

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-19954 of 2013

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Date of decision:12.5.2016

Kartar Singh

.....Petitioner

v.

Satish Kumar and others

.....Respondents

.....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Kamal Sharma, Advocate for the petitioner.

Mr. Sudhir Rana, Advocate for the respondent.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of the order dated 18.8.2012 (Annexure-P.3) passed by learned Judicial Magistrate Ist Class, Safidon by which the accused/respondents were discharged in the complaint filed under Sections 420, 465, 476, 468, 471, 500, 323 and 120-B IPC and the order dated 7.1.2013 (Annexure-P.4) passed by learned Sessions Judge, Jind, by which the revision petition filed by the petitioner/complainant was dismissed.

Notice of motion was issued in this case. Record of the Lower Courts was also summoned.

Mr. Sudhir Rana, learned Advocate has put in appearance on behalf of the respondent and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Kartar Singh filed the complaint against Satish Kumar and others for the offences under Sections 420, 465, 468, 467, 471, 500, 323 and 120-B IPC. The brief facts of the case as noted down by the learned Judicial Magistrate Ist Class, Safidon in its order dated 18.8.2012 are as under:-

“The complainant has filed the present complaint under Sections 420, 465, 468, 467, 471, 500, 323 and 120-B of Indian Penal Code (hereinafter referred to as IPC) against the accused on the allegations that complainant went to the accused No.1 in the month of January, 2007 for obtaining Messy Tractor and accused No.1 agreed to deliver the Messy Tractor to the complainant on reasonable rate. Accused No.1 required the documents of land i.e. jamabandi etc. from the complainant for mortgaging the same property with the bank. The accused No.1 got sanctioned loan of Rs.6,00,000/- from P.A.R.B. Bank Ltd. Safidon on 2.2.2007 and mortgaged the land of complainant. The bank issued the cheque in favour of firm of the accused No.1 and the same was received by the accused No.4 who is salesman of firm of accused No.1. Further, the accused No.1 without delivery of the tractor to the complainant has obtained cheque of Rs.6,00,000/- after mortgaging the land of the complainant, illegally, unauthorizedly by concealment of true

fact and misleading the employees of bank. The complainant along with Shyam son of Babu Ram, Sodagar Singh, Ashok Kewal Singh, when again went to the accused No.2 & 3 they openly refused to deliver the tractor and also threatened the complainant with dire consequences. The matter was reported to the police but the police has not taken any action against the accused. Hence, the present petition.”

The accused were summoned on the basis of preliminary evidence for the offences under Sections 323 and 406 IPC vide order dated 18.4.2009.

In pre-charge evidence, the complainant examined Sodagar Singh as CW-1, Ishwar Singh as CW-2, Jai Bhagwan, Clerk as CW-3, Kabul Singh as CW-4, Shisha Singh, Advocate as CW-5 and Kartar Singh-complainant himself appeared as CW-6. The PWs deposed as per complainant's version.

The learned Judicial Magistrate Ist Class, Safidon, after considering the evidence held that no MLR has been exhibited to prove the offence of hurt under Section 323 IPC. As per Section 406 IPC, the Court held that in the document Ex.PW.3/A, endorsement has been put by the complainant at the point Ex.DA and Ex.DB, wherein it is specifically written “I have received the tractor:” (TRACTOR LIYAHAI). On the basis of this endorsement, the accused were discharged. Revision petition was filed before the learned Sessions Judge, Jind, who upheld the findings given by the learned Judicial Magistrate Ist Class, Safidon, vide order dated 7.1.2013.

I have gone through the record specially the Lower Courts record and the orders passed by the Courts below. It is settled law that at the time of framing of charge even in the complaint case, the Court is to see only the prima facie case. The Court is not to weigh the evidence at this stage for the purpose of conviction. It is settled law that even strong suspicion is sufficient to frame the charge. For framing charge for the offence under Section 323 IPC, copy of MLR is, in no way, essential. The Court is to scrutinize the evidence on record and find out whether prima facie case is made out or not. The case of the complainant is that his signatures were obtained on so many documents and blank papers etc. and no tractor had been delivered to him. There is nothing on the record, at this stage, to disbelieve the statement of the complainant. The endorsement on document Ex.PW.3/A, wherein endorsement has been put by the complainant that "I have received the tractor" will not itself disprove the whole case of the complainant. The complainant himself says that no tractor had been delivered. There is no other witness, who had seen the tractor ever with the complainant. There is also no other document except this endorsement to show that the tractor was actually delivered. Otherwise also, if the tractor was actually delivered, then there might have been the registration certificate or the transfer of the tractor or any other document. As regards the insurance, the tractor is insured at the time of selling but the version of the accused is that he mortgaged the land and loan amount of Rs.6 Lacs was paid by the Bank to the accused. It is also the allegation that brother of one of the accused, who owns this firm, is a commission agent. If

[5]

after obtaining these documents the delivery of the tractor was taken by some of the other accused and they have misappropriated the tractor, this version is also probable where one cannot say as to why it cannot happen. As already discussed, at this stage, the Court for framing of charge is to see whether prima facie case is made out or not and the complainant along with other witnesses are saying that the delivery of the tractor was not given and the loan amount was obtained by him by mortgaging the land. Therefore, the findings given by both the Courts below are not as per law.

Therefore, finding merit in the present petition, the same is accepted.

The matter is remanded back to the learned trial Court to reconsider the same as per law. The parties are directed to appear before the trial Court on 30.5.2016. Lower Court record be sent back.

However, nothing stated herein shall be construed as an expression of opinion on the merits of the case and the learned trial Court shall consider the case on the basis of evidence and material as produced before it.

May 12, 2016.

(Inderjit Singh)
Judge

hsp