129 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No. M-14358 of 2016 (O&M)
DECIDED ON: APRIL 28, 2016

ANIL KATARIA

.....PETITIONER

VERSUS

HARYANA FINANCIAL CORPORATION & ANR

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

Present: Mr. Sanjay Gupta, Advocate
for the petitioner.

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JASPAL SINGH, J (ORAL)

CRM No. 13706 of 2016

Application is allowed, as prayed for.

CRM No. M-14358 of 2016 (O&M)

By virtue of this petition preferred under Section 482 Cr.P.C., Anil Kataria has sought the setting aside of summoning order dated May 02, 2014 (Annexure P-1) passed by learned Judicial Magistrate, Ist Class, Rohtak in a complaint case No. 07 dated 17.04.2008/06.03.2014 titled as ***"Haryana Financial Corporation v. Pardeep Singh and another"*** as well as order dated February 08, 2016 (Annexure P-2) passed by learned Additional Sessions Judge, Rohtak in Criminal Revision No. 111 of 2014.

2. While assailing the impugned order(s) passed by both the courts below, it has been argued by vehemence by learned counsel for the petitioner that the same are based upon surmises and conjectures and are contrary to the facts, that too without due application of mind. The courts below have failed to appreciate that from the allegations unfolded in the complaint as well as in the documents on record, it is proved that petitioner immediately on receipt of default notice from respondent No.1 visited the concerned branch on July 19, 2000 and informed that neither he ever mortgaged the property nor he knew respondent No.2. He in fact, filed his identity documents having original signatures on record to prove his stand. Though Mr. R.P. Jain, the then Branch Manager on the same day brought these facts to the notice of Senior Manager (Recovery) as well as Deputy General Manager (Law) of respondent No.1, but no action in the matter was taken by either of them. Respondent No.1 never made any effort to get his signatures compared with the signatures appearing on the loan documents to ascertain the truth.

3. Similarly, reply dated July 22, 2012 sent by respondent through his counsel to the letter dated July 05, 2012 of the respondent was also not appreciated by both the courts below, which clearly proves that it is a case of impersonation. In fact, petitioner was impersonated by someone. Thus, summoning order of the petitioner is bad in law.

4. It has further submitted by learned counsel for the petitioner that it was incumbent upon the courts below to invoke the provisions contained in Section 73 of Indian Evidence Act before passing the summoning order or the dismissal of revision petition preferred by the petitioner. Neither either of the courts below get the signatures compared themselves nor sought any expert

opinion to ascertain the truth. Not only this, even the courts below have failed to appreciate that the police officer to whom inquiry under Section 202 Cr.P.C. was assigned had conducted the inquiry in a mechanical manner. Even, the statement of Sh. Ram Parkash Hans has not been appreciated by the courts below, who has clearly stated while getting his statement recorded under Section 202 Cr.P.C. that photo identity proof of the mortgager is in his office file which is lying in the Chandigarh office of the complainant. The sale deed in possession of respondent No.1 is a forged and fabricated document as the original is stated to be in possession of Canara Bank, where also the equitable mortgage of the same has been created by someone impersonating the petitioner. When the original title deeds of the property in question were deposited with Canara Bank on November 13, 1996 then how the same can be deposited with respondent No.1 on 07.07.1997. So in the given circumstances petitioner cannot be fastened with any liability and impugned order(s) are absolutely against legal proposition and are liable to be set aside.

5. This court has given a deep thought to the various submissions made by learned counsel for the petitioner and have scanned the impugned order(s) passed by both the courts below but find the same without any legal weight.

6. Undisputably, respondent No.2 availed financial assistance from respondent No.1 to the tune of ₹49,15,000/- and at that time the equitable mortgage was created by submission of title deeds i.e. sale deeds, in respect of property owned by petitioner. Even, as per the version of petitioner, he came to know that some forged and fabricated documents have been submitted to the Corporation in the month July 2000 on his behalf by impersonating him

regarding which the equitable mortgage was created to secure the loan but he did not lodge any complaint against the Corporation or respondent No.2 with the allegations of forgery or fabrication or his alleged impersonation. He remained tight lipped for more than 16 years and now on one fine morning, he has come with the plea that he has been impersonated. Rather, the facts stood revealed that property which was the subject matter of mortgage created by the petitioner, has since been sold away on the basis of General Power of Attorney by the petitioner. Even, report under Section 202 Cr.P.C. is suggestive of the fact that for obtaining loan, the property which was offered by the petitioner was not his ownership. Rather it was sold out much prior. Moreover, if the mortgage deed/sale deeds have been forged and fabricated by way of impersonation of the petitioner it is a matter of evidence and is required to be proved by adducing cogent and convincing evidence by the petitioner before trial Court. It is not a ground for setting aside the summoning order or complaint.

7. In the light of what has been discussed above, this Court does not find any merit in the instant petition and as such the same is dismissed.

APRIL 28, 2016 **(JASPAL SINGH)**
sham **JUDGE**