

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-4452-2018 in/and
CRM-M-46238-2017 (O&M)
Date of decision: - 16.02.2018**

Bhupinder Singh

.....Petitioner

Versus

Surjit Kaur and others

.....Respondents

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Ranjit Singh, Advocate
for the applicant-petitioner.

MAHABIR SINGH SINDHU, J. (ORAL)

CRM-4452-2018

Application has been filed for restoration of the main petition, which was dismissed for non-prosecution on 23.01.2018 and which is duly supported by way of an affidavit of learned counsel for the applicant-petitioner.

For the reasons mentioned in the application, the same is allowed and the order dated 23.01.2018 is recalled.

CRM-M-46238-2017 is restored to its original number.

CM stands disposed of.

CRM-M-46238-2017

On oral request of learned counsel for the petitioner, the present petition is taken up for arguments today itself.

2. Present petition has been filed for challenging the impugned order dated 07.07.2015 (Annexure P-2), passed by JMIC, Ludhiana as well as order dated 05.08.2017 (Annexure P-4), passed by learned Additional Sessions Judge, Ludhiana, vide which the complaint for summoning of private respondents No.1 to 5, under Sections 420, 506 and 120-B IPC, has been dismissed.

3. It is contended by learned counsel for the petitioner that both the Courts have committed a grave error of law while dismissing the complaint of the petitioner and there is sufficient material to summon respondents No.1 to 5 for committing offence under Sections 420, 506 and 120-B IPC.

4. Heard learned counsel for the petitioner and perused the paper-book.

5. Brief facts of the case are that complainant entered into an agreement for construction of the house of her daughter, namely, Pawandeep Kaur with Gurdev Singh son of Bhagwan Singh and accused Kulwant Singh son of Naseeb Singh. On the basis of this agreement, Gurdev Singh and Kulwant Singh had taken an advance money of ₹1,67,650/- from the complainant. It is further alleged that Jagtar Singh, Hardeep Singh, Kulwant Singh and Gurdev Singh appended their signatures on the agreement and gave receipt to that effect. Before materialization of the agreement, Gurdev Singh expired and due to his

death, work of house could not be completed. After the death of Gurdev Singh, his wife Surjit Kaur started giving applications against the complainant and on 6.9.13, the complainant was called by Ranjit Singh, being councilor in his office, who misbehaved with him and was pressurized to give ₹25,000/- to the respondents No.2, 3 and 4. Thereafter, on 17.9.13, the respondents gave another application through Surjit Kaur to ACP, Atam Park, Ludhiana in connivance with respondent No.5 Ranjit Singh and again pressurized him and took ₹2,30,000/- from him and the same was reduced into writing and forcibly obtained his signatures. It is further alleged that respondents No.1 to 5 forced the complainant to part with the said amount forcibly and dishonestly.

6. Perusal of the impugned orders by both the Courts below clearly reveals that the basis for filing of the present complaint is the agreement entered into between the parties, but the petitioner has miserably failed to prove the same and only photo-copy was produced on record of learned trial Court. Thus, neither the original agreement was produced; nor any secondary evidence was led to prove the same in accordance with law. Even otherwise, the perusal of the entire complaint does not make out the commission of any cognizable offence against the private respondents. Thus, the reasoning given by both the Courts below that prima facie case is to be made out before taking recourse for summoning of a person in a complaint case is the right course and this Court fully agrees with the reasoning given by both the Courts below. Law is well settled that summoning of a person in a cognizable offence by way of a private complaint is a serious matter and that should not be

taken in a routine manner. Reference in this regard can be made to the judgment of Hon'ble the Supreme Court in case M/s Pepsi Foods Limited Vs. Special Judicial Magistrate, (1998) 5 SCC 749. The relevant para thereof reads as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

7. In view of above, this Court does not find any merit in the present petition and the same is, accordingly, dismissed.

(MAHABIR SINGH SINDHU)
JUDGE

February 16, 2018
naresh.k

Whether reportable?	Yes
Whether reasoned/speaking?	Yes