

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-1259 of 2016 (O/M)
Date of decision : 14.1.2016

Swadesh Kumar Ahuja

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Lalit K. Gupta, Advocate, for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in the present petition is the order dated 4.12.2015 (Annexure-P-4), passed by the learned Additional Sessions Judge, Panipat, whereby the summoning order dated 4.7.2014 (Annexure-P-3), for the offences punishable under Sections 406/420 and 120-B IPC, passed by the Additional Chief Judicial Magistrate, Panipat, in protest petition/complaint case No. 33/2010, titled as Swadesh Kumar Ahuja Versus Rajiv Raj and another, under Sections 406, 420, 467, 468, 471 IPC read with Section 120-B IPC, pertaining to FIR No. 509 dated 4.10.2009, registered under Sections

CRM No. M-1259 of 2016 (O/M)

-2-

406/420/467/468/471/120-B IPC at Police Station Model Town, Panipat, qua Rajiv Raj, was set aside.

Briefly stated, Rajiv Raj (respondent herein) as well as Prem Parkash Bareja, have been summoned by the learned Additional Chief Judicial Magistrate, Panipat, vide order dated 4.7.2014 (Annexure-P-3) on a protest petition/complaint dated 6.5.2010 (Annexure-P-2), filed by the present petitioner (complainant before the lower Court), wherein it was stated that accused No. 1 is the owner of two properties i.e. Plot No. 107-L (Eastern side), measuring 141 sq. yards and House No. 104-R, measuring 437 sq. yards, situated in Model Town, Panipat, as per sale deed/Vasika No. 1566 dated 26.5.1989 and sale deed No. 6093 dated 29.2.1980. Accused No. 2 represented that he is managing the properties on behalf of accused No. 1 and is his general attorney. Believing the testimony of accused No. 2, the complainant agreed to the proposal put forth by accused No. 2 and a deal was struck for sale of the said properties for a sale consideration of Rs. 55,00,000/-. Out of the said amount, Rs. 5,51,000/- was agreed to be paid as earnest money by way of demand draft and cash. The present petitioner paid Rs. 3,00,000/- to the accused, vide four demand drafts and Rs. 2,51,000/- was paid to the accused in cash. The amount of demand drafts was deposited in the account of accused No. 1. Now, the accused have not executed the sale deed. The learned Additional Chief Judicial Magistrate, Panipat, vide order dated 4.7.2014 (Annexure-P-3), found that the intention of

CRM No. M-1259 of 2016 (O/M)

-3-

the accused from the very beginning was dishonest. Therefore, both the accused were summoned under Sections 406/420 IPC read with Section 120-B IPC. One of the accused i.e. accused No. 1 Rajiv Raj preferred a criminal revision against the said summoning order, which was allowed, vide order dated 4.12.2015 (Annexure-P-4), passed by the learned Additional Sessions Judge, Panipat,

I have heard the learned counsel for the petitioner and have also carefully gone through the file, the copy of the protest petition/complaint dated 6.5.2010 (Annexure-P-2), filed by the present petitioner before the lower Court, the summoning order dated 4.7.2014 (Annexure-P-3), passed by the learned Additional Chief Judicial Magistrate, Panipat, as well as the order dated 4.12.2015 (Annexure-P-4), passed by the learned Additional Sessions Judge, Panipat.

The perusal of the protest petition/complaint dated 6.5.2010 (Annexure-P-2) itself reveals that a deal of the said properties was struck for Rs. 55,00,000/-. It is stated that sale of date was fixed, but on the said date, the sale deed was not executed and till date, the sale deed has not been executed. It was not alleged that on any date, the present petitioner had appeared before the concerned Sub Registrar for execution of the sale deed and that he is ready and willing to perform his part of the contract. Basically, it is a case of violation of terms and conditions of the agreement of sale and is a civil dispute. As per the petitioner, four demand drafts were deposited in the account of

CRM No. M-1259 of 2016 (O/M)

-4-

accused No. 1 and the same has been admitted by the accused. Thus, from its face, it cannot be said that since inception, the intention of the accused was to cheat the present petitioner. However, he could seek the relief of specific performance and in the alternative, recovery of money with interest could have been claimed.

In these circumstances, the present complaint is nothing, but misuse of the process of Court, in order to get quick relief through the criminal proceedings, whereas, basically, it is a civil dispute. Therefore, I do not find any cogent ground to interfere in the impugned order dated 4.12.2015 (Annexure-P-4), passed by the learned Additional Sessions Judge, Panipat, vide which the summoning order dated 4.7.2014 (Annexure-P-3), passed by the learned Additional Chief Judicial Magistrate, Panipat, was set aside and the criminal revision against the said summoning order, qua accused No. 1 Rajiv Raj, was accepted. Hence, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

14.1.2016
sjks