

(2017) 07 RAJ CK 0083
In the Rajasthan High Court
Case No : 3278 of 2016

Amit Kumar Choudhary S/o Ratan Lal Choudhary	APPELLANT
Vs	
State of Rajasthan & Anr.	RESPONDENT

Date of Decision : 06-07-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court
Indian Penal Code, 1860, Section 420 - Cheating and dishonestly inducing deliver

Citation : (2017) 07 RAJ CK 0083

Hon'ble Judges : Pushpendra Singh Bhati

Bench : SINGLE BENCH

Advocate : Mahesh Bora, Nishant Bora, @APPELLANT @hash Rajpurohit, Rakesh Matoria

Final Decision : Allowed

Judgement

1. The petitioner has preferred this misc. petition under Section 482 Cr.P.C. for quashing the FIR and its entire subsequent investigation in FIR No.492/16 dated 3.10.2016 Police Station Suratgarh City, for offence u/s 420 IPC.
2. The brief facts as noted by this Court are that the complainant has filed a complaint which was registered as FIR No.492/16. The agreement of sale which is on record was entered between the petitioner and complainant on 19.02.2016. As per the agreement to sale the accused petitioner has received Rs.9 lakhs against the sale and remaining Rs.3 lakhs were to be paid at the time of registration of the sale deed. It was agreed in the agreement that registry shall be made on 15.02.2017. Further, it was also stated in the agreement that at the time of registry, the petitioner shall bring all no due certificates pertaining to any liability upon the property concerned. Both these facts are clearly reflected in the agreement which is annexed along with the petition. The complainant however, without waiting for the due date when the no dues certificate along with necessary formalities were completed i.e. 15.02.2017 filed and FIR dated

3.10.2016. On the bare perusal of the FIR, the allegation is that the agreement was full of mis-representation as the petitioner has not shown the fact of the property being leased and such concealment resulted in the present FIR.

3. The counsel for the petitioner has relied upon the precedent law in the case of Murari Lal Gupta Vs. Gopi Singh reported in (2005)13 SSC page-699. The relevant portion of the judgment reads as follows:- "6. We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Session Judge. Having taken into consideration all the material made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complain is an abuse of the process of the Court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Indian Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the Respondent parted with money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely, because an agreement to sell was entered into which agreement to petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 of the Indian Penal code is made out even prima facie. The complaint filed the respondent and too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurize the petitioner for coming to terms with the respondent.

7.The petition is allowed. The complaint filed by the Respondent in the Court of Judicial Magistrate First Class, Madhepura and registered as Complaint No.120-C/2000 is directed to be quashed. Needless to say, the Respondent is at liberty to pursue such other remedy under the civil law as may be available to him."

4. Counsel for the petitioner has also relied upon the judgment by this Court in S.B. Criminal Misc. Petition No.464/2012 in the matter of Siddharth Vs. State of Rajasthan & Anr. decided on 17.08.2012. The relevant portion of the judgment reads as follows:- "Having considered the arguments advanced at the bar and after going through the FIR impugned as well as the statement of the complainant, it is apparent that the agreement, which was entered into between the parties prescribed a specific date i.e. 15.11.2007 and thereafter 15.1.2008 before which the complainant was to make the payment of the balance amount towards the sale. The complainant in his FIR or his statement recorded under Section 161 Cr.P.C. has not made any averment that he offered to make the remaining payment to the accused and despite that, the accused did not execute the registered sale deed in favour of the complainant. Even if the said allegation had been made, then also, the remedy for the complainant would have been to

file a suit for specific performance. The subsequent sale by the petitioner has been made on 29.11.2010 i.e. nearly 2 1/2 years after the term prescribed in the agreement between the petitioner and the complainant lapsed.

In view of the aforesaid facts, this Court is of the opinion that none of the ingredients of the offences under Sections 406 and 420 IPC are made out from the FIR impugned and the investigation carried out thus far. Accordingly, the misc. petition succeeds and is allowed. The FIR impugned and all proceedings subsequent thereto are hereby quashed.

Stay petition is also disposed of."

5. Counsel for the respondent has harped upon the concealment of the fact that property was on lease by the petitioner at the time of registered agreement.

6. After hearing the counsel and perusing the material on record of the case as well as the precedent law, this Court is of the opinion that the facts of the case clearly point out that the parties were having a registered agreement and non-compliance of the same has resulted into this FIR. Thus, the nature of the dispute in this case is of purely civil nature and also a case of under specific performance is already pending before the competent Court. Moreover, as per the agreement itself, the petitioner was to give the no dues at the time of registered sale deed as stipulated to be executed on 15.02.2017, whereas the FIR has been lodged on earlier date i.e. 3.10.2016.

7. Thus in the aforesaid circumstances, the misc. petition succeeds and deserves to be allowed and the FIR No.492/16 dated 3.10.2016 Police Station Suratgarh City are hereby quashed. The stay petition also disposed of.