

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

**Crl. Misc. No. M-3184 of 2014
Date of Decision: 28.01.2015.**

Navdeep Singh

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Sandeep Kaushik, Advocate
for the petitioner.

Mr. V.P.S.Sidhu, AAG, Punjab.

Mr. Ankur Mittal, Advocate
for respondent No. 2.

.....

SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) for quashing of FIR No. 310 dated 19.11.2012, under Section 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860, registered at Police Station City Nakodar, Tehsil Nakodar, District Jalandhar (Annexure P-1) and all the subsequent proceedings arising therefrom including the order dated 2.12.2012 (Annexure P-16).

Learned senior counsel for the petitioner has submitted that no offence of cheating or forgery could be said to have been committed by the petitioner. In fact, complainant had

executed a power of attorney in favour of Sukhwinder Singh. In civil litigation, the said power of attorney was held to be a genuine document. On the basis of the said power of attorney, accused Sukhwinder Singh had executed an agreement to sell in favour of the petitioner on 29.3.2006. Since the sale deed had not been executed in terms of the said agreement to sell, petitioner had filed a civil suit for specific performance of agreement to sell in question. The Trial Court upheld the power granted to accused Sukhwinder Singh to execute the agreement to sell in question. However, suit filed by the petitioner was dismissed on the ground that it was not established that earnest money had been paid to accused Sukhwinder Singh at the time of execution of agreement to sell by the petitioner. Learned senior counsel has further submitted that petitioner had left India on 20.3.2011 for Canada and had not visited India thereafter. FIR in question was registered in the year 2012. Without effecting proper service of summons on the petitioner, he had been declared a proclaimed offender vide impugned order dated 2.12.2012 (Annexure P-16).

Learned State counsel as well as counsel for respondent No. 2, on the other hand, have opposed the petition and have submitted that the Civil Court, while dismissing the suit filed by the petitioner, had specifically held that petitioner and his co-accused Sukhwinder Singh were hand in glove and the agreement to sell in question could not be said to be a legal and valid document as no evidence had been led qua payment of earnest money to the tune of ₹ 30,00,000/- by the petitioner to his co-accused Sukhwinder Singh. Moreover, receipt proved on

record by the petitioner qua payment of earnest money to Suratpal Singh, was found to be a fake document. Petitioner had failed to appear before the Court despite issuance of summons. Hence, the order whereby petitioner was declared a proclaimed offender, was liable to be upheld.

Prosecution story, as per the FIR Annexure P-1, in brief, is that Suratpal Singh was owner of land measuring 8 *kanals* 12 *marlas*. Suratpal Singh was settled abroad. Complainant was attorney of Suratpal Singh. Sukhwinder Singh accused sold the property of Suratpal Singh to petitioner Navdeep Singh in a fraudulent manner. Although, agreement to sell in favour of Navdeep Singh was executed by Sukhwinder Singh but sale deed could not be executed. In a civil suit filed by petitioner Navdeep Singh for specific performance of agreement to sell dated 29.3.2006, it was held that the agreement to sell in question was not a legal and valid document. Petitioner had forged and fabricated receipt regarding payment of earnest money to Suratpal Singh in connivance with Sukhwinder Singh. The said receipt was not signed by Suratpal Singh.

Admittedly, Sukhwinder Singh had executed agreement to sell dated 29.3.2006 in favour of the petitioner as attorney of owner Suratpal Singh. Petitioner filed a civil suit for possession by way of specific performance of agreement to sell dated 29.3.2006. The said suit was dismissed by the Trial Court vide judgment/decreree dated 18.12.2009 (Annexure P-9). A perusal of the judgment Annexure P-9 reveals that the Trial Court while dismissing the suit held that petitioner and Sukhwinder Singh were hand in glove and the agreement in

question could not be said to be a legal and valid document especially when no cogent evidence had been led qua payment of earnest money of ₹ 30,00,000/- by the petitioner to Sukhwinder Singh. The suit filed by the petitioner was dismissed.

During the course of arguments, it has also transpired that the receipt relied upon by the petitioner qua payment of earnest money, was found to be a fake/forged document. Signatures of Suratpal Singh on the receipt were sent for examination and as per the report of the Forensic Science Laboratory, signatures appearing on the receipt, were forged.

Keeping in view the seriousness of allegations levelled against the petitioner, no ground for quashing of the FIR is made out. Hence, the relief claimed by the petitioner, in this regard, is declined.

The next relief claimed by the petitioner is that he had been declared a proclaimed offender vide impugned order dated 2.12.2012 (Annexure P-16) without effecting proper service on him. It has transpired during the course of arguments and the said fact is also evident from the copy of the passport of the petitioner Annexure P-15 that petitioner had left for Canada on 20.3.2011. Admittedly, petitioner has not returned to India thereafter. FIR in question was registered in the year 2012. A perusal of the impugned order Annexure P-16 does not lead to the inference that due service had been effected on the petitioner who was residing in Canada before declaring him a proclaimed offender.

Accordingly, impugned order dated 2.12.2012 (Annexure P-16) whereby petitioner was declared a proclaimed

offender, is set aside. Magistrate is directed to pass a fresh order against the petitioner under Section 82 Cr.P.C., in accordance with law.

Petition stands disposed of accordingly.

**(SABINA)
JUDGE**

January 28, 2015
Gurpreet