

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-5675 of 2017

Date of decision:28.7.2017

Pritam Singh

...Petitioner

v.

Kanwar Pal and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Gourave Bhayyia, Advocate for the petitioner.

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Inderjit Singh, J.

The petitioner has filed this petition under Section 482 Cr.P.C. for seeking quashing of impugned order dated 12.12.2016 passed by learned Additional Sessions Judge, Ambala in Criminal Revision Petition No.160 of 2007 in case titled as “Pritam Singh Vs. Kanwar Pal and another” and quashing of order dated 25.10.2007 passed by learned Judicial Magistrate Ist Class, Ambala in Criminal Complaint No.12 dated 16.12.2006 titled as “Pritam Singh Vs. Kanwar Pal and another” vide which the criminal complaint filed by the petitioner/complainant has been dismissed. It has further been prayed that after quashing the impugned order the original complaint No.12 of 16.12.2006 be restored to its original number and the respondents be directed to face the trial.

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

From the record, I find that the learned Judicial Magistrate Ist Class, Ambala dismissed the Criminal Complaint No.12 dated 16.12.2006 titled as “Pritam Singh Vs. Kanwar Pal and another” vide order dated 25.10.2007. A revision petition was filed by the complainant/petitioner before the Court of Session. The learned Additional Sessions Judge, Ambala vide order dated 29.3.2008 partly allowed the revision petition qua Kanwar Pal but dismissed the same qua Kirna Devi without giving notice to the complainant. A petition was filed before this Court for setting aside the order dated 29.3.2008 passed by the learned Additional Sessions Judge as it was without any notice to the complainant. That petition was accepted by this Court and the matter was remanded back to hear the revision petition after giving notice to the complainant. Then the learned Additional Sessions Judge, Ambala vide order dated 12.12.2016 upheld the order dated 25.10.2007 dismissing the complaint passed by learned judicial Magistrate Ist Class, Ambala and the revision petition was dismissed. Aggrieved from this order the present petition has been filed.

A perusal of the record further shows that in view of the order dated 29.3.2008 passed by the learned Additional Sessions Judge, which was partly allowed qua Kanwar Pal, the proceedings were conducted by the learned Judicial Magistrate Ist Class and the charges were framed against Kanwar Pal. Even a revision petition was filed before the Court of Session which was also dismissed by the learned Sessions Judge, Ambala vide order dated 8.7.2014 and upheld the framing of charges. Then a petition (Cr. Misc. No.M-28647 of 2014) (Annexure-P.2) under Section 482 Cr.P.C. was

filed before this Court which was also dismissed vide order dated 22.1.2016.

Learned counsel for the petitioner argued that as the petition for framing of the charges against Kanwar Pal has been dismissed and the framing of the charges has been upheld against Kanwar Pal, therefore, now the Court of Session passed the contradictory order.

From the record, I find that the proceedings regarding summoning of Kanwar Pal as accused and framing of charges against him have been conducted against Kanwar Pal in view of the order dated 29.3.2008 (Annexure-P.3) passed by learned Additional Sessions Judge (Ad hoc)/Fast Track Court, Ambala but as this order has been set aside by this Court and the matter was remanded back, therefore, all these proceedings also become nullity. Thus framing of charges and summoning of Kanwar Pal have become nullity as these have been conducted on the basis of order dated 29.3.2008 passed by learned Additional sessions Judge (Ad hoc), which order has already been set aside.

Now coming to the impugned order dated 12.12.2016 vide which the revision petition has been accepted by learned Additional Sessions Judge, Ambala. The brief facts of the case as noted down by the Additional Sessions Judge, Ambala, in the impugned order dated 12.12.2016 are as under:-

“As per record of the case, complainant Pritam Singh filed complaint against respondents for commission of offences punishable under Sections 406 and 420 read with Section 120-

B IPC to the effect that Kanwar Pal/respondent No.1 entered into an agreement to sell his land measuring 7 kanal 17 marla being 1/4th share out of 31 kanal 9 marla bearing khewat khatauni No.16 min/17 min, khasra No.18//16, 19//11, 22, 23, situated in Village Aliaspur, Hadbast No.7, Tehsil Mullana, District Ambala, for total sale consideration of Rs.2.5 lakh, with complainant and received Rs.2 lakh as earnest money from complainant on 3.6.2005 against receipt and last date for registration of sale deed was fixed as 31.12.2005. It is further averred that agreement in question was witnessed by Ran Singh, Bhopal Singh and Jaibir Singh and scribed by Kuldeep Kumar Gupta, Stamp Vendor, Mullana. It is further averred that 31.12.2005 and 1.1.2006 being holidays, complainant approached the office of Sub Registrar, Mullana on 2.1.2006 with balance sale consideration for getting the sale deed registered, but till evening, respondent No.1 did not turn up and then, complainant got his presence marked by moving application. It is further averred that complainant filed civil suit seeking specific performance against respondents, wherein ad-interim injunction was granted on 10.4.2006 restraining the respondents from alienating said land. However, in conspiracy with respondent No.2 and to cause wrongful loss to complainant and to grab his money, respondent No.1 got the sale deed registered in favour of respondent No.2 secretly on

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7.9.2006 and on coming to know about the same on the same day, complainant moved application before Sub Registrar apprising him of pendency of Civil Suit and injunction order, but even then, sale deed was registered. It is further averred that intention of respondent No.1 was not bona fide at the time of execution of agreement dated 3.6.2005 and he, thus, cheated, defrauded and robbed of the complainant of Rs.2 lakh and also committed breach of trust in conspiracy with respondent No.2 and others. With these averments, the complaint was filed.”

A perusal of the complaint shows that it is a case of breach of agreement to sell and is of civil nature. There is nothing on the record to show that at the time of execution of the agreement to sell the intention of the complainant was to cheat. Rather, when the accused committed the breach of the agreement to sell then civil suit has been filed by the complainant and during the pendency of civil proceedings property has been sold by the respondents. The findings given by the learned Judicial Magistrate Ist Class as well as learned Additional Sessions Judge that the dispute is of civil nature are correct as per evidence and law which do not require any interference from this Court and the same are upheld.

Finding no merit in this petition, the same is dismissed.

July 28, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No