IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.2505 of 2014
Date of Decision: August 11, 2015

Kamla Jain ...Petitioner

Versus

Ajesh Jain and another ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Arun Singal, Advocate for the petitioner.

Mr. J.S, Saneta, Advocate for the respondents.

FATEH DEEP SINGH, J.

A criminal complaint titled *Kamla Jain vs. Ajesh Jain and another* was preferred on the allegations of the complainant that she has taken a house measuring 160 square yards on 20 years lease through registered deed dated 01.10.2001 @ ₹400/- per month. It is alleged that on the insistence of father of the accused Ajesh Jain and Renu Jain who both are his siblings that he wanted balance money it was on 25.10.2001 the complainant paid a sum of ₹96,000/-. It is further alleged that on 27.7.2007 Ram Kishan Jain, father of the accused died and, thereafter, in the month of May, 2010 the accused had told the complainant that they were proposing to sell off their house. It is thereafter, the complainant offered to purchase the house and deal for ₹7,00,000/-was struck between them orally. The complainant alleges that in the presence of witnesses she gave ₹2,50,000/-to the accused who had put off the matter submitting that the original documents of ownership was lying with the Allahabad Bank against some loan. It is alleged by the complainant that she repaid the loan on behalf of the accused amounting to ₹2,25,000/- and obtained NOC and when she called upon the accused to do the needful they kept on lingering the same on one pretext or the other and it was in the presence of Panchayat the accused had conceded that their house was under a loan with Khadi Gram Udyog, Panipat. Thereafter, a series of squabbles took place, whereby, the complainant has moved local Police on 18.8.2010, 22.9.2011 but to no avail and hence filed the complaint in question.

The learned Judicial Magistrate 1st Class, Panipat through order dated 25.10.2012 after recording preliminary evidence finding commission of offences under Sections 406,415,418,420,506 and 34 IPC summoned the accused. The same was challenged in revision petition before the learned Additional Sessions Judge, Panipat and the Court in revision through impugned judgment dated 7.6.2013 set aside the orders of the learned Magistrate dismissing the complaint and hence the complainant is before this Court by way of instant revision.

Heard. It is squarely accepted by learned counsel for the petitioner and learned counsel for the respondents that the principle of law is very well settled as to the framing of the charge wherein what is to be seen is the element of **prima facie case** for which reliance has been placed by both the counsel on ***Kanti Bhadra Shah and another vs. State of West Bengal 2000(10 RCR (Criminal) 407*** which is also relied upon in ***Bhushan Kumar and another vs. State (NCT of Delhi) and another 2012(2) RCR (Criminal) 794*** and in ***M/s Ansal properties and Infrastructure Ltd. and others vs. Haryana State Pollution Control Board 2012(3) RCR (Criminal) 138*** to hold that there is no legal requirement that the trial Court should write an order illustrating reasons for framing of a charge. However, the principle of prima facie case as enunciated in ***R.S. Nayak vs. A.R. Antulay AIR 1986 S.C. 2045*** and ***State of Bihar vs. Ramesh Singh AIR 1997 S.C.*** 2018 and subsequent view in ***1990 Criminal Law Journal 1869 S.C.*** in case of ***Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimaraj Bijja and others*** still holds good which has also been reiterated in another view of the Hon'ble Apex Court in ***2000 SCC (Criminal) 311 State of Madhya Pradesh vs. S.B. Johari and others.***

Thus, the contentions of the learned counsel for the respondents that at the most even if the allegations of the complainant are admitted to be gospel truth only a civil liability arises and there is no criminal liability which can be fastened upon the accused and which though is sought to be controverted on behalf of the petitioner submitting that it was clearly an act of dishonesty and cheating. Appreciating these submissions, no doubt, summoning order need not be that comprehensive spelling out the reasons for summoning of the accused but being an order which certainly causes prejudice to a party must be a speaking one giving the reasons why the Court deems it appropriate that there was prima facie evidence to summon the accused. What has been brought on the records is the testimony of the complainant herself as CW1 by means of her affidavit Ex.CW1/A and documents comprising of Ex.C1 to Ex.C8. Ex.C5 pertains to NOC certificate which shows some sort of one time settlement with the Khadi Gram Udyog, Panipat and is issued by Allahabad Bank without any particulars of the loan and the person except the account number. Ex.C2 to Ex.C4 are the copies of the vouchers of the pay-in-slips and which do not reflect by and for whom these payments have been made. Ex.C6 and Ex.C7 are complaints made to the local police and Ex.C8 is a copy of the petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973. Ex.C1 is the receipt regarding payment having been received by Ram Kishan Jain, father of the accused amounting to ₹96,000/- being by way of advance rent. Thus, from it all nothing tangible has come on the records to show commission of any criminal offence and the entire allegations harbour around civil legal liability. No doubt, relation of tenant and landlord are admitted and in the impugned order reflects that it was the main consideration before the Court below that the dispute was primarily of a civil nature and there was neither any element of dishonest intention of causing wrongful loss or making wrongful gain nor there was any evidence to show cheating as defined in Section 415 IPC and criminal breach of trust as defined in Section 405 IPC much less that of criminal intimidation when admittedly the issue is over the tenancy and, therefore, the Courts ought to be careful and cannot allow wrecking of vengeance for a motivated object. None of the essential ingredients of commission of any criminal offence certainly could be made out as has been held in the impugned order. Learned counsel for the petitioner could not convince this Court how the impugned order was perverse, illegal necessitating intervention by this Court. No doubt, the powers under Section 401 Cr.P.C. of this Court are very restricted and the Court can only in the eventuality of any illegality or impropriety could show interference but the learned counsel for the petitioner failed to show this Court any such eventuality. Thus, finding no merit in the instant petition, the same stands dismissed.

(FATEH DEEP SINGH)
JUDGE

August 11, 2015
aarti