

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

CRM-M-38244 of 2013 (O&M)

Date of decision : 23.07.2016

Gurpal Singh and ors.

...Petitioners

Versus

Amar Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vivek Suri, Advocate
for the petitioners.

Ms. Harsimrat Rai, DAG, Punjab

Mr. M. S. Joshi, Advocate
for respondent Nos.1 to 5.

JITENDRA CHAUHAN, J. (Oral)

Through the present criminal miscellaneous petition the petitioners have laid challenge to the order of learned Additional Sessions Judge, Patiala, dated 12.09.2013, (Annexure P-4) vide which learned Additional Sessions Judge, accepted the revision petition of respondents setting aside the order of learned Judicial Magistrate Ist Class, Patiala, Annexure P-3, whereby the present petitioners were discharged in case FIR No.174 dated 12.11.2009, for the offences under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code (for short 'the IPC') at Police

Station Julkan.

The brief facts of the case are that FIR No.174 dated 12.11.2009 under Sections 420, 465, 467, 468, 471 and 120-B IPC was registered at Police Station Julkan against the accused/present petitioners on the basis of an application moved by Parkash Chand-complainant (since deceased) to S.S.P., Patiala by pleading that he mortgaged his two shops with possession situated at village Devigarh for a sum of ₹65,000/- on 23.07.2002 to Gurpal Singh and on 07.09.2005 he got redeemed his two shops after making the payment and got a receipt from Gurpal Singh on the back of the mortgage deed. However, the present petitioners fabricated an agreement to sell of the above two shops on 22.04.2009. The agreement to sell alleged to be executed by him, in favour of Gurpal Singh and others is a forged and fabricated document. He never executed or signed the said agreement to sell.

The said application moved by Parkash Chand (since deceased) was enquired into by DSP (D) Patiala, who after recording the statements of the witnesses opined that the agreement to sell appears to be a forged document. DSP also referred to the statement of stamp vendor Jatinder Singh who stated that the complainant never came to him for purchasing the stamp and the stamp paper on which the alleged agreement to sell had been written, was purchased by Gurpal Singh. Another witness Bhag Singh stated before the enquiry officer that neither any payment was made in his presence nor Parkash Chand or his sons were present at that time, when he

put his thumb impression on the agreement to sell on the asking of Gurpal Singh. When the enquiry officer attracted attention of the witness toward the affidavit dated 18.08.2009 given by him to Gurpal Singh, he clarified that the affidavit was prepared by Gurpal Singh and carries his thumb impression. No payment was made to Parkash Chand in his presence and that the fact of payment mentioned in the said affidavit was wrong. The detailed enquiry report of DSP has been reproduced in the FIR registered against the petitioners.

The Challan was presented, but at the time of consideration for framing of charge against the present petitioners, learned Judicial Magistrate Ist Class, Patiala discharged the accused/present petitioners vide Annexure P-3.

Respondent Nos.1 to 5 filed a revision petition before learned Additional Sessions Judge, Patiala against the order Annexure P-3, which was allowed on 12.09.2013 vide Annexure P-4 on the ground that it is settled law that at the time of framing of charge only prima facie case is to be seen and merits of the case are not to be explored. Learned Additional Sessions Judge also relied on the judgment titled as '**Soma Chakarwarty Vs. State through CBI**', 2007(5) SCC 403, in which it has been held that if on the basis of material on record, the Court could form an opinion that accused might have committed the offence, it can frame the charge. The petitioners have impugned order dated 12.09.2013, Annexure P-4 by way of present petition.

It is contended by the learned counsel for the petitioners that as the comparison of signature on the agreement to sell has not been made therefore, no offence is made out against the petitioner.

The counsel for the respondents contended that the case was registered after thorough enquiry and there is strong prima facie case against the petitioners. Even the agreement to sell was apparently forged as the shops are situated at village Devigarh whereas, in the agreement to sell the shops are mentioned to be situated in village Dundi Majra. However, the petitioners have intentionally translated Annexure P-2 wrongly to make a correction of the situation of the shops.

I have heard the learned counsel for the parties and carefully perused the entire record on file.

The present case was registered against the petitioners on the basis of enquiry report of DSP (D) Patiala, wherein the statements of the witnesses of the agreement in question and stamp vendor-Jatinder Singh were discussed, which suggests that agreement to sell was a forged document. Further, Hon'ble the Supreme Court, in the case of '**Hem Chand Vs. State of Jharkhand**', 2008 AIR (SC) 1903, has made the following observations:-

“The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during

investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any. "

Therefore, this Court finds no infirmity or illegality in the impugned order dated 12.09.2013.

Accordingly, the present petition is dismissed.

23.07.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**