

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

WRIT PETITION NO.2603 OF 2020

Syed Najamul Hassan Shah.

Vs.

Deputy Inspector General (Operations), etc.

Petitioner by : Raja Rizwan Abbasi, Advocate.
Malik Mushtaq Ahmad, Advocate.

Respondents by : M/s Majid Ahmed Abbasi, Ch. Saleem Raza and
Ms. Bushra Tariq Raja, State Counsel.
Mr. Irshad Ahmed, S.I.

Date of hearing : 07.12.2020.

LUBNA SALEEM PERVEZ, J. The petitioner, Syed Najamul Hassan Shah, through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 561-A Cr.P.C seeks quashment of FIR No. 202, dated 26.06.2020, registered for offence under section 420, PPC at P.S Shalimar, Islamabad.

2. Necessary facts of the case are that the petitioner and the complainant/Respondent No.5 entered into an agreement dated 22.04.2019, for sale/purchase of 10-kanal of land in Mohra Shah Wali @ Rs.3,200,000/- per kanal and 2-kanal & 7-marlas @ Rs.1,700,000/- in Pind Gondal. The complainant/Respondent No.5 at the time of signing of agreement paid Rs.5,000,000/- to the petitioner as token money. Respondent No.5 on the basis of this agreement lodged subject FIR against the petitioner alleging fraud within the meaning of section 420 PPC as the petitioner failed to comply with the terms of the agreement wherein a condition that in case of failure to hand over possession of the plot, the petitioner will return 200% of the token money received is also incorporated.

3. Learned counsel for the petitioner submitted that the allegations leveled against the petitioner are malicious, false, frivolous and incorrect and, therefore,

the impugned FIR is liable to be quashed; that the subject FIR is without jurisdiction as the land in dispute is situated in Taxila, District Rawalpindi; that no case of fraud under section 420 PPC has been made by the Complainant/Respondent No.5 as the matter is of civil nature; that the petitioner has filed suit against Respondent No.5 for possession through ejectment, cancellation and permanent injunction and Respondent No.5, on the other hand, has filed a suit for recovery of Rs.1,000,000,000/- (Rupee one billion) against the petitioner; that both the civil suits are in respect of the land mentioned in subject FIR and are pending before the learned Civil Judge, Taxila, District Rawalpindi; that Assistant Sub Inspector is not competent to register FIR of the case. He relied on the judgments re; "*Muhammad Nawaz vs. SHO, Police Station SabziMandi, Islamabad and others*" [2017 PCr.LJ 133] and "*FarooqNadim and 4 others vs. S.H.O, Police Station and 2 others*" [2006 YLR 1198].

4. On the other hand, learned counsel for the Respondent No.5/Complainant submitted that the petitioner after execution of the agreement has backed out from the deal and did not perform his part of the agreement, therefore, in accordance with the terms of the agreement, the petitioner is liable to return 200% of the token money; that the challan has been submitted and the petitioner has alternate remedies under section 249-A, Cr.P.C before the concerned Court, therefore, the petition is not maintainable and liable to be dismissed.

5. Arguments heard. Record perused.

6. Perusal of the record reveals that petitioner, vide agreement/iqrarnama dated 22.04.2019, agreed to sell his immovable property bearing khasra Nos. 1341/2, 1342/2, 1343, 1344,1345, 1365, 1363, 1356,1377 and 1366 measuring about 10-kanals situated in Mouza Mohra Shah Wali @ Rs.3,200,000/- per kanal and Khasras No. 945 and 946 measuring 2-kanal and 7-marlas situated in Pind Gondal, Taxila, District Rawalpindi to M/s Faisal Town (Private) Ltd. through its Director, Khan Ahmed Saleem, and paid Rs.5,000,000/- as token money/biyana at the time of signing of agreement by acquiring possession of the property. The remaining sale consideration, as per agreement, was to be paid within two and a half month at the time of transfer of the property in the name of Faisal Town (Pvt.) Ltd. It was also agreed between the parties that in case of any default of terms and conditions of the agreement, the petitioner would be liable to pay 200%

of the token money as penalty to the Complainant. It appears that after some time the transaction of sale of property could not be finalized as the record shows that the petitioner filed a civil suit on 10.12.2019 for possession through ejectment, cancellation and permanent injunction against Faisal Town (Pvt.) Ltd. after serving legal notice dated 25.07.2019 as well as M/s Faisal Town Private Ltd., after serving legal notice dated 06.08.2019, also filed a suit for recovery of Rs.1,000,000,000/- against the petitioner on 24.12.2019. Both the contesting suits are pending before the learned Civil Judge 1st class, Taxila District Rawalpindi. The Complainant/Respondent No.5, namely Sohrab Khan on behalf of Faisal Town Private Ltd. to initiate criminal proceedings as well, registered this FIR No. 202/2020 on 28.06.2020 alleging cheating and fraud against the petitioner for not performing his part of agreement as per terms and conditions for permanent possession of the suit land.

7. Both the parties admit to have entered into the agreement to sell dated 22.04.2019, and in consequent thereof also admit the down payment / biyana of Rs. 5,000,000/- and handing over the possession of the subject immovable property to M/s Faisal Town Private Ltd. *Prima facie*, the dispute relates to the implementation of the said agreement according to the terms and conditions agreed between the parties.

8. The petitioner, in the FIR has been charged with offence of cheating and fraud under section 420 PPC, which provides for punishment for cheating and dishonestly inducing the person deceived to deliver the property or make, alter or destroy any part of the valuable security or anything which is signed and sealed and is capable of being converted into a valuable security. Careful analysis of Section 420 PPC, thus shows that it is comprised of following necessary components to constitute charge of cheating:-

“i). Dishonestly inducing the person deceived to deliver any property; or

ii). To make, alter or destroy;

(a) The whole or any part of valuable security; or

(b) Anything which is signed or sealed and which is capable of being converted into a valuable security.”.

Thus deceiving and taking over the delivery of property belonging to one person through dishonest inducement, which causes loss to the person deceived, is the foremost factor to constitute act of cheating, vide section 420 PPC. It has been held in the judgment reported as “*Basshir Dawood and 2 others vs. Tanvir Ahmed and another*” [2000 PCr.LJ 1230 (Karachi)] that the fraudulent and dishonest intention of deceiving a person through inducement and temptation are the essential factors to constitute the offence of cheating.

9. The complainant in the instant case is aggrieved of non-implementation of the agreement dated 22.04.2019, by the petitioner and has simultaneously invoked criminal proceedings u/s 420 PPC against the petitioner, however, careful perusal of the facts incorporated in FIR do not reflect the act of inducement, temptation or luring as a result thereof a huge amount of token money was paid to the petitioner which caused loss to complainant. It is evident from the contents of agreement, duly signed by both the parties, that in lieu of payment of Rs.5,000,000/-, the possession of the property in dispute has been handed over to M/s Faisal Town Private Ltd., thus, no loss has been caused to the complainant/Faisal Town Pvt. Ltd. The transaction between the parties, vide agreement dated 22.04.2019, lacks the ingredients of cheating, dishonest inducement and deception to hold the petitioner responsible for commission of offence u/s 420 PPC. Learned counsel for Respondent No.5/Complainant remained unable to produce any evidence to substantiate his stance that the transaction of sale of property between the parties, vide agreement dated 22.04.2019, was a result of cheating and dishonest inducement. The controversy between the parties is, therefore, undoubtedly is of civil nature for which the parties have already filed cross civil suits against each other. It has been held by this Court in the judgment reported as “*Muhammad Nawaz vs. SHO, Police Station Sabzi Mandi, Islamabad and others*” [2017 PCr.LJ 133] that:-

“In view of above ingredients of criminal breach of trust, breach of any term of agreement to sell does not fall within the above mentioned criteria as the agreement to sell has been created under Contract Act, 1872 where one party signifies his willingness to do or not to do anything against a consideration and if the same has been accepted by the other party it becomes a promise whereas the said promise is if enforceable by law creates the term "contract".

The dispute related to such kind of contracts can easily be categorized under civil rights and their breach has also been remedied under the terms of contract or under Specific Relief Act,

1877 whereby the parties can approach the civil court in terms of section 9 of C.P.C. and especially when respondent No. 2/complainant has already approached the competent civil court in suit.....”

10. It is well settled that where criminal proceedings against the accused, *prima facie*, appears to be abuse of the process of court and reflects no probability of conviction of the accused, then the FIR is liable to be quashed by exercising inherent powers under section 561-A, Cr.P.C. Reliance in this regard can safely be placed on the case law reported as *Raja Haq Nawaz versus Muhammad Afzal and others (1968 SCMR 1256)*, *Muhammad Nawaz versus SHO, Police Station, Sabzi Mandi, Islamabad and others (2017 PCr.L.J 133)*, *Abdul Ghani versus Kadero and another (1977 PCr.L.J 135)* and *Mahmood ul Hasan versus Imtiaz Khan and another (PLD 1963 (W.P) Lahore 481)*.

11. In view of the above, the instant petition is **allowed** and the impugned FIR No. 202/2020 dated 26.06.2020, registered against the petitioner for offence under section 420 PPC at P.S. Shalimar, Islamabad, is hereby **quashed**.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the open Court on 31-12-2020.

JUDGE

M. JUNAID USMAN