the ground floor of the house in question to the complainant in the year 2003. However, the complainant altered page No. 4 of the lease deed and converted the same into an agreement to sell. In this regard, Petitioner No. 1 lodged FIR No. 235 dated 4.12.2004 against the complainant. Trial qua the said FIR is pending. As a counter blast, the complainant has filed the complaint in question alleging that the complainant party has been cheated by the Petitioners. The Petitioners are the residents of Delhi. Learned trial Court, while passing the summoning order, has failed to conduct an inquiry as envisaged u/s 202 Code of Criminal Procedure In support of his arguments, learned senior counsel has placed reliance on S.K. Bhowmik v. S.K. Arora and Anr. 2007 (4) RCR 650.

4. Learned Counsel for Respondent No. 1 has opposed the petition.

5. Amended Section 202 Code of Criminal Procedure reads as under:

Postponement of issue of process-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over

to him u/s 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made:

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath u/s 200. (2) In an inquiry under Sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath; Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath. (3) If an investigation under Sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

6. A perusal of the summoning order reveals that the learned trial Court, after going through the preliminary evidence led by the complainant has summoned the Petitioners to face the trial u/s 420/120B IPC. However, as per the amended provision of Section 202 Code of Criminal Procedure, in case the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction then the issuance of process shall be postponed against the such accused and the Magistrate shall inquire into the case himself or direct an investigation to be made by a police officer or by any such person as he thinks fit for the purpose of deciding whether or not there are sufficient grounds for proceeding against the accused. In the present case, the learned Magistrate has failed to conduct any inquiry as envisaged u/s 202 Code of Criminal Procedure but has proceeded to summon the Petitioners on the basis of preliminary evidence led by the complainant. The complainant himself appeared in the witness box as CW-3 and has examined CW-1 Pawan Kumar, an official from Advisor to Administration Chandigarh, CW-2 Satish Kumar, Ahlmed of the Court of Judicial Magistrate at Chandigarh, CW-4 Tilak Raj, CW-5 Devinder Parshad, Document Expert and CW-6 Lata Gupta, Ahlmed in the Court of Civil Judge, Jr. Division, Chandigarh. The complainant also tendered some documents in support of his case. The Petitioners are residents of Delhi and in these circumstances, the summoning order passed by the learned trial Court is liable to be set aside as it has been passed in violation of mandatory provisions of Section 202 Code of Criminal Procedure.

7. Accordingly, this petition is partly allowed, the impugned summoning order dated 17.3.2007 (Annexure P-7) is set aside and the Magistrate is directed to pass a fresh order in accordance with law after complying with the mandatory provisions of

Section 202 Code of Criminal Procedure.