IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-9664 of 2011 (O&M)
Date of Decision: November 15, 2016

Surinder Kumar and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vivek K. Thakur, Advocate
for the petitioners.

Mr.D.S.Virk, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Randeep Singh, Advocate
for respondent No.2.

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INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Sham Lal, for quashing of FIR No.216 dated 22.08.2009 under Sections 406, 420 and 120-B IPC, registered at Police Station Rajpura City, District Patiala.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

As per the record, the FIR was got recorded by Sham Lal, wherein, he stated that he had borrowed ₹3 lakhs on interest from Surinder Kumar in lieu of which, the said person obtained General Power of Attorney qua his shop No.256 and paid only a sum of ₹20,000/- and kept on making excuses for payment of remaining amount and said that whenever he will receive the amount, he will call him (complainant) and make the payment. After period of 40 days, Surinder Kumar executed a sale deed in respect of shop No.256 in favour of his wife Seema Rani. When the complainant came to know about it, he returned ₹20,000/- to Surinder Kumar and asked him to return the General Power of Attorney but he kept on dilly dallying the matter and told him that he shall get the sale deed executed in his favour on 08.04.2009. Then Surinder Kumar got executed General Power of Attorney from his wife Seema Rani in favour of his brother Subhash Chand and obtained signatures of the complainant as witness on General Power of Attorney. Then he got executed provisional sale deed in favour of the complainant and stated that final sale deed will be executed in 1-2 days but till date, he has not got executed the sale deed in his favour. It is also stated by the complainant that the said shop is in his possession and he is doing plastic and crockery items. It is further stated that Surinder Kumar has committed fraud with him.

Learned counsel for the petitioner argued that the present FIR is nothing but abuse of process of law and has been got registered only to harass the petitioners. It is admitted fact that General Power of Attorney has been executed by the complainant in favour of Surinder Kumar petitioner. There is no forgery of any type in execution of the General Power of Attorney and it is a voluntary act. General Power of Attorney was executed on 15.02.2007. Sale deed on the basis of this General Power of Attorney was executed on 10.04.2007. Second Power of Attorney was executed on 08.04.2009, which was signed by the complainant-respondent No.2 as an attesting witness. The second sale deed was executed on 12.05.2009 on the basis of second Power of Attorney by Seema Rani in favour of Subhash Chand.

Learned counsel for the petitioner further argued that none of the document is forged one as admitted by the complainant in the FIR. He also argued that complainant-respondent No.2 was knowing execution of sale deed by Surinder Kumar in favour of Seema Rani on 10.04.2007 but he kept silent for more than two years and four months.

After hearing learned counsel for the parties as well as learned State counsel and after going through the record, I find that the only allegation regarding cheating by the complainant in the FIR is that he borrowed ₹3 lakhs but actually ₹20,000/- was given to him but he relied upon the receipt dated 15.02.2007 himself, in which it is mentioned that ₹3 lakhs was received and borrowed by him from Surinder Kumar and Sham Lal will repay this amount within one year i.e. 14.02.2008, which means that the version that instead of ₹3 lakhs, ₹20,000/- was paid, which was returned by the complainant as stated in the FIR, is contradictory to the document Ex.R-1, which is produced and relied upon by respondent No.2.

It is admitted at the time of arguments by respondent No.2 that he executed General Power of Attorney authorizing Surinder Kumar to execute sale deed and there is no such condition in the General Power of Attorney that sale deed cannot be executed before 14.02.2008 nor there is anything mentioned regarding repayment of ₹3 lakhs by Sham Lal respondent to the petitioner within one year. As no such condition is there in the General Power of Attorney, therefore the sale deed executed on the basis of General Power of Attorney cannot be held as forged document or amounts to cheating.

Furthermore, respondent No.2, as admitted at the time of arguments, was knowing regarding the sale deed in favour of Seema Rani since its execution i.e. 10.04.2007, then why he kept silent upto 22.08.2009 till the registration of the FIR. Even if it is taken that instead of ₹3 lakhs, ₹20,000/- has been paid to the complainant, then why he kept silent till the registration of the FIR and why he has not got cancelled the General Power of Attorney. Moreover, the second Power of Attorney was executed by Seema Rani on 08.04.2009, which is on the record, and it is admittedly signed by respondent No.2 as an attesting witness and then sale deed was executed on 12.05.2009 and even then, the complainant did not raise any objection and this FIR was got registered on 22.08.2009.

In view of the above discussion, I find that the registration of the FIR in the present case is nothing but abuse of process of law and amounts to miscarriage of justice and has been got registered only to harass the petitioners.

Therefore, finding merit in the present petition, the same is allowed. FIR No.216 dated 22.08.2009 under Sections 406, 420 and 120-B IPC, registered at Police Station Rajpura City, District Patiala and all subsequent proceedings arising therefrom, are hereby quashed.

November 15, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**