

CRM-M-2372-2014 (O&M)

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

CRM-M-2372-2014 (O&M)
Date of decision: 05.11.2015

Gurlal Singh Grewal

...Petitioner

Versus

Gurparshad Singh Grewal and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Damandeep Singh, Advocate
for the petitioner.

Mr. C.S. Bakshi, Advocate,
for the respondents.

SABINA, J

Petitioner has filed this petition challenging the order dated 07.12.2013.

Learned counsel for the petitioner has submitted that sale deed now sought to be proved on record was very essential for the just decision of the case to establish the prevalent rate of prices at the relevant time.

Learned counsel for the respondent, on the other hand, has opposed the petition.

Case of the complainant-petitioner, in brief, is that accused in order to make wrongful loss to the trust and personal gain to themselves had wrongfully caused loss to the trust by misappropriating the trust money as well as the property entrusted to them. Accused had sold land measuring 2175 Sq.yards vide sale

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deed dated 22.03.2006 at a lesser price. Accused had no authority to execute the sale deed.

Complainant in support of his case led his preliminary evidence. Accused were summoned to face the trial. During the pendency of the trial, petitioner moved an application under Section 311 Cr.P.C. for permission to lead additional evidence. By way of additional evidence, petitioner wants to prove on record sale deed dated 12.04.2006 executed by Soni Grewal in favour of Amazon Enterprises Pvt. Ltd. and the concerned clerk of GLADA along with complete record of auction/sale in favour of M/S Picadally Hotels Pvt. Ltd. held on 21.11.2007 regarding land measuring 5127.80 Sq.yards situated at Ferozepur Road, Ludhiana and Ravi Kumar, Civil Engineer along with valuation report prepared by him qua land situated in revenue estate at village Sunet Ludhiana.

Section 311 Cr. P.C. reads as under:-

“311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

Thus, as per the above provision, Court has ample power to

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summon any witness during trial, if his/her evidence appears necessary for the just decision of the case.

The Trial Court while dismissing the application has held as under:-

“After going through the present case file, I find that the sale deed in dispute is dated 22.03.2006 and the present complaint was filed on 27.07.2007 after a span of more than 1 year 4 months from the date of sale deed. During this tenure the sale deed which the applicant wants to bring on record was registered and executed on 12.04.2006 much prior to the filing of the present complaint. The applicant had not filed the name of any valuer in the list of witnesses attached with the complaint. Therefore, he moved an application dated 10.05.2012 before this court to allow him to examine Sh. Krishan Anand, estimate valuer which was allowed by my ld. predecessor. Further the present accused was summoned by ld. predecessor of this court vide order dated 06.02.2009 and since then more than four years have already been elapsed but the complainant/applicant has not completed his entire pre-charge evidence. On one hand, the complainant has stated that he was not aware of the sale deed bearing Vasika No.235 dated 12.04.2006 but the complainant own witness Sh. Krishan Anand has furnished a copy of this sale deed as Ex-CW4/B during his testimony away bad on 29.10.2007. From 29.10.2007 to 12.07.2013 the complainant made no attempt to prove this sale deed and has intentionally slept over his right. It is the settled fact that the price of land falling through place to place and from location to

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location property which abuts the main road is always costlier than the property which is far away from the property abutting the main road. The collector rate of the property in dispute was proved by the complainant by calling the clerk from the office of Sub-Registrar, Ludhiana. The complainant has himself not stepped into the witness box till date. Allowing the present application of the complainant to examine Engg. Ravi Kumar will indirectly amount to collect evidence which a Court cannot allow to do so. Every party is bound to prove his own case. In this regard, I reply upon case titled as **Zahira Habibulla H. Sheikh Vs State of Gujarat (2004) 4 SCC 158, (2) Mohanlal Shamji Soni Vs Union of India AIR 1991 SC 1346** and further in five Judges bench in case titled as **A.R. Antuley Vs R.S. Nayak 1992(1) SCC 225** has held that right to speedy trial is the fundamental and constitutional right of the accused as enshrined in article 21 of the Indian Constitution. No person has vested right to prolong the trial on one pretext or the other and every trial must be completed within a limited period. Speedy trial is in public & social interest. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages namely stage of investigation, inquiry, trial, appeal, revision and retrial. No person has vested right to use the judicial process as an instrument of oppression or for harassment. Thus, in the totality of my entire discussion made above and guided by the law laid down by the Hon'ble Supreme Court in the cases

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as referred above, I do not find any merit in the application moved by the counsel for the applicant and the present application is devoid of any merit and the same is hereby dismissed. Now to come up on 09.01.2014 for entire pre-charge evidence of the complainant.”

The reasons given by the trial Court while dismissing the application moved by the petitioner are sound reasons. The sale deed now sought to be proved on record was executed prior to the filing of the complaint in question. However, petitioner had not pleaded the said sale deed at the time of filing of the complaint. The valuer now sought to be examined by the petitioner was also not mentioned as one of the witnesses by the petitioner at the time of filing of the complaint. It has further been noticed by the trial Court that petitioner had been allowed to examine Krishan Anand estimate valuer, by the trial Court vide order dated 06.02.2009. In fact complainant had failed to appear in the witness box till date and had failed to conclude his pre-charge evidence.

In the facts and circumstances of the present case, the learned trial Court had rightly dismissed the application moved by the petitioner. No ground for interference by this Court, is made out.

Dismissed.

November 05, 2015
kapil

(SABINA)
JUDGE