

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4415-2015 (O&M)
Date of Decision:-20.07.2018.

Baldev Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. M.S. Sachdev, Advocate for the petitioner.

Mr. Nikhil K. Chopra, Additional A.G. Punjab.

Mr. Amit Jhanji, Advocate for respondent Nos.2, 3 and 5.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, petitioner has sought for quashing of the order dated 16.01.2015 passed by CJM (NRI Cases), Jalandhar by which his application under Section 311 of Cr.P.C. in the case FIR No.167 dated 04.05.2007 under Sections 420/467/468/471/120-B IPC, registered at Police Station Division No.4, Jalandhar, is rejected.

2.) Petitioner through application under Section 311 Cr.P.C. wants to bring into evidence the agreement to sell dated 16.08.2005 executed by Jagtar Singh as power of attorney of Shiv Singh in favour of Baldev Singh and prove the payment in favour of said Jagtar Singh and further to prove the special power of attorney dated 16.08.2005 executed by said Jagtar Singh in favour of accused Gian Kaur duly registered with the office of Sub Registrar, Jalandhar on 16.08.2005 as registered document No.2266 dated 16.08.2005 and further to prove execution of general power of attorney

No.596/4 dated 28.04.2005 executed by Shiv Singh s/o Jiwan Singh in

favour of his brother Jagtar Singh s/o Jiwan Singh duly registered with the office of Sub Registrar, Jalandhar on 28.04.2005. Petitioner's application has been rejected on the score that it is not relevant document having regard to the allegations made in the FIR is relating to sale agreement dated 29.08.2006 read with 30.10.2006 between Gian Kaur and Paramjit Singh and Gurminder Jit Kaur and Gian Kaur and Baldev Singh.

3.) Learned counsel for the petitioner submitted that sale agreement dated 16.08.2005 between Shiv Singh (GPA Holder of Jagtar Singh and Baldev Singh) is for a sum of ₹ 48,50,000/-, whereas, later agreement stated to be between Gian Kaur and Paramjit Singh and Gurminder Jit Kaur for a sum of ₹ 24,00,000/-. Therefore, there is intertwine among these 3 sale agreements dated 16.08.2005, 29.08.2006 and 30.10.2006. Consequently, sale agreement dated 16.08.2005 is relevant material for the purpose of FIR No.167 dated 04.05.2009. Therefore, rejection of petitioner's application is arbitrary and illegal. It was also submitted that if the sale agreement dated 16.08.2005 is not relevant for the purpose of deciding FIR No.167, in that event, Court has always power to discard the document dated 16.08.2005. Thus, Trial Court has erred in rejecting the petitioner's application filed under Section 311 of Cr.P.C. Further learned counsel for the petitioner pointed out that in respect of sale agreement dated 29.08.2006 is concerned, a decree was ordered in favour of Paramjit Singh and Gurminder Jit Kaur wherein document dated 29.08.2006 has been upheld. Consequently, sale agreement dated 16.08.2005 cannot be taken into consideration as contended by the other side may not hold good in view of the Supreme Court decision passed in **Devendra Vs. State of**

Uttar Pradesh 2009 (8) JT 120 para 13.

4.) Per contra learned counsel for the respondents Nos.2, 3 and 5 vehemently argued that in respect of sale agreement dated 29.08.2006 is concerned which is the subject matter of civil litigation and suit was decreed in favour of respondent No.3 on 27.11.2013 only to the extent of recovery of amount stated in the sale agreement dated 29.08.2006. Feeling aggrieved by the decree, appeal was filed wherein decree was upheld on 14.02.2017. Further RSA is pending consideration before this Court. While passing the decree, the Trial Court has taken into consideration the sale agreement dated 29.08.2006 while upholding that it is in order. In view of the Trial Court decision and consequently, Appellate Court's decision, question of examining sale agreement dated 16.08.2005 in FIR No.167 do not arise. Thus, petitioner has not made out a case so as to interfere with the order dated 16.05.2015 (Annexure P-1).

5.) Heard the learned counsel for the parties.

6.) Crux of the matter in the present petition is whether petitioner's application under Section 311 Cr.P.C. for the purpose of entertaining sale agreement dated 16.08.2005 read with 28.04.2005 would be correct or not. The brief facts are relating to sale and purchase of particular property with reference to sale agreement dated 16.08.2005. Such agreement had been transacted among original owners Shiv Singh who had given GPA to Jagtar Singh. Thereafter, Jagtar Singh had issued a special power of attorney in favour of Gian Kaur on 16.08.2005. Consequently, on the very same day, it was purchased by Baldev Singh and Gian Kaur for a sum of ₹ 48,50,000/-. When things stood thus, there was a sale agreement of the very same property among Gian Kaur and Paramjit Singh and Gurminder Jit Kaur on 29.08.2006 for a sum of ₹ 24,00,000/-. Thereafter, on 30.10.2006, Gian

Kaur is stated to have executed sale deed in favour of Baldev Singh. All these 3 transactions are intertwined. As on 16.08.2015 original owner Shiv Singh thorough General Power of Attorney Jagtar Singh executed agreement to sell in favour of Baldev Singh and Baldev Singh also witness to the agreement to sell dated 29.08.2016 and further he purchased that property on 30.10.2016 from which it is evident that these are related to each other. Similarly General Power of Attorney dated 28.04.2015 shows the competency of Jagtar Singh and further execution of Special Power of Attorney by said Jagtar Singh shows the competency of Gian Kaur with regard to execution of agreement dated 29.08.2016. Even though Civil Court has passed a decree in favour of respondent No.3 insofar as sale agreement dated 29.08.2006. However, the same is not binding with reference to FIR No.167 in view of the Supreme Court decision cited supra. The aforesaid document dated 16.08.2005 can be discarded even at the time of deciding the matter finally. Therefore, the Trial Court has erred in not appreciating the interlinking between the 3 documents, namely sale agreements dated 16.08.2005, 29.08.2006 and 30.10.2006 and documents of competency to execute these documents i.e. General Power of Attorney of Jagtar Singh and further Special Power of Attorney in favour of Gian Kaur. Hence, order dated 16.01.2015 is set aside and matter is remanded to the Trial Court to decide petitioner's application under Section 311 of Cr.P.C. afresh.

7.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

July 20, 2018.

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes / No

Yes / No.