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2023:PHHC:098595

CRM-M-6159-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6159-2019

Date of Decision:- **01.08.2023**

Reena Devi and Another

... Petitioners

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. T.S. Grewal, Advocate
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioners praying for quashing of FIR No.504 dated 6.9.2017 (Annexure P-1) registered under Sections 13-D and 125-A of Representation of The People Act 1951 and Sections 199 and 420 IPC at police station Mahendergarh and all the subsequent proceedings arising therefrom.
2. Notice of motion was issued to the respondent and thereafter the State Counsel appeared and filed reply by way of an affidavit of Yad Ram, Deputy Supdt. of Police, Mahendergarh.

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3. In the instant case FIR has been registered against both the petitioners on the basis of complaint lodged by Sub-Divisional Officer, Mahendergarh, wherein it was alleged that petitioner No.1 filed her nomination papers for election of Municipal Councilor, Ward No.14 and petitioner No.2 filed his nomination papers for election of Municipal Councilor, Ward No.5 of Municipal Committee, Mahendergarh on 11.05.2016, supported by their affidavits. That both the petitioners did not disclose about property No.B-11/221/1 Shopping Complex, Old Ram Leela Ground, Mahendergarh, owned by them, in the aforesaid affidavits. So the petitioners gave false affidavits along with their nomination papers with mala fide intention and thus, committed offences under Sections 199 and 420 IPC and Sections 13-D and 125-A of Representation of the People Act.
4. I have heard the counsel for the petitioners and the State counsel.
5. The counsel for the petitioners submitted that petitioner No.1 filed her nomination papers on 11.05.2016 for election of Municipal Councilor from Ward No.14, Municipal Committee, Mahendergarh. Likewise petitioner No.2 filed his nomination papers for election of Municipal Councilor from Ward No.5 of Municipal Committee Mahendergarh. In the said nomination papers nothing was concealed by the petitioners and the said nomination papers were scrutinized by the returning officer and the same were found to be in order. Petitioners contested the aforesaid elections which were held on 22.05.2016 and the result was declared on the same day. Petitioner No.1 was declared elected as Municipal Councilor from Ward No.14, while petitioner

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No.2 was declared elected as Municipal Councilor from Ward No.5, Municipal Committee, Mahendergarh. It has been further submitted that disgruntled unsuccessful candidates including some of the municipal councilors lodged a complaint that in their nomination papers, the petitioners concealed the fact that they also owned property No.B-11/221/1 on the basis of agreement to sell dated 8.11.2013, Annexure P-4. Thereafter, impugned FIR was registered against the petitioners who are husband and wife. It has been further contended that no information with regard to their property was suppressed by the petitioners while filing the nomination papers which were duly verified by the returning officer. The counsel for the petitioners has further submitted that the alleged document, Annexure P-4, is a mere agreement to sell purported to be executed by Dinesh Garg and others regarding property No.B-11/221/1 shopping complex old Ram Leela ground Mahendergarh in favour of petitioner No.1. The counsel has further contended that it is settled proposition of law that agreement to sell does not confer any title. The counsel for the petitioners while referring to provision of Section 54 of Transfer of Property Act has submitted that the title in immoveable property having value of more than Rs.100/- can be alienated/ transferred only by executing a registered sale deed. Further, Section 54 provides that an agreement to sell immoveable property is a contract, which shows that the sale of such property, shall take place on the basis of terms and conditions settled in the said agreement by both the parties. In this context the counsel for petitioner has placed reliance on the decision

of Hon'ble Apex Court in ***Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhotra (dead) through LRs reported in 2004(4) RCR Civil 303***. The counsel for the petitioners has further contended that as no title of aforesaid immoveable property was conveyed to the petitioners on the basis of agreement to sell, it cannot be said that the petitioners furnished false affidavit by concealing the aforesaid immoveable property in their nomination papers. The counsel for the petitioners further submitted that there is nothing on record that the nomination papers coupled with affidavits were submitted by the petitioners with mala fide intention to be elected in the election by furnishing false information in the said affidavits. The counsel for the petitioner has further submitted that in case any person wanted to challenge the election of the petitioners, there is efficacious remedy under Haryana Municipal Act 1973 and the rules framed thereunder. The counsel for the petitioners has further submitted that impugned FIR is abuse of the process of Court and law and prosecution based on the said FIR will result into miscarriage of justice.

7. On the other hand the State counsel while supporting the impugned FIR has contended that document dated 8.11.2013 may be executed as agreement to sell but at the time of its execution the entire sale consideration was paid by the petitioners to the proposed vendors and as such, it practically amounts to purchase of immovable property No.B-11/221/1 shopping complex, old Ram Leela ground Mahendergarh by the petitioners and the said transaction took place much prior to filing of nomination papers by the petitioners. The State

counsel further submits that thus, the petitioners submitted false affidavits along with their nomination forms, wherein they concealed material information about the aforesaid immovable property owned by them. The State counsel has further submitted that as the petitioners furnished false affidavits along with their nomination forms, with dishonest intention offences under Sections 199 and 420 IPC are made out against them along with offences under various provisions of Representation of The People Act as are mentioned in the FIR itself.

8. I have considered the submissions made by the counsel for both the parties.
9. The case of the prosecution as set up in the FIR is that the petitioners did not disclose the fact with regard to their ownership of property No.B-11/221/1, shopping complex, old Ram Leela ground, Mahendergarh in their affidavits given by them along with their nomination papers and thus, they filed false affidavits with dishonest intention to materially affect the result of the election and they won the said election by committing cheating and also committed offences punishable under Representation of The People Act 1951.
10. On perusal of agreement to sell, Annexure P-4, dated 8.11.2013, it is evident that the said agreement is an unregistered document and the same is relating to some portion of property No.B-11/221/1, shopping complex, old Ram Leela ground Mahendergarh. Even if the entire sale consideration worth Rs.56,00,000/- (Fifty Six Lakhs) was paid by the petitioner No.1 to the proposed vendors, at the time of execution of

said agreement, it cannot be termed as a sale transaction, as per the provision of Section 54 of Transfer of Property Act which clearly mandates that the title in immoveable property valued at more than Rs.100/- shall be conveyed only by executing a registered sale deed. An agreement to sell is neither a document of title nor a deed of transfer of property by sale. It does not confer any absolute title upon the proposed vendee over the property in question in view of Section 54 of Transfer of Property Act. In this context reliance is placed on enunciation of law in *Rambhau Namdao Gajre's case* (supra). Further the Hon'ble Apex Court ruled in *Suraj Lamp and Industry Pvt. Ltd Vs. State of Haryana and others (2009) 7 SCC 363* that immoveable property having value of Rs.100/- or more could be sold or transferred only through registered transfer deed and the transfer of immoveable property by any other mode cannot be treated as complete or concluded transfer of property.

11. In light of aforesaid discussion and the settled position of law, it cannot be said that title in property No.B-11/221/1, shopping complex, old Ram Leela ground Mahendergarh was conveyed to the petitioners on the basis of agreement to sell, Annexure P-4, which is a unregistered document. So it is evident that petitioners were not owners of the aforesaid immoveable property, at the time of filing of their nomination papers and concerned affidavits. The State has failed to prove that the information given by the petitioners in their affidavits was incomplete or that material information about their assets was not disclosed by the petitioners while filing their

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nomination papers. The prosecution has also prima facie failed to show that there was any mala fide intention on the part of the petitioners, when they filed their nomination papers along with the concerned affidavits.

12. Admittedly, both the petitioners were elected as Municipal Councilors. In case the candidates who lost the election or any other interested persons were not satisfied with the result of the elections, they were having efficacious remedy to file election petition(s) to challenge the elections of both the petitioners under Section 75 of the Haryana Municipal Election Rules 1978.
13. For the foregoing reasons, the present petition is allowed and the impugned FIR No.504 dated 6.9.2017 (Annexure P-1) registered under Sections 13-D and 125-A of Representation of People Act and Sections 199 and 420 IPC at police station Mahendergarh and all the subsequent proceedings arising therefrom, are set aside and quashed.
14. Disposed of accordingly, so also the pending miscellaneous application(s), if any.

01.08.2023
Puneet Chawla/Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No