

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6350-2014 (O&M)

Date of decision: February 15, 2017.

Rajinder Kohli

... **Petitioner**

v.

Nirmal Singh

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Amardeep Singh Gill, Advocate for the petitioner.

Shri Deepak Arora, Advocate for the respondent.

A.B. Chaudhari, J. (Oral):

Rule. Heard forthwith. By order dated 4.5.2016, this Court had posted the petition for final hearing since this Court was not impressed with the objections filed by the counsel for the respondent-complainant. In that view of the matter, the matter is posted for final hearing.

Heard learned counsel for the parties at length. In a private complaint case filed by the complainant-respondent, the allegation against the petitioner is that he signed as an attesting witness on the agreement, which according to the complainant, was forged by accused No.1 Sant Parkash. The complainant succeeded in the civil court upto this Court in the civil proceedings in getting the suit property. Indeed the fraud was practised upon the respondent-complainant but then, that was done by the close relative of Baljinder Singh. The said close relative Baljinder Singh irresponsibly handed over the papers to the accused No.1 who ultimately is

stated to have committed the fraud. The complainant bona fide handed over the original papers to his close relative believing that the needful will be done by his close relative in relation to his property. But then, Baljinder Singh made a mistake and handed over the papers to accused No.1, who is alleged to have committed the fraud. Be that as it may, the respondent-complainant has luckily obtained his property back in civil litigation.

The respondent-complainant thereafter filed a complaint before the criminal court against accused No.1 and the attesting witness, i.e., the present petitioner. The only limited question that arises before me is only to find out whether the summoning order issued against the petitioner Rajinder Kohli, who is the attesting witness on the alleged forged agreement by accused No.1, can be upheld. It is in that context that I have gone through the averments in the complaint filed by the respondent-complainant and his verification statement recorded by the learned Magistrate for issuing summoning order. There is no other particular material produced by him on record except the alleged forged agreement bearing the signatures of the petitioner as attesting witness. The averments in the complaint in para 5 relating to the present petitioner reads thus:-

“5. That accused No.1 in connivance with accused No.2 and 3 prepared a forged and fabricated agreement on one of the blank papers which was duly signed by the complainant.”

The verification statement before the court of the complainant and the relevant portion relating to the petitioner reads thus:-

“Sant Parkash Singh in connivance and in criminal conspiracy with accused No.2 Rajinder Kohli and accused No.3 Shiv Sham

Singh Sodhi.”

It is seen from the above that except using vague and general terms that the petitioner as attesting witness is a party to the forged agreement 'in connivance with accused No.1', there is absolutely nothing on record to show any element of conspiracy or connivance with any particular material. Therefore, mere use of the word 'in connivance with' cannot partake the character of the petitioner as an offender since prima facie there is absence of the material to show the element of *mens rea* in a criminal case. Thus, taking the complaint as well as the statement of the complainant at the face value, it cannot be said that the petitioner as an attesting witness can be said to have committed any offence. In that view of the matter, summoning order and consequential proceedings deserve to be set aside. In the result, I make the following order:-

ORDER

- (i) CRM-M-6350-2014 is allowed;
- (ii) summoning order and the revisional order and the complaint qua the petitioner only are all quashed.

[A.B. Chaudhari]
Judge

February 15, 2017.
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No