

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

CRM-M No.12374 of 2014

Date of decision: 3rd February, 2016

Sunder Lal Maloo

... Petitioner

Versus

Gaje Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sumeet Goel, Advocate
for the petitioner.

Ms. Priyanka Sharma, Advocate for
Mr. M.L. Sharma, Advocate
for the respondent.

FATEH DEEP SINGH, J.

A criminal complaint titled 'Gaje Singh v. Sunder Lal Maloo' dated 11.08.2004 under Sections 420/467/468/471 IPC was filed in the Court of Sub Divisional Judicial Magistrate, Sohna, District Gurgaon (Annexure P1) and the learned Judicial Magistrate 1st Class, Gurgaon summoned the present petitioner as accused vide its orders dated 03.12.2010 (Annexure P2). It is against the summoning order and the complaint, the petitioner has knocked at the doors of this

Court under Section 482 Cr.P.C. seeking quashing of the summoning order as well as the complaint.

The brief allegations that have been levelled by the complainant are that complainant Gaje Singh claims that he is owner in possession of 2315/105332 share of agricultural land bearing Khewat No.115, Khata No.134 situated within the revenue estate of village Ghata, Tehsil and Police Station Sohna, District Gurgaon; contending further that by virtue of an oral agreement to sell, the complainant undertook to sell the same in favour of the accused for a sale consideration of ₹47.00 lacs, out of which it is alleged that the accused has paid a sum of ₹12.50 lacs by way of cheque No.065063 dated 23.04.2000 undertaking to pay the balance amount in the due course. It is alleged that thereafter when the accused as per the assurance and promise presented the cheque for due encashment, the same was rejected raising an objection 'payment stopped by the drawer'. It is alleged that the accused had in the meanwhile forged and fabricated a General Power of Attorney bearing No.44 dated 10.06.1999 purported to have been given by the complainant and on the strength of this forged document, executed sale deed bearing No.2499 dated 28.03.2000 of this property in favour of M/s Lunar Finance Limited of which the accused is the Chairman.

Learned counsel for the petitioner submits that a civil suit had been preferred by the complainant titled 'Gaje Singh v. S.L. Maloo and another' for declaration and the Court of learned Civil Judge (Junior Division), Gurgaon through judgment dated 31.01.2012 had

dismissed the suit of the plaintiff (now complainant), and placing reliance on '**Kishan Singh (dead) through LRs v. Gurpal Singh and others**' (2010)8 SCC 775, has sought to harbour around the fact that after having faced defeat the complainant cannot have misuse of the process of the Court and institute such a criminal complaint on misleading facts and which arguments have been sought to be opposed on behalf of the respondent/complainant by Ms.Priyanka Sharma, Advocate that the very elements of criminality and civil rights are on different footing.

Learned counsel for the accused/petitioner admits that immediately on issuance of the summoning orders, they have never approached the learned trial Court under Section 245 Cr.P.C. to instill confidence in the Court that there was no worthwhile evidence or occasion to summon the accused and thus, seeking their discharge in the case. Furthermore, the provisions of Code of Criminal Procedure which governs criminal cases as far as procedural aspect is concerned, have provided a remedy by way of revision under Sections 397/399 Cr.P.C. As is admitted by learned counsel for the petitioner, being a revisable order amenable to revision he has not challenged the same by any means. More so, without complying with the orders of the trial Court and putting in appearance before it, what is reflected from the statements of the two sides is that the petitioner has straightaway come to this Court seeking quashing of the same by the exercise of inherent powers under Section 482 Cr.P.C. As has been laid down in a catena of case law including the ratio in '**State of**

Haryana and others v. Ch.Bhajan Lal and others’ 1992 AIR SC 604, such a provision is to be sparingly used in rarest of the rare cases for advancement of justice in exceptional circumstances. More so, as has been held by the Hon’ble Apex Court in ‘**Urmila Devi v. Yudhvir Singh’ 2013(4) RCR (Criminal) 899** and ‘**Mohit @ Sonu and another v. State of UP and others’ 2013(3) RCR (Criminal) 673** which provides that where the Cr.P.C. provides specific remedy then resorting to such exceptional provisions under Section 482 Cr.P.C. needs to be discouraged. Even in the ratio of **Kishan Singh’s case (ibid)**, the Hon’ble Supreme Court has considered various ratios as to the applicability of findings of fact recorded by the Civil Court on the criminal case and it has been held by their Lordships that the findings of fact recorded by Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa, holding further that standard of proof is different in civil and criminal cases. Certainly it is even conceded by the counsel for the two sides that civil cases are decided on the principle of preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt that weighs in the mind of the Court. Thus, in the totality of these circumstances though there is no statutory provision or principle which has crystallized over a period of time that findings recorded by the Court, either in the civil or criminal case, shall be binding either way. This Court shall be slow in accepting the arguments that have been advanced by learned counsel for the petitioner. However, the parties are at liberty to seek aid of sections 41, 42 and 43 of the Indian Evidence Act, 1872 depending

upon the legal necessity. More so, there are specific allegations levelled by the complainant against the accused that he has forged and fabricated General Power of Attorney of the complainant and by virtue of that has sold the share of his land in favour of co-accused which is a limited Company being run by the accused.

At this juncture, it would be too preposterous to adjudge the evidence or the very falsity of allegations. Thus, in the totality of what has been detailed and discussed above, there is no merit in the present petition which as such stands dismissed. Parties are directed to appear before the trial Court which shall proceed ahead into the matter as per law.

(FATEH DEEP SINGH)
JUDGE

February 3, 2016
rps