

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-19853 of 2015
Date of decision: 08.07.2015

Ashraf

.....Petitioner(s)

Versus

Kirpal Singh

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

* * *

Present: Mr. Mohammad Arshad, Advocate for the petitioner(s).

DARSHAN SINGH, J.

The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C') for quashing the impugned order dated 21.5.2015 passed by the learned Judicial Magistrate, Ferozepur Jhirka, Distt. Mewat in Criminal Complaint No.116 dated 7.12.2010 tilted as 'Kirpal Singh versus Ashraf' vide which the application filed by the complainant under Section 311 Cr.P.C. for production of the agreement to sell dated 15.4.2007 has been allowed.

Respondent-Kirpal Singh has filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner. During the pendency of that case, the respondent moved an application under Section 311 Cr.P.C for leading the additional evidence to produce the agreement to sell dated 15.4.2007 executed by him in favour of Mahender Singh son of Risal Singh resident of village Rajpura Then Distt. Jind to sell his property situated in Gobindpura Tehsil and District Jind for a sum of Rs.20,00,000/-.

The said application was contested by the present petitioner

by filing a detailed reply controverting the pleas raised in the application.

The said application has been allowed by the learned trial Court vide impugned order dated 21.5.2015.

Learned counsel for the petitioner contended that the agreement to sell dated 15.4.2007 was never pleaded by the respondent-complainant in the complaint. It was also not referred by him in his statement. Such document can be created even later on. Hence, the same cannot be relied upon. He further contended that the agreement is alleged to be of 15.4.2007 but the transaction is alleged to be of the year 2010 i.e. after about three years. It is not believable that the money received under that agreement three years before the relevant date will still be available with the respondent. Thus, he contended that this document does not inspire any confidence.

He further contended that the learned trial Court has referred the wrong provision of law i.e. Section 165 of the Indian Evidence Act to allow the application that is not relevant at all and is not applicable to the application for additional evidence.

I have duly considered the aforesaid contentions.

Even if the contentions raised by the learned counsel for the petitioner are accepted that Section 165 of the Evidence Act is not applicable and has been wrongly referred to by the learned trial Court that will not be a ground to upset the impugned order.

The application has been filed by the respondent-complainant under Section 311 Cr.P.C. for permission to produce the agreement to sell dated 15.4.2007 executed by him for the sale of his land. It appears that he wants to show the source of money which is always a relevant question in the complaint under Section 138 of Negotiable Instruments Act. So, the production of this evidence will certainly assist the trial Court to arrive at

the just decision of the case.

The contentions raised by the learned counsel for the petitioner that the agreement to sell dated 15.4.2007 is not reliable, it can be manipulated later on and does not inspire confidence and that it was executed three years prior to the relevant date, are the questions to be considered on merits at the time of appreciation of the evidence. The evidentiary value and admissibility of the evidence are entirely different aspects. The petitioner will certainly have a chance/opportunity to assail the evidentiary value of this agreement to sell once the same is allowed to be produced in the Court.

Thus, keeping in view my aforesaid discussion as the agreement to sell dated 15.4.2007 will assist the Court to arrive at the just decision of the case, so the present petition has no merits and same is hereby dismissed.

July 08, 2015
ps

(DARSHAN SINGH)
JUDGE