

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Writ Petition No. 742/2019.

Muhammad Bilal Raza Madni

Versus

Raja Saleem Janjua, etc.

Petitioner by: Mr. Shuja Ullah Gondal and Mr. Qaiser Imam Ch.,
Advocates

Respondents by: Ms. Ramsha Izhar, State Counsel.
Mr. Ali Hussain Bhatti, Advocate.
Akram, S.I. P.S. Shahzad Town, Islamabad.

Date of Decision: 07.02.2020.

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner has prayed for quashing of FIR No.288, dated 08.12.2018, U/S 420 PPC, P.S. Shahzad Town, Islamabad.

2. Brief facts referred in the instant FIR lodged on the complaint of respondent No.1 are that he is resident of Mohalla Rajgan Farash, Tehsil & District Islamabad and has close relationship with Bilal Raza Madni (petitioner) who alongwith his partner Abdul Rauf persuaded him to purchase land measuring 8-1/2 Marla situated in Khasra Nos. 141, 142, Revenue Estate Farash Islamabad, which is available with Bilal Raza Madni. The land was purchased by complainant/respondent No.1 and he has paid sale consideration of 2-1/2 marla, whereas rest of 06 marla was agreed to be purchased @ Rs.1,30,000/- per marla. The amount of Rs.1,00,000/- was paid as earnest money in presence of witnesses and agreement was executed and as such remaining sale consideration of Rs.6,80,000/- was to be paid on 05.01.2017 but the petitioner has failed to transfer the land on the date fixed as

he was not owner of land in the said khasra numbers and as such committed the offence of fraud and criminal breach of trust.

3. Learned counsel for the petitioner contends that petitioner is owner of land and he has made an offer to the respondent/complainant for transfer of the land in his name but despite this position, respondent No.1 is reluctant and got lodged the instant case, whereas no offence is made out from the bare reading of the FIR; that respondent No.1 has also filed suit for permanent and mandatory injunction which is pending before the competent Civil Court and entire issue revolves around the civil dispute; that petitioner has also filed suit for declaration, cancellation, restoration of possession, mandatory and permanent injunction, which is pending before the learned Civil Court as petitioner is seeking recovery of his land which has already been delivered to respondent No.1/complainant.

4. Conversely, learned counsel for respondent No.1 contends that petitioner was not owner of land in khasra Nos.141, 142, Mouza Farash, Islamabad and he has arranged the land after registration of criminal case, however, offence has already been constituted and dispute is not of civil nature; that petitioner can approach the trial Court through alternate remedy in terms of Section 249-A Cr.P.C., if circumstances warrant that no probability of conviction is visible in the instant matter, therefore, instant writ petition is not maintainable.

5. Arguments heard, record perused.

6. Perusal of record reveals that complainant/respondent No.1 entered into an agreement with petitioner on 22.10.2016 for the purchase of land measuring 06 marlas @ Rs.180,000/- per marla and has paid an amount of Rs.1,00,000/- as earnest money, however, when he contacted the petitioner for transfer of land on the cutoff date i.e. 05.01.2017 it revealed that petitioner is

not owner of land in the said khasra Nos.141, 142, Mouza Farash, Tehsil & District Islamabad, as a result whereof FIR No.288, dated 08.12.2018, U/S 420 PPC, P.S. Shahzad Town, Islamabad was registered. During the hearing of this case, this Court called the report from Halqa Patwari, who has submitted the following report:-

تالیع حکم افسران بالا ریکارڈ موضع فراش ملاحظہ کیا گیا ہے بعد ملاحظہ ریکارڈ معلوم ہوا کہ نمبر خسرہ 141 میں رقبہ بقدرے (01-7) بحوالہ انتقال نمبر 12021 ہے۔ اور اسی طرح نمبر خسرہ 142 میں سے رقبہ بقدرے (0-5-6) بحوالہ انتقال نمبر 10779 بیچہ، نمبر 11058 بیچہ، نمبر 12180 بیچہ، نمبر 12362 بیچہ، نمبر 11836 بیچہ، نمبر 12103 بیچہ، نمبر 12293 بیچہ کی رو سے مسی محمد بلال رضا مدنی ولد محمد آزاد نے خرید کیا ہے۔ اور اس طرح نمبرات خسرہ 141-142 میں کل رقبہ (0-7-4) سات مرلہ چار سرائی کا مالک قائم ہوا ہے، اور مورخہ 14-12-2018 کو فرد برائے بیچہ رقبہ بقدرے (0-7-4) سات مرلہ چار سرائی دفتر ہذا سے میرے زیر دستخطی جاری ہوا ہے۔

7. The above mentioned report reveals that petitioner is owner of 07 marla & 04 sarsai in Khasra No.141, 142, Mouza Farash, Tehsil & District Islamabad, which has been confirmed from the revenue record and as such the very claim of the complainant/respondent No.1 that petitioner is not the owner of any piece of land, has not been justified from record. However, the facts narrated in the FIR have to be seen in the light of civil suit titled **Raja Saleem Vs. Muhammad Bilal Raza Madni**, whereby respondent No.1 claims the restraining order against the petitioner for his interference in the land in possession of respondent No.1.

8. On the other hand petitioner has already filed a suit for declaration, cancellation, restoration of possession, mandatory and permanent injunction against the complainant before the learned Civil Court and claims his land which was transferred on the basis of agreement dated 22.10.2016.

9. The above referred civil litigation clearly spells out that both the parties are litigating against each other on the basis of agreement and complainant

has also got lodged the FIR with the allegation that petitioner is not owner of any piece of land and has committed the fraud in terms of Section 420 PPC. The offence with which petitioner has been charged in the FIR relates to cheating and dishonestly inducing delivery of property, therefore, it is necessary to go through the definition of cheating, defined in Section 415 PPC

"Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property or intentionally induce the person so deceived to do or omit to do anything is likely to cause damage or harm to that person [or any other person] in body, mind, reputation or property, is said to "cheat". Explanation. A dishonest concealment of facts is a deception within the meaning of this section.

10. The above referred definition have its certain special characteristics whereby relationship of the parties is based upon agreement which has been admitted by both the parties, even respondent No.1 refers in his FIR that he has paid the amount of 2-1/2 marlas of land which was transferred in his name other than this agreement which is also subject matter of suit filed by the petitioner, who is owner in the khasra as per revenue record as well as from the report submitted by Halqa Patwari, hence, it is easily gathered from facts that registration of FIR is based upon malafide and no offence is made out from the bare reading of FIR. It is settled by the superior Courts that FIR would be quashed when no offence is made out or when matter is purely of civil nature and the very registration of FIR is based upon abuse of process. Reliance is placed upon PLD 2007 SC 48 (The State Vs. Sultan Ahmed), 1990 SCMR 1299 (Haji Muhammad Latif Vs. Farman Ali and others), 2017 P.Cr.L.J 133 (Muhammad Nawaz Vs. SHO Sabzi Mandi, Islamabad).

11. In view of above, this Court believes that parties are litigating about the breach of terms of agreement in cross suits which are pending before the competent Civil Court, even contract referred in the FIR No.288, dated 08.12.2018, U/S 420 PPC, P.S. Shahzad Town, Islamabad, is the subject matter of civil proceedings and at last the petitioner demonstrated from the record that he is owner of land in khasra Nos.141, 142, Mouza Farash, Tehsil & District Islamabad and the said fact was verified by the Halqa Patwari vide his report dated 15.01.2020, therefore, no offence U/S 420 PPC is made out. The petitioner has also made an offer to the complainant for compliance of terms of agreement but respondent No.1 has categorically taken the stance that he is not interested to act upon the said agreement at this stage.

12. In view of above, the very registration of FIR, submission of challan before the trial Court and any subsequent proceedings are illegal, therefore, the same are hereby quashed. However, the parties can approach the Civil Court for their grievance, if any.

13. Instant writ petition is allowed in above terms.

(MOHSIN AKHTAR KAVANI)
JUDGE

Zahid