

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRM-M-38977-2015

Date of Decision: November 18, 2015

Surinder Kumar

...Petitioner

Versus

Baljinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Ms. Rakhi Sharma, 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 12.8.2015 (Annexure P-4), passed by learned Additional Sessions Judge, Amritsar, whereby criminal revision petition filed by the petitioner challenging the order dated 7.3.2015, passed by learned Judicial Magistrate First Class, Amritsar, whereby the complaint filed by the petitioner for summoning and trial of the respondents, for the offences

punishable under Sections 406 and 420, IPC, was dismissed.

Learned counsel contends that an amount of ₹16,00,000/- (Rupees sixteen lacs only) was paid to the respondents for alienating land, but they failed to keep the words and even did not return the amount paid by the petitioner. She further submits that both the Courts below have failed to appreciate the fact that *prima facie* case for summoning of the respondents was made out and, as such, it was incumbent for learned Area Judicial Magistrate to summon the respondents to face trial.

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

While dismissing the complaint filed by the petitioner, learned Judicial Magistrate First Class, Amritsar, held as under:-

“3. Considered. The grievance of complainant is that the deed writer has not returned him Rs. 6 lacs, which were alleged to be returned to him after he gets the property vacated from the tenants. His further grievance is that the sale deed has been executed in mere Rs. 6 lacs and accordingly summoning against the accused has been sought under Sections 420 and 406 of

IPC. At the stage of summoning the accused, sufficient grounds must be there to proceed against accused. Perusal of sale deed dated 19.07.2010 shows that the same has been executed for the sum of Rs. 6 lacs and the mode of payment of the same has also been discussed i.e. Rs. 1 lac to have been received in cash and remaining Rs. 5 lacs through banker's cheque no. 839896 dated 29.05.2010 drawn on HDFC Bank Branch Sector 35-B Chandigarh. The said sale deed is a registered document, where the complainant appeared before Sub-Registrar and appended his signatures, it was upon complainant to prove that the sale deed was to be executed for Rs. 22 lacs. As per Sections 91 and 92 of Indian Evidence Act when the terms of contract have been reduced in the form of document no other evidence shall be given in proof of terms of such contract except the document itself and no evidence of any oral agreement or statement shall be admitted. When the document of sale deed, that too duly registered before the Sub-Registrar is on file, no amount of oral evidence shall be sufficient to rebut the veracity of the same. As far as alleged agreement to sell is concerned, the same was a totally different transaction and complainant can't get any benefit out of the same. Even if for argument sake its believed that the complainant is having any grievance with the said sale deed, the remedy lies under Civil Law, and certainly not under criminal law. In view of the discussion made

above, no sufficient grounds are made out to summon the accused in the present case. Complaint is hereby dismissed. File be consigned to judicial record room.”

While dismissing criminal revision petition filed by the petitioner, learned Additional Sessions Judge, Amritsar, held as under:-

“10. Taking into account the record of the trial court as well submissions of both the parties, this court is of the considered view that the main grievance of the complainant is that accused persons had failed to pay him Rs. 6 lacs. which is the balance sale consideration. He had alleged that the amount was kept with accused no.3 to be paid to him when he deliver the vacant possession of the property to accused no. 1 and 2 after getting it vacated from tenants. He alleged that he got the property vacated from tenants and delivered the possession but the amount of Rs. 6 lacs was not paid to him. Hence, accused had misappropriated his money and had committed cheating with him, therefore, they are liable to be summoned under section 406/420 of IPC. The complainant had alleged agreement Ex. C1 and sale deed Ex. C2. As per Ex. C2 sale deed dated 19.7.2010, the sale consideration is written as Rs. 6 lacs and it has also been mentioned that complainant had received Rs. 5 lacs. through cheque and Rs. 1 lac. in

cash. This document has been voluntarily signed by the complainant and there is no allegation that this document was signed by him under any misrepresentation, therefore, this document is voluntarily executed document. Further Ex. C2 has been registered before the office of Sub-Registrar. At the time of registration, the complainant had not made any complaint that sale consideration has not been paid to him but now he is alleging that balance sale consideration has not been paid to him. The preliminary evidence brought by him only pertains to the fact that accused persons had failed to pay him Rs. 6 lacs balance but no allegation of mis-appropriation and cheating has been made against the accused that they had deceived and induced him to part away with valuable security. No document has been brought by the complainant to show that the balance sale consideration was payable to him. Therefore, prima-facie no offence u/s 420/406 of IPC is made out against the present accused. Otherwise also the allegations levelled by the complainant only leads to the conclusion that his grievance can be remedied under civil law, therefore, as the complainant had failed to bring sufficient grounds for summoning the accused, the trial court had rightly dismissed the complaint of the complainant without summoning the accused. There is no infirmity in the order dated 07.03.2015. Hence the present revision petition bears no merits and the same

is hereby dismissed. Record of the trial court be sent back and revision file be consigned to the record room.”

This Court finds that even if whole case of the complainant/petitioner is taken at its face value, then also the intention to commit the offences punishable under Sections 406 and 420, IPC, would be lacking in the present case. At best it can be said to be a case of breach of contract, which would give rise to civil litigation and not a criminal case. Both the learned Courts below have accorded sound reasons for dismissal of the complaint and criminal revision petition filed by the petitioner. This Court though was not inclined to appreciate the factual position while exercising the jurisdiction under Section 482, Cr.P.C., but to satisfy the petitioner and his counsel, the matter has been heard in detail and it is found that there is no substance in the present petition and, as such, the same is hereby dismissed.

(NARESH KUMAR SANGHI)
JUDGE

November 18, 2015
Pkapoor