

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32569 of 2014

Date of decision: 6.10.2015

Sunil Kumar

.. Petitioner

Vs.

Parbhati @ Parbhati Lal and another

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vikas Lochab, , Advocate
for the petitioner.

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

RAMESHWAR SINGH MALIK, J.

Feeling aggrieved against the impugned judgment dated 5.3.2013 passed by the learned Additional Sessions Judge, Narnaul whereby revision filed by the petitioner was dismissed, upholding the impugned judgment dated 2.4.2012, passed by learned Judicial Magistrate 1st Class, Narnaul, dismissing his complaint, petitioner has approached this Court by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short) for quashing the impugned judgments.

Brief facts of the case, as recorded by learned Additional Sessions Judge, in para 2 of the impugned judgment, are that

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authenticity of this document

petitioner-complainant filed complaint alleging therein that respondent No.1 was owner in possession of land measuring 1 kanal 18 marla being 1/6th share out of the total land measuring 11 kanals 10 marlas comprised in khewat No. 342, khatoni No. 520. He was also owner in possession of 0-15 marla and being owner of 1/6th share out of land measuring 4 kanals 13 marlas comprised in khewat No. 344, khatoni No. 523 mustil and killa No. 3/23/2 and further he was recorded owner of 2 kanals 8 marlas land being 48/298 share out of the land measuring 14 kanals 8 marlas land comprised in khewat No. 347 khatoni No. 526/527. He was also owner to the extent of 0-16 marlas land being 1/6th share out of total land measuring 4 kanals 17 marla comprised in khewat No. 349 and khatoni No. 530,531 and in total, he was recorded owner of 5 kanals 18 marlas as per jamabandi for the year 2003-04. It was alleged that respondent No.1, in connivance with respondent No.2, hatched a criminal conspiracy in order to cause wrongful loss to the petitioner and to earn wrongful gain for him. Respondent No.1 entered into an agreement to sell dated 16.6.2008 in respect of his 5 kanals 18 marla land for total sale consideration of ₹26,50,000/- and received ₹3,00,000/- as earnest money. Respondent No.1 had agreed to sale his land in favour of Roshan Lal, Narender, Sunil Kumar-complainant, Ram Shanker and Mukesh to the extent of 1/5th share each. However, later on, petitioner came to know that respondent No.1 had already entered into an agreement with Prem Chand on 27.11.2006 in respect of the same suit land for a total sale consideration of ₹40,00,000/- and out of ₹40,00,000/-, respondent No.1 had already

received ₹2,00,000/- as earnest money and in that agreement as well as agreement with the petitioner, property was the same. It was alleged that respondent No.1 had cheated that petitioner in connivance with respondent No.2. On the basis of these allegations, petitioner-complainant prayed that alleged accused be summoned, tried and punished in accordance with law.

Complainant-petitioner was allowed to lead his preliminary evidence. In order to substantiate the allegations levelled against the accused, complainant examined as many as 5 PWs, besides producing other documentary evidence.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that the complainant has failed to make out any case. Accordingly, the complaint was dismissed under Section 203 Cr.P.C., vide impugned judgment dated 2.4.2012.

Dissatisfied, the impugned judgment was challenged by the complainant, by way of revision which also came to be dismissed by learned Additional Sessions Judge, vide impugned judgment dated 5.3.2013. Hence this petition, at the hands of complainant.

Learned counsel for the petitioner submits that the complainant-petitioner brought cogent and convincing evidence on record, which was sufficient to record conviction of the accused persons. However, since the learned courts have failed to appreciate the evidence in correct perspective, the impugned judgments have resulted in miscarriage of justice. He prays for setting aside the impugned judgments, by allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

A bare combined reading of both the impugned judgments would show that the learned courts have discussed, considered and appreciated each and every relevant aspect of the matter, before arriving at their respective judicious conclusions. Oral as well as documentary evidence was appreciated in the correct perspective. Having said that, this Court feels no hesitation to conclude that the learned Courts have committed no error of law, while passing their respective impugned judgments and the same deserve to be upheld.

It is a matter of record that no suit for specific performance, at the instance of the petitioner, qua the land in question was filed at any relevant point of time. It is also not disputed that respondents were very much ready and willing to get the sale deed executed on 15.6.2009. It was not the case of the complainant that respondents refused to execute the sale deed, rather, it was mentioned in the agreement to sell itself that possession of the land in question was already delivered to the

proposed vendee.

In this view of the matter, it cannot be said that respondents had hatched a criminal conspiracy with a view to cheat the complainant. Admittedly, time is the essence of the contract. Once the complainant himself was not coming forward to get the sale deed executed, it cannot be presumed that respondents were at fault in not getting the sale deed executed.

Under somewhat similar circumstances, on the issue of framing of charge, the Hon'ble Supreme Court in para 8 of its judgment in State Tr. Insp. Of Police Vs. A. Arun Kumar and another, 2015 (2) SCC 417, observed as under:-

*The law on the point is succinctly stated by this Court in **Sajjan Kumar v. CBI, 2005 (3) RCR (criminal) 707** wherein after referring to **Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4** and **Dilawar Balu Kurane v. State of Maharashtra, 2002 (1) RCR (criminal) 451** this Court observed in para 19 thus:*

"It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the

defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

This Court the went on to cull out principles as regards scope of Sections 227 and 228 of the Code, which in our view broadly apply to Sections 238 and 239 of the Code as well. It was observed thus in para 21:

“Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C. 21.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in A.Arun Kumar's case (supra), it is unhesitatingly held that the learned Courts were well justified on facts as well as in law, in

passing the impugned judgments and the same deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant petition stands dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)
JUDGE**

*6.10.2015
AK Sharma*