

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35079-2015

Date of Decision: November 28, 2015

Arun Sharma

...Petitioner

Versus

Rishi Raj Chauhan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Ruchin Midha, Advocate,
for the petitioner.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the Reporters or not?</i> | YES |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | YES |

NARESH KUMAR SANGHI, J (Oral)

Challenge in the present petition, filed under Section 482, Cr.P.C., is to the order dated 8.5.2015 (Annexure P-1), passed by learned Additional Sessions Judge, Gurgaon, whereby criminal revision petition filed by the petitioner challenging the order dated 26.2.2014 (Annexure P-2), passed by learned Judicial Magistrate First Class, Gurgaon, discharging the respondent-accused, was dismissed.

Learned counsel contends that at the time of preliminary evidence, all the relevant documents supporting the

oral evidence of the petitioner, were placed on record and duly marked. However, after summoning of the accused/respondents and during pre-charge evidence, due to the fault of the lawyer representing the petitioner/complainant, the documents which were available on record, could not be exhibited as per law and, as such, same were not read in evidence in favour of the petitioner. Due to the fault of the lawyer, the petitioner/complainant should not be allowed to suffer. He further submits that the well proved case of the petitioner/complainant cannot be thrown merely on the basis of the fault of the lawyer representing him (petitioner). He has also submitted that the allegations levelled against the accused/respondents are serious in nature. Despite the fact that the respondents entered into an agreement with the petitioner/complainant and charged the token money, they failed to execute the sale deed within the stipulated period, would clearly spell out that they had mala fide intention to commit the offence. He further submits that culpability of the respondents would also be judged from the fact that during subsistence of the agreement with the petitioner/complainant, the accused/respondents also entered into yet another agreement

with third person with regard to the same property.

I have heard learned counsel for the petitioner and with his able assistance gone through the material available on record.

Brief facts of the case are that the respondents, Rishi Raj Chauhan and Smt. Chander Bala, offered to sell their house situate in Urban Estate, Gurgaon, and entered into an agreement to sell with the petitioner/complainant. Despite charging the token money, the respondents failed to execute the sale deed in favour of the petitioner and, as such, he (petitioner) was constrained to file a civil suit for permanent injunction against the respondents. Later on a compromise was effected between the parties and the civil suit was withdrawn. The respondents did not honour the terms and conditions of the compromise effected during pendency of the civil suit. The petitioner filed an execution petition, which was allowed. The respondents thereafter filed an application challenging the compromise alleged to have been effected between the parties during pendency of the civil suit filed by the petitioner. Since the respondents had criminal intention to commit the offences, therefore, a complaint was filed by the petitioner against the

respondents for the offences punishable under Sections 406, 420, 467, 468 and 471, IPC.

In support of his allegations, the petitioner/complainant led preliminary evidence and learned Judicial Magistrate First Class, Gurgaon, summoned the respondents to face trial for having committed the offences punishable under Sections 406, 420, 467, 468 and 471, IPC. After appearance of the respondents, learned Trial Court directed the petitioner/complainant to lead pre-charge evidence. After examining himself (petitioner/complainant) as PW-1, pre-charge evidence was closed. By order dated 26.2.2014, learned Trial Court discharged the accused/respondents. The operative part of the order passed by learned Judicial Magistrate First Class, Gurgaon, dated 26.2.2014, is as under:-

“8. Complainant Arun Sharma appeared as PW-1 and deposed that he entered in to an agreement to sell with the accused persons with regard to suit property. There were two agreement to sell duly registered regarding the suit property. The accused persons were reluctant in getting the sale deed executed. Being apprehensive on the account of seller's conduct, he filed a civil suit for permanent

injunction and obtained a stay from the court. The accused persons entered into a compromise deed in the above mentioned suit. He further deposed that the accused persons were reluctant to honour the terms of compromise deed and therefore he was constrained to file execution petition. He further deposed that in 2012 he got hold of criminal complaint filed by one Chandra Shekar against the present accused persons. He also obtained a copy of the FIR as filed by Chandra Shekhar, the fraudulent sale deed plus payment receipts and possession letter signed by the accused persons in favour of Chandra Shekhar for the suit property. He further deposed that he approached the Police Station, Sushant Lok for registration of FIR.

9. *This is the complete pre-charge evidence of the complainant available on the record. The only witness complainant himself stepped into the witness box as PW-1. It is pertinent to mention that no material document was tendered on the record in proof of the assertions. It is relevant to mention herein that the complainant in his examination in chief has nowhere stated in what way the accused persons have committed the offences for which they were summoned. The complainant has failed to prima facie establish the circumstance in which he was allegedly cheated by the accused persons. Furthermore no document has been placed on record to prove alleged forgery. Further, having perused the entire deposition of Arun Sharma,*

this court is of the considered opinion that the essential postulates of the offences for which the accused persons were summoned, were not established on the record.

10. As a sequel to my findings above, this court is of the considered opinion that no case is made out against the accused persons, if un-rebutted, would warrant their conviction. Accordingly, the accused Rishi Raj and Chander Bala present in the court stand discharged for the offences for which they were summoned to face trial by the court. Their bail/surety bonds, stands discharged. File be consigned to records, after due compliance.”

Dis-satisfied with the above order of discharge, the petitioner filed a criminal revision petition before the Court of Session at Gurgaon, which was decided by learned Additional Sessions Judge vide his order dated 8.5.2015. The operative part of the order passed by learned Additional Sessions Judge, Gurgaon, is as follows:-

“8. Keeping in view the arguments advanced by learned counsel for the parties and perusing the record of the case, it came into the notice of this court that the revisionist filed the complainant on the allegations that

accused entered into an agreement to sell the house No. 1094-A, Sector 17B, Gurgaon by virtue of vasika No. 15503 dated 20.11.2009 and vasika No. 16816 dated 7.12.2009. Thereafter the revisionist filed the injunction suit against him which was compromised. Thereafter the revisionist filed the execution of the compromise which was pending before the court of Sh. Ashu Kumar Jain, Civil Judge (Jr. Div) Gurgaon. Thereafter accused alienated the property in question in favour of third person and thus caused wrongful loss to the complainant. After conclusion of preliminary evidence, the respondents were summoned to face the trial by virtue of order dated 4.1.2013. After appearance of the accused in the present complaint, the complainant adduced his only oral evidence. The case of the complainant is based upon the agreement to sell dated 20.11.2009 and 7.12.2009. The said agreements have not been produced on record in pre charge evidence. The preliminary evidence is not liable to be looked into while framing the charge sheet against the accused. At the time of framing of charge in the complaint case

*section 245 of Cr.PC empowers the Magistrate to discharge the accused if, upon taking of all the evidence referred to in section 244, he considers that no case against the accused has been made out which may warrant his conviction. Complaint speaks that matter in dispute is of the civil nature and the matter has been compromised in the civil court also and execution of the compromise is pending. Now coming to the present case in brief no preliminary evidence is liable to be considered at the time of charge and in pre charge evidence the complainant lead only oral evidence which is not sufficient evidence to connect the accused with crime in accordance with law. The oral evidence of the complainant is not sufficient to connect the accused with the alleged crime. If conviction does not warrant then in the said circumstances accused is not liable to be charge sheeted in view of section 245 Cr.PC. This court also find support from the law settled in **Sunil Mehta and another versus State of Gujarat and another- 2013(3) RCR (Criminal) 238.***

9. *In view of the discussion made, learned trial*

court has passed the order dated 26.2.2014 judiciously and correctly in accordance with law which does not require any interference in the said order hence the revision petition filed by the revisionist is hereby dismissed. Trial court record alongwith a copy of this judgment be sent back. File be consigned to record room after due compliance.”

The contention of learned counsel for the petitioner that in addition to the oral evidence there were documents and the same were to be taken into consideration by learned Courts below for framing charges against the respondents does not weigh well. It is an admitted fact that during pre-charge evidence, the petitioner/complainant has failed to prove the documents available on record. It is settled law that mere production of a document would not mean that the same should be read in evidence unless it is proved in accordance with law. Both the Courts below have specifically noted that except the oral evidence led by the petitioner there was no material to support the allegations against the respondents. This Court is also of the firm view that except the deposition of the

petitioner/complainant there was no evidence to connect the respondents with the offences alleged to have been committed by them. Even otherwise, from the tenor of the allegations levelled in the complaint and deposed by the petitioner/complainant in his pre-charge evidence, this Court finds that a dispute of breach of contract has been given the colour of a criminal case. Both the Courts below had accorded sound reasons in support of the orders dismissing the complaint and the criminal revision petition, respectively. Therefore, the present petition lacks merits and the same is hereby dismissed.

(NARESH KUMAR SANGHI)
JUDGE

November 28, 2015
Pkapoor