

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

CRM-M-9856 of 2015 (O&M)

Date of Decision: 4.11.2015

Manohar Lal

.....Petitioner.

Versus

Suresh Kumar and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Gurcharan Singh, Advocate
for the petitioner.

To be referred to the Reporters or not? Yes

1. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the impugned order dated 11.12.2014 (Annexure P-4) passed by the learned Additional Sessions Judge, Hoshiarpur, whereby revision of the petitioner was dismissed and the order dated 30.1.2014 (Annexure P-2) passed by the learned Sub Divisional Judicial Magistrate, dismissing the complaint of the petitioner, was upheld.

Learned counsel for the petitioner submits that

complainant executed power of attorney in favour of the respondent-accused which was later on cancelled. He further submits that the respondent-accused cheated the petitioner by selling his property. There was sufficient material available with the petitioner to prove his case. However, since the courts below have failed to appreciate true facts of the case as well as preliminary evidence brought on record by the petitioner, impugned orders have resulted in miscarriage of justice and the same are liable to be set aside. He prays for setting aside the impugned orders, by allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the impugned orders have not been found suffering from any patent illegality and the same deserve to be upheld, for the following more than one reasons.

A bare combined reading of both the impugned orders would show that learned courts below have proceeded on a factually correct and legally justified approach, while passing their respective impugned orders. Sufficient and cogent reasons have been recorded by the learned courts in support of their orders. Preliminary evidence led by the petitioner was not found sufficient to summon the accused. Petitioner could not make out even a prima facie case against the accused, so as to enable the learned trial court to proceed against the accused. Having said that, this Court feels no hesitation to conclude that learned courts below have committed no error of law while passing the impugned orders and the same deserve to be

upheld.

It is a matter of record that petitioner himself suffered the power of attorney in favour of the accused-respondent, who happens to be a relative of the petitioner. It is also not in dispute that the sale deed was executed by the respondent during the validity of the power of attorney. Thereafter, cancellation of power of attorney would be of no consequence. It is not even the argued case on behalf of the petitioner that respondent suffered the sale deed after cancellation of power of attorney. Further, petitioner is already pursuing his remedy to recover the money by way of recovery suit. In this view of the matter, learned courts below have not been found to have exceeded their jurisdiction, while passing the impugned orders and the same deserve to be upheld, for this reason also.

In fact, summoning of a person in a criminal case is a serious matter and it cannot be taken lightly by the learned trial court. The learned trial Magistrate is duty bound to apply his judicious mind on the basis of the material placed on record and he has to record his satisfaction that a prima facie case was made out against the accused to issue process against him. In the present case, petitioner has failed to substantiate any of the allegations levelled against the respondent, because of which the learned trial court rightly passed the impugned order.

Thereafter, even the learned revisional court re-considered the matter and came to the judicious conclusion that cogent findings recorded by the learned trial court were justified on facts as well as in law. In such a situation, it can be safely concluded

that learned courts below were well justified, while passing their respective impugned orders and the same deserve to be upheld, for this reason as well.

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.”

“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 to the facts and circumstances of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in A Arun Kumar's case (supra), as the same aptly apply to the facts of the present case, it is unhesitatingly held that since the impugned orders have not been found to be suffering from any jurisdictional error or patent illegality, the same deserve to be upheld.

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 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 above said observations made, present petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

4.11.2015
Ak Sharma