

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. 18831 of 2012(O&M)
Date of decision : 07.07.2015**

Gurdeep Singh

..... Petitioner

versus

Faridkot Bathinda Kshetriya Gramin Bank

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?
Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Present: Mr. P.S. Dhaliwal, Advocate
for the petitioner.**

**Mr. A.B.S. Sidhu, Advocate
for the respondent.**

ANITA CHAUDHRY, J.

The petitioner has been summoned to face trial in a complaint filed by the respondent Bank, under Section 406 IPC vide order dated 08.04.2010.

The factual matrix. The petitioner availed a loan of Rs.26000/- for purchasing tube-well and diesel engine in the year 1995. He mortgaged his land measuring 16 kanals with the Bank vide mortgage deed No. 1277 dated 13.09.1995. He defaulted in repaying the loan amount. In order to cheat the bank, he sold the land to a third party vide sale-deed dated 11.05.2005.

Preliminary evidence was led and the petitioner was summoned to face trial under Section 406 IPC. The complaint filed against the other persons, including the purchasers, was

dismissed.

Aggrieved with the summoning order, the petitioner filed a revision petition. The same was dismissed by the revisional Court on 09.02.2012. Hence, the instant petition has been instituted seeking quashing of complaint, summoning order and subsequent proceedings, including the order passed by the revisional Court.

I have heard learned counsel for the parties and have gone through the paper-book carefully.

It has been urged on behalf of the petitioner that the loan was not disbursed to the petitioner and the bank official himself got the entry of mortgage deleted from the revenue record. He further urged that it was a civil dispute and no criminal liability is attracted as there was no entrustment. It has been urged that the essential ingredients to constitute an offence of criminal breach of trust are conspicuously missing. Learned counsel has further urged that sale of mortgaged property by the petitioner does not amount to breach of trust as mortgagor's right is not forbidden. In support of his contention, reliance has been placed on **Gopalakrishnan Vs. State of Kerala 2010(2) Criminal Court Cases 165(Kerala)**.

On the other hand, learned counsel for the respondent supported the orders passed by the Court below.

The petitioner is not denying that he has sold the land to a third party. The perusal of mortgage deed (Annexure R-1) placed on record by the respondent alongwith its reply, makes it

abundantly clear that Clause 5 thereof restricts the petitioner, as per his undertaking, not to part with the mortgaged land, by way of sale, transfer etc. without the permission of the bank. After the mortgage, the petitioner was entrusted with the land as a custodian thereof. He was under a legal obligation to take permission from the Bank while alienating the suit. He not only committed default in repayment of the loan, but prima facie to frustrate the rights of the Bank, sold the same to third party in violation of the undertaking given by him. Thus, he cannot derive any benefit from Gopalakrishnan's case (supra), as the facts of that case are totally different.

The petitioner has even disputed the factum of taking of loan from the respondent Bank. According to him, the loan was not disbursed to him on account of some technicalities; the mortgage entry was got removed by the bank official himself and he was well within his right to sell his land. He has further raised the plea that the complainant Bank never demanded the money nor issued any notice. These are disputed questions of fact, which can only be ascertained only on the basis of evidence that would be adduced by the parties. No finding can be recorded at this stage on these issues.

Broad guidelines have been framed by the Hon'ble Apex Court for exercise of powers under Section 482 Cr.P.C. in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, but the instant case does not fall in any one of the categories mentioned in it. The powers under

Section 482 Cr.P.C. have to be exercised sparingly and with circumspection, that too in rarest of rare cases, which does not exist in the present case.

No ground for quashing is made out. Dismissed. However, whatever has been said hereinabove is without prejudice to the case on merit. The petitioner will be at liberty to raise all the pleas before the appropriate forum and at the appropriate stage.

July 07, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE