

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28412 of 2016
DATE OF DECISION:-11.01.2019

SUSHILA DEVI

...PETITIONER...

V.

STATE OF HARYANA AND ANR.

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Pankaj Mehta, Advocate,
for the petitioner.

Mr. Raj Kumar Makkar, Sr. DAG, Haryana.

Mr. Rishab Lohan, Advocate and
Mr. R.N. Lohan, Advocate,
for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Prayer has been made for quashing order dated 29.07.2016 (P-4) of the first revisional court, whereby application of the petitioner under Section 319 Cr.P.C. for summoning the petitioner as additional accused was accepted, while setting aside of order of the trial court dated 21.03.2016, dismissing the same.

Briefly, respondent No.2 entered into an agreement to sell with Om Parkash, brother-in-law of the petitioner to purchase 15 kanals two marlas of land for total sale consideration of Rs.16,98,750/- and paid Rs.14.90 lakh. Remaining was to be paid to vender Om Parkash later on.

The date for execution and registration of sale deed was agreed as

30.08.2010, which was extended twice for 30.09.2010 and 30.12.2010. On 30.12.2010, respondent No.2 along with balance sale consideration remained present through out the day in the office of concerned sub registrar, but vender Om Parkash did not turn up. Consequently, respondent No.2 got marked his presence with Sub-Registrar and, thereafter, filed a suit for specific performance of contract. However, when respondent No.2 came to know that his vendor Om Parkash had already executed an agreement to sell prior to his agreement to sell in favour of his sister-in-law, he lodged a FIR No.198, dated 09.04.2011 against his vendor Om Parkash and petitioner alleging that they being closely related to each other and in connivance have committed fraud with him.

However, during investigation, petitioner was found innocent. Therefore, she was placed in column No.2, whereas, final report under Section 173(2) Cr.P.C. was filed against Om Parkash and charge-sheet was framed against him. During the pendency of trial, respondent No.2 moved an application under Section 319 Cr.P.C., which after hearing was dismissed by the trial court vide order dated 21.03.2016 (P-3).

Being aggrieved, respondent No.2 approached the revisional court, who accepting his revision and setting aside the aforesaid order of the trial court accepted his application under Section 319 Cr.P.C. for summoning the petitioner as additional accused to face trial, directing the parties to appear before the trial court vide impugned order 29.07.2016

Learned counsel for the petitioner contends that agreement to sell in favour of the petitioner executed by Om Parkash vender of respondent No.2 is much prior to his agreement, inasmuch as, agreement in favour of the petitioner was executed on 05.07.2010, whereas agreement to sell in favour of respondent No.2 executed by Om Parkash was on 30.08.2010. The petitioner is not signatory to agreement executed by Om Parkash in favour of respondent No.2. Even the petitioner denies her relation with Om Parkash vender. Revisional Court had failed to appreciate that there was no iota of evidence against the petitioner that she ever connived with Om Parkash, while setting aside well reasoned order of the trial court.

On the other hand, learned counsel for respondent No.2-complainant refuting the above submissions of learned counsel for petitioner pleaded the legality and validity of impugned order dated 29.07.2016.

Having given thoughtful consideration to the rival submissions, this Court finds instant petition merits rejection for the reasons to follow:-

1. No doubt, agreement to sell in favour of the petitioner is prior to the date of execution of agreement in favour of respondent No.2 allegedly executed by vender Om Parkash. However, it has come in the impugned order that petitioner is sister-in-law of vender Om Parkash. The agreement to sell in her favour is only around one month prior to the agreement in favour of respondent No.2. Therefore, from this angle, it can

safely be presumed that petitioner and vendor Om Parkash being closely related to each other with their evil design created a false document in the shape of agreement to sell dated 05.07.2010 to cheat and defraud respondent No.2 for a hefty amount of Rs.14.90 lakh, which he paid to Om Parkash vendor.

2. There is nothing on the record that the petitioner till date has ever filed any suit for specific performance against her vendor Om Parkash, inasmuch as, had there been any genuineness in the alleged transaction in between the petitioner and her brother-in-law Om Parkash vendor, in that eventuality, the petitioner must have adopted legal recourse against him, which fact, is in itself sufficient to draw adverse inference against her and vendor Om Parkash that they being closely related to each other did not adopt any such exercise.

I have gone through the impugned judgment dated 29.07.2016 and find no illegality in the same. Dismissed.

Parties are directed to appear before the trial court on 24.01.2019.

11.01.2019

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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:
whether reportable:

Yes/No
Yes/No