

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M No.15005 of 2009  
Date of Decision:27.08.2015

**Shakuntla Rani and another**

**.....Petitioners**

**Versus**

**Prem Singh and another**

**.....Respondents**

**CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH**

1. Whether reporters of local newspaper may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the digest?

Present : Mr. Bipin Ghai, Sr. Advocate with  
Mr. J.S. Mehndiratta, Advocate  
for the petitioners.

Mr. Baldev Singh Sodhi, Advocate  
for respondent No.1.

Mr. A.K. Lamdhari, Advocate  
for respondent No.2.

**FATEH DEEP SINGH, J.**

In this petition under Section 482 Cr.P.C. the petitioners Shakuntala Rani and Ranjana Shahi have sought quashment of the complaint dated 12.10.2006 (Annexure P8), which has been filed by respondent No.1- Prem Singh as well as summoning order dated 21.04.2009 (Annexure P14) passed by the learned JMIC, Chandigarh by virtue of which the petitioners have been summoned as accused for commission of offences under Sections 420, 120-B of the Indian Penal Code as well as subsequent proceedings arising therefrom.

The brief allegations are that Shakuntala Rani purchased a flat from one Neena Sharma in August, 2003 on the basis of General Power of Attorney which was initially allotted to one Dimpal Adhiwan by Chandigarh Housing Board. It is an admitted stand that Neena Rani purchased it from Dimpal Adhiwal on 28.01.2003, regarding which an agreement (Annexure P1) was executed and the Power of Attorney given by the original allottee is Annexure P1/A. It is during the course of events in the year 2005, one Deepak Garg represented the petitioner-Shakuntala Rani for purchase of this flat regarding which Agreement to Sell dated 21<sup>st</sup> October, 2005 (Annexure P2) was entered into between them, wherein it was specifically specified under what capacity petitioner No.1 was entering into this arrangement and which flat was subsequently sold to the complainant/respondent No.1-Prem Singh. In terms of Agreement to Sell, the date for execution of the entire arrangement including payment and execution of documents was fixed as 31<sup>st</sup> December, 2005. The petitioner received a request from Deepak Garg for extension of time which petitioner No.1 declined and rather informed the intending purchaser that the same may be executed on or before 30<sup>th</sup> December, 2005 regarding which notice (Annexure P3) was sent.

Thereafter, nothing transpired and it was on 31<sup>st</sup> January, 2006, petitioner No.1 received notice from respondent No.1/complainant-Prem Singh (Annexure P5) thereafter, leading to filing of a complaint on 25<sup>th</sup> July 2006 to the Senior Superintendent of Police, Chandigarh (Annexure P-6) leading to registration of the case but vide report dated 26<sup>th</sup> August, 2006

(Annexure P7), the Investigating Agency gave the opinion that it was a civil dispute and thereafter an application under Section 156 (3) Cr.P.C. was moved before Judicial Magistrate, 1<sup>st</sup> Class, Chandigarh (Annexure P-8) and on the basis of order dated 12<sup>th</sup> October, 2006 (Annexure P-9) report of the Police was called and on the basis of this report (Annexure P-10) dated 30<sup>th</sup> November, 2006, the learned Judicial Magistrate treated the application as a private complaint by way of Annexure P-11 leading to the passing of the summoning orders and that is how the parties are before this Court.

Heard Mr. Bipin Ghai, Sr. Advocate with Mr. J.S. Mehndiratta, Advocate for the petitioners, Mr. Baldev Singh Sodhi, Advocate for respondent No.1 and Mr. A.K. Lamdhari, Advocate for respondent No.2 and perused the record.

The short point that emancipates from the vehement arguments of the two sides is the very maintainability of this petition under Section 482 Cr.P.C.. Though, Mr. Bipin Ghai, Sr. Advocate has sought to argue that a revision against the summoning order is not maintainable to counter the submissions of the counsel for the respondents, however, the Hon'ble Apex Court way back in the case of ***“Rajendra Kumar Sita Ram Pandey Versus Uttam, 1999 (1) RCR (Cri) 800 SC”*** has extensively deliberated and has drawn the conclusions that summoning order is not purely an interlocutory order and termed it to be an intermediate or quasi judicial order in nature and the fact that since summoning is a serious matter and, therefore, affects substantially the rights of the party can never be termed to be an

interlocutory order and, thus, in view of this, this Court holds that revision is certainly maintainable. More so, the Code of Criminal Procedure, 1973 contains provisions by way of Section 245 (2) Cr.P.C. which gives unfettered powers to the learned Magistrate to discharge an accused at any stage and even the Hon'ble Apex Court has held so in the case of “***K.M. Mathew Vs. State of Kerala, 1992 Criminal Law Journal 3779 SC***” and has laid down the propositions that it is open to the co-accused to plead before the Magistrate that the process against him ought not to have been issued and the Magistrate can drop the proceedings or send the process though contrary to ***Sita Ram Pandey's*** case *ibid* wherein the Court had opined it to be an interlocutory order.

Looking from another angle though on behalf of the petitioners it could not be impressed upon that revision was not maintainable when such an order of summoning is not only pre-judicial to the interest of a party but are put to the hazard of a long drawn trial and therefore immensely affects the rights of a party necessitates filing of a revision in such eventuality and faced with similar situation in the case of “***Mohit @ Sonu and another Vs. State of U.P. and another, 2013 (3) RCR (Crl.) 673***”, the Hon'ble Apex Court has dealt with the revisional powers vis-a-vis under Section 482 Cr.P.C. and has considered the ratios laid down in “***Madhu Limay Vs. State of Maharashtra, 1977 (4) SCC, 551***”. Way back in the case of “***Raj Kapoor Vs. State, 1980(1) SCC 43***”, it was held by the Hon'ble Supreme Court of India that though provisions of Section 397 Cr.P.C. or any of the provisions

of Criminal Procedure Code will not affect the amplitude of the inherent powers preserved in Section 482 Cr.P.C. but held that easy resort to inherent powers is not right except under compelling circumstances and, therefore, held that the same be not invaded to the areas set apart for specific powers under the Code of Criminal Procedure.

Since, this Court is of the view that revision is also perfectly maintainable against such a summoning order then would it be appropriate for this Court to exercise its inherent powers under Section 482 Cr.P.C. when there is an equally efficacious alternative remedy available and by doing so repeatedly by passing such statutory provisions. The very effect of the law laid down by the Bench of Hon'ble Apex Court in the case of “*State of Haryana and others Vs. Ch. Bhajan Lal and others, 1992 AIR 604*” has specifically laid down the propositions that such an extraordinary inherent powers are to be sparingly used only in exceptional cases. Since, in the present matter there is a hair-line difference in such a transaction falling within the domain of a criminal offence or a civil remedy, it would be appropriate, if the parties are allowed to lead the evidence in that direction and, thus, counsel for the petitioners could not stress whether it is not expedient and in the interest of justice to permit the prosecution to continue and none of the eventualities for exercise of powers under Section 482 Cr.P.C. as laid down in *Ch. Bhajan Lal's* case (ibid) could be satisfied in this case.

Together with the fact since there is a specific remedy provided

by way of revision as well as under Section 245 (2) Cr.P.C., the inherent powers under Section 482 Cr.P.C. in view of law laid down in Mohit's case (supra) cannot and should not be resorted to. In the light of the same finding no merits, the instant petition stands dismissed.

Necessary stay order dated 28.5.2015 of this Court stands vacated. The trial Court is directed to proceed ahead into the matter as per the law.

**(FATEH DEEP SINGH)**  
**JUDGE**

**August 27, 2015**  
***Dpr***