

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

**Crl. Misc. No. M-32756 of 2013
Date of Decision: 06.02.2015.**

Ashok Kumar

.....Petitioner

Vs.

Sharda

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. M.S.Sachdev, Advocate
for the petitioner.

Mr. Vikram Singh, Advocate
for the respondent.

.....

SABINA, J.

Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging the order dated 23.8.2013 (Annexure P-1) whereby application moved by the respondent under Section 65 of the Indian Evidence Act, 1872 ('Act' for short), was allowed.

Learned counsel for the petitioner has submitted that the Trial Court had erred in observing that petitioner had not disputed the genuineness of the sale deeds in question whereas the case of the petitioner was that the sale deeds in question, were not genuine documents. Learned counsel for the petitioner has placed reliance on the statement of the petitioner Annexure P-12.

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

Impugned order dated 23.8.2013 reads as under:-

“Consideration on application filed u/s 65 Evidence Act is heard. Case file is perused.

It is observed that accused himself, while recording his statement in Court dated 8.4.2013, as directed u/s 294 Cr.P.C.. didn't dispute genuine of said deeds. Undisputedly, complainant herself is not party to said sale deeds, rather sale deeds are registered documents. Said sale deeds are not in possession of complainant.

Moreover, while filing reply to said application also, respondent has not made denial of execution of said sale deeds by him. Sale deeds are to be produced from public authorities and as such, these can't be altered or changed. So, objections filed by respondent are rejected and complainant is allowed to prove sale said sale deed by leading secondary evidence. Evidence of complainant be produced on 9.9.2013.”

Annexure P-12 statement of the petitioner recorded on 8.4.2013 reads as under:-

“I do not admit the documents mentioned in the list appended with application under Section 294 Cr.P.C. shown to me being inadmissible and being not the original.”

A reading of the statement of the petitioner dated 8.4.2013 (Annexure P-12) reveals that petitioner had not admitted the documents mentioned in the list appended with the application under Section 294 Cr.P.C. The Trial Court, thus, fell

in error while observing that petitioner had not disputed the genuineness of the sale deeds in his statement Annexure P-12. Since the Trial Court had committed a factual error while passing the impugned order, the same is liable to be set aside.

Accordingly, this petition is allowed. Impugned order dated 23.8.2013 (Annexure P-1) is set aside. Trial Court is directed to pass a fresh order, in accordance with law.

**(SABINA)
JUDGE**

February 06, 2015
Gurpreet