

**JUDGMENT SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**W.P No.3846/2017.**

**Syed Azhar Hussain Shah etc**      **Vs.**      **Additional Sessions  
Judge (West) Islamabad  
etc.**

Petitioner No.1 by:      Raja Umer Hussain Bhatti, Advocate.

Petitioner No.2 by:      Rao Sabir Hussain, Advocate.

Respondent No.3 by:      Sardar Liaqat Hussain, Advocate.

State/Respondent No.4 by:      Barrister Ayesha Siddique, State  
Counsel.

**Date of Decision:**      **12.09.2019.**

**MOHSIN AKHTAR KAYANI, J:-** Through this writ petition, the petitioners have assailed the concurrent findings of the Courts below, whereby application filed by the petitioners U/S 423 (d) Cr.P.C for stay of criminal proceedings has been dismissed.

2.      Learned counsel for the petitioners contends that the petitioners have been nominated as accused in case FIR No.99/2016, dated 21.04.2016, U/S 420, 406, 468, 471/34, PPC, P.S Sabzi Mandi, Islamabad, which was registered on the complaint of respondent No.3; that respondent No.3 got lodged the said FIR on the basis of agreement to sell dated 18.09.2013, whereby he claims that he paid amount of Rs.68,50,000/- for purchase of residential plot No.344-A, Street No.35, Sector F-11/3, Islamabad; that the petitioners after receiving the said amount failed to transfer the said plot and as such it was alleged that the petitioners have misappropriated the amount by way of fraud and cheating; that respondent No.3 filed a suit for specific performance on 28.03.2016 against the petitioners, wherein similar question has been agitated regarding alleged breach of terms of the agreement and as such the matter can only be resolved by competent Civil Court; that the petitioners filed application for stay of proceedings in the criminal case but

the said application has been dismissed by the Courts below without appreciating the law on the subject.

3. Conversely, learned counsel for respondent No.3 contends that the petitioners have acknowledged the liability by way of an affidavit of compromise, whereby an amount of Rs.45,00,000/- has already been paid to respondent No.3 and remaining amount of Rs.23,50,000/- is still payable on part of the petitioners, for which respondent No.3 filed suit for specific performance and recovery of the said amount; that cross-suit was filed by the petitioners for cancellation of documents, which was dismissed and as such the matter is pending before the Appellate Court.

4. I have heard the arguments and gone through the record.

5. Perusal of the record reveals that the parties are in dispute qua plot No.344-A, Street No.35, Sector F-11/3, Islamabad, which was allegedly sold out by Syed Azhar Hussain Shah/petitioner No.1 to respondent No.3/Iftikhar Ahmed vide agreement to sell dated 18.09.2013 against total sale consideration of Rs.1,37,00,000/-, out of which Rs.68,50,000/- was paid by respondent No.3 to the petitioners, however, the said agreement could not be executed as a result whereof respondent No.3 got lodged FIR No. 99/2016, dated 21.04.2016, U/S 420, 406, 468, 471/34, PPC, P.S Sabzi Mandi, Islamabad but during the course of proceedings, the matter was reconciled and as a result of the same, petitioner No.1 paid an amount of Rs.45,00,000/- vide agreement dated 09.06.2016 and also acknowledged that he will pay balance sale consideration of Rs.23,50,000/- to respondent No.3 but due to non-compliance of the subsequent compromise agreement/affidavit, the suit for specific performance was filed by respondent No.3, which is pending adjudication before competent Civil Court. On the other hand, the petitioners filed suit for cancellation of the compromise document, however, the said suit was dismissed and now the matter is pending before Appellate Court as such the petitioners have filed application for stay of proceedings in criminal case on the ground that subject matter is of civil nature and same is pending before competent Civil Court, whereas question of fraud can only be determined after final decision of the Civil Court. Learned Trial Court as well as Revisional Court dismissed the application filed by the petitioners concurrently by holding that subject matter and outcome of instant

criminal proceedings are altogether different from the proceedings pending adjudication before competent Civil Court and even there is no bar that civil and criminal proceedings can proceed side by side.

6. I have gone through the record and in full agreement with the principles settled by the Superior Courts in 2007 MLD 1505 (Dost Muhammad vs. Mian Kausar Hussain), 2008 YLR 2505 (Rehan Nasir vs. SHO, P.S Rail Bazar, District Faislabad), PLD 2009 [Karachi] 65 (Maqsood Ahmed Qureshi vs. Muhammad Azam Ali Siddiqui) & 2006 SCMR 1192 (Haji Sardar Khalid Saleem vs. Muhammad Ashraf), wherein it was settled that criminal proceedings can run side by side with civil proceedings and both have different sets of proofs. Civil disputes are decided on the basis of preponderance and on the basis of probability, whereas findings of criminal case are neither binding nor relevant for decision of the Civil Courts.

7. The concurrent findings have been given by the Courts below on legal principles. The petitioners have failed to point out any perversity, illegality or jurisdictional defect in the impugned judgments. Even otherwise, Constitutional petition is not maintainable against the concurrent findings.

8. In view of the above discussion, the instant writ petition is dismissed. Before parting with this judgment, it is necessary to issue direction to learned Civil Court seized with the civil suit titled *Iftikhar Ahmed vs. Capital Development Authority through its Chairman, Islamabad etc.* for declaration, specific performance and permanent injunction to conclude the trial on or before 31.12.2019.

(MOHSIN AKHTAR KAYANI)  
JUDGE

R Anjam