

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-45084 of 2018

Date of Decision: 11.10.2018

Sumer Singh

...Petitioner(s)

Versus

Yogender Mangla

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Rohit Ahuja, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Petitioner - Sumer Singh has filed the present petition under Section 482 CrPC for setting aside the order dated 16.08.2017 (Annexure P-6) passed by learned Sessions Judge, Faridabad, whereby the revision petition filed by the petitioner against order dated 04.09.2015 (Annexure P-5) passed by Judicial Magistrate Ist Class, Faridabad in a criminal complaint titled as *Sumer Singh Vs. Yogender Mangla* under Sections 420, 467, 468 and 471 IPC, P.S. Central, was dismissed.

Briefly stated, the petitioner-complainant filed a complaint under Sections 420, 467, 468 and 471 IPC with the averments that his father namely Krishan Lal along with other persons was a co-sharer in Khewat No.666, Khatauni No.785, Killa No.1/2 for total area of 1 kanal and 5 marlas, whereas Jhandu was owner in possession of 1017/5598 share

of land of 0 kanal and 11 marlas. After the death of his parents, the petitioner became owner of 972/5598 share being the legal heir of his parents and that of 1017/5598 share of Jhandu also. On 25.03.2006, Jhandu, Raghubir, Smt. Ganga, Smt. Chameli, Smt. Shyamwati, Smt. Baskar and Smt. Prem Kaur had executed a Power of Attorney in favour of the petitioner-complainant of the land to the extent of their share measuring 6 kanal 5 marlas out of land comprised in Khewat Nos.610, 607, 612 and 601 and 690. They had never authorised him to sell Rect. No.61 Killa No.1/2. Thereafter, the petitioner-complainant entered into an agreement with the respondent-accused Yogender Mangla to sell the land measuring 6 kanal 5 marla, but the respondent-accused fraudulently got executed sale deed no.670 dated 17.04.2006 of land measuring 6 kanal 16 marlas. The petitioner-complainant requested the respondent-accused many a times to execute the sale deed for this excess land of 11 marlas in his favour but he refused to do so. Despite having filed applications dated 29.03.2014 and 01.07.2014 before the police, no action was taken thereon. Hence, the complaint.

Learned trial Court did not find any *prima facie* case against the respondent-accused and dismissed the complaint, vide order dated 04.09.2015.

The said order dated 04.09.2015 was challenged by the petitioner by way of a revision petition before the Additional Sessions Judge, Faridabad, which was also dismissed vide order dated 16.08.2017.

It is in the aforesaid circumstances, the petitioner has filed the present petition impugning the aforesaid order dated 16.08.2017 passed by learned Additional Sessions judge, Faridabad.

Learned counsel for the petitioner has argued that the petitioner had entered into an agreement with the respondent-accused to sell land measuring 6 kanal 5 marlas only, but the respondent-accused had fraudulently shown 6 kanal 16 marlas land in the sale deed No.670 dated 17.04.2006. Jhandu and others had never authorised the petitioner to sell the land comprised in Khewat No.666, Khatauni No.785, M.No.61, Killa No.1/2 (1-5), in which the petitioner-complainant was a co-sharer. The total sale consideration of 6 kanal 5 marlas land was settled at Rs.85 lakhs, but the respondent fraudulently got mentioned the 11 marlas land in the sale deed, which was in the name of father of the complainant and others, for which the complainant has not received any sale consideration, despite it being a valuable property. The matter was reported to the police as well, but to no avail, which led to filing the present complaint. The criminal complaint as well as revision petition filed by the petitioner-complainant have been dismissed by the Courts below without appreciating the facts and evidence.

He has further argued that Jhandu, Raghubir, Smt. Ganga, Smt. Chameli, Smt. Shyamwati, Smt. Baskar and Smt. Prem Kaur had executed a General Power of Attorney dated 25.03.2006 in favour of the petitioner-complainant for the property to the extent of 6 kanal and 5 marlas situated in Mauja Baselwa, Faridabad. The petitioner-complainant, as attorney and for himself, executed a sale deed dated 17.04.2006 in

favour of the respondent-accused, but later on, he came to know that the respondent-accused fraudulently with a *mala fide* intention got registered the abovesaid sale deed in respect of land measuring 6 kanals 5 marlas along with land measuring 11 marlas. But the Courts below have wrongly observed that the dispute is civil in nature, though the present case is not only civil but criminal in nature as well.

I have heard learned counsel for the petitioner and perused the impugned order.

In the instant case, sale deed dated 17.04.2006 (Annexure P-4) is the crucial document, which depicts that the lessee had land measuring 6 kanals 16 marlas and the petitioner-Sumer Singh, in his individual capacity as well as General Power of Attorney of Jhandu and Raghubir, sons, Smt. Ganga, Smt. Chameli, Smt. Shyamwati, Smt. Baskar, daughters, and Smt. Prem Kaur widow of Kishan Lal had executed a sale deed in favour of the respondent-accused. As such, the vendors including the petitioner-complainant, were in possession of total land measuring 6 kanals 16 marlas, which is free from any type of liability, defect in title or mortgage, decree or litigation etc. The petitioner had also filed a suit for declaration and for permanent injunction, which was decided vide judgment and decree dated 10.11.2014, but in the said judgment, it is nowhere held by the Civil Court that the respondent had committed any fraud upon the petitioner-complainant. Even otherwise, it has also come in the civil litigation that the land comprised in Rect. No.61, Kill No.1/2 has been acquired by the State Government and for this reason, the trial Court has ordered refund of an amount of Rs.7 lakhs along with interest @ 10% per annum. Thus, once

the petitioner had himself executed the sale deed and the Court has ordered refund of the amount, this Court finds that the petitioner has failed to establish any criminal liability upon the respondent.

Therefore, the precise case of the petitioner-complainant is that the respondent-accused had committed fraud and got executed sale deed beyond the share of the complainant. However, it is not in dispute that the petitioner-complainant has himself executed sale deed dated 17.04.2006. In the complaint, it has not been spelt out as to in what manner the complainant was influenced by the respondent and how the complainant had put his signatures, so as to prove the fraud having been committed upon the complainant. Virtually, the dispute is of civil nature, if any, for which, the parties have already invoked the jurisdiction of Civil Court.

Therefore, this Court does not find any reason to interfere in the orders passed by both the Courts below.

Accordingly, the present petition is dismissed.

October 11, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No