

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

CRM No.M-28505 of 2016 (O&M)

Date of Decision: July 18, 2019

Avtar Singh

...Petitioner

VERSUS

Jhang Bahadur Iqbal Jain and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kanwaljit Singh, Senior Advocate with
Mr.Ashish Soi, Advocate
for the petitioner.

Mr.Jagmohan Singh Bhatti, Advocate
for respondent No.1.

Mr.Divanshu Jain, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of complaint No.29348/2013/1-9-2012 under Section 156(3) Cr.P.C. titled as 'Jhang Bahadur Iqbal Singh vs. S. Avtar Singh and another', summoning order dated 22.04.2015 under Sections 409, 471, 475, 466 and 120-B IPC, as the same is passed on the basis of concealment of judgment and decree dated 23.01.2015 passed by learned Addl. District Judge, Chandigarh.

Notice of motion was issued. Learned counsel for respondents

No.1 and 2 appeared and contested the petition.

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

The perusal of the record shows that Jhang Bahadur Iqbal Singh filed complaint against Avtar Singh and Ashok Kumar Jain under Section 156(3) Cr.P.C. for issuing directions to the police for registration of a case for commission of offence under Sections 409, 471, 420, 465, 468 and 471 read with Section 120-B IPC etc. It is stated in the application that accused No.1 is real brother of the complainant and accused No.2 was appointed as Attorney on 08.01.1996 by the complainant. Accused No.1 and 2 conspired with each other and consolidated a conspiracy to defraud the complainant. Both of them committed heinous offence of cheating, criminal breach of trust and forgery.

The perusal of the complaint shows that allegations are that complainant, accused No.1 and others, let out SCO No.101, 102 and 103, Sector 17C, Chandigarh to Punjab Scheduled Caste Land Development and Finance Corporation through its Executive Director as per lease agreement dated 11.09.2003. Accused No.1 signed the said lease deed for himself as well as attorney of Smt.Pritam Kaur, mother and accused No.2 Ashok Kumar Jain, signed the deed as attorney of the complainant. Special Power of Attorney was executed by the complainant in favour of accused No.2. As per practice, the rent was to be deposited in the bank account No.13257. In absence of the complainant, both the accused started diverting the rent amount to the personal account No.18771 maintained with Punjab and Sind Bank, Sector-17, Chandigarh, which is fraudulent act on the part of both the accused. When complainant came to know about this act, he revoked the

filed, which was decided by learned Civil Judge (JD), Chandigarh. Even, as per the judgment and decree, the complainant has been held to be owner of SCO No.101, 102 and 103 to the extent of 1/3 rd share. Accused No.1 filed appeal, which is pending. With these averments, this complaint has been filed.

From the documents on record and admission at the time of arguments, I find that it is admitted fact that complainant has given Power of Attorney in favour of accused No.2 Ashok Kumar Jain, which has been revoked in the year 2004 and lease deed is dated 11.09.2003, copy of which is also placed on record. There was no restriction or any condition in the Power of Attorney. Admittedly, the Power of Attorney has been revoked in the year 2004. The litigation between the brothers/parties was going on and now, the complaint has been filed in the year 2012. No cogent reason and explanation has been given by the complainant for such a long delay of 8 years. This unexplained such a long delay, in the facts and circumstances, can be the reason for quashing the present complaint itself.

Secondly, admittedly Ashok Kumar Jain was Attorney and he signed on behalf of the complainant on the lease deed. There is nothing in the complaint that any amount has been misappropriated by the Attorney or any amount has gone into his account or he committed breach of trust or misappropriated any amount of rent. The perusal of the documents on record shows that complainant and accused No.1 Avtar Singh, who are real brothers, are in litigation. Annexure P-6 is the copy of the suit for recovery filed by complainant Jhang Bahadur Iqbal Singh against Avtar Singh in the year 2005. The perusal of this document shows that tenant used to deposit

Gulroop Kaur D/o Jhang Bahadur Iqbal Singh and Avtar Singh, with Punjab and Sind Bank, upto the month of September 2003. Even in the joint account, the complainant was not party. There is no mention in the Power of Attorney that the rent is to be deposited in this joint account. There is also no document to show that rent cannot be deposited in any other account. Jhang Bahadur Iqbal Singh filed a suit against Avtar Singh, his brother, Pritam Kaur, his mother and others for declaration to the effect that plaintiff and defendants No.1 and 2 are owners in possession of SCO Nos.101, 102 and 103. This suit has been decreed to the extent that plaintiff, who is now complainant, is the owner to the extent of 1/3rd share in the property in question vide judgment dated 30.11.2011. In the appeal, the suit was dismissed by learned Addl. District Judge, Chandigarh vide judgment dated 23.01.2015. Another suit for recovery was filed by Jhang Bahadur Iqbal Singh in the year 2005, which was allowed by learned Civil Judge (JD), Chandigarh vide judgment dated 21.04.2014. In the appeal, the judgment dated 21.04.2014 was also set aside. It has been brought to the notice of this Court that RSA is still pending before this Court. The perusal of the suit for recovery also shows that there was no allegation against the Attorney that he has connived with the brother of the complainant i.e. present petitioner Avtar Singh.

The perusal of the record shows that only dispute and allegation is that rent was not deposited in the earlier account and later on, it was deposited in the changed account, which was in the name of the petitioner. The perusal of the record further shows that suit for recovery of rent was also filed and suit for ownership was also filed by the complainant and in the appeals, both the suits have been dismissed. RSA is stated to be

pending, which shows that dispute between the parties is regarding ownership and is of civil nature, which is pending for adjudication before this Court.

In view of above facts and the fact that complaint was filed after 8 years regarding misappropriation of rent etc. shows that complaint has been filed just to put pressure upon the accused and civil litigation has been given the colour of criminal litigation.

Keeping in view above discussion, I find that filing of the present complaint, is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in the present petition, the same is allowed. Complaint No.29348/2013/1-9-2012 under Section 156(3) Cr.P.C. titled as 'Jhang Bahadur Iqbal Singh vs. S. Avtar Singh and another', summoning order dated 22.04.2015 and all subsequent proceedings arising therefrom, are hereby quashed.

July 18, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No