

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19695-2019 (O&M)
Date of Order:28.05.2019

Rajesh Kumar

..Petitioner

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Goyal, Advocate,
for the petitioner.

Mr. Karan Sharma, AAG, Haryana

Mr. Dalel Singh, Advocate and
Mr. Manmohan Saroop, Advocate
for respondent no.2.

ANIL KSHETARPAL, J(Oral)

Present petition under Section 482 of the Code of Criminal Procedure has been filed bringing to the notice of this Court a disturbing trend, which is affecting justice delivery system.

Complainant-respondent no.2 filed a complaint under Sections 420/406/506/120-B of the Indian Penal Code against petitioner-Rajesh Kumar and four others alleging that he was induced to enter into an agreement to sell and out of total sale consideration of Rs.80,00,000/-, Rs. 75,00,000/- was received on 02.05.2015. Thereafter, complainant-respondent no.2 came to know in 2016 that Rajesh Kumar-petitioner was neither having any power of attorney of Pinki to sell her share nor she has given any power of attorney to the petitioner. Assertions made in paragraph

10 of the complaint are extracted as under:-

“10. That in May, 2016 the complainant came to know and inquired from Sub-Registrar Thanesar, District Kurukshetra that accused no.1-Rajesh Kumar is/was neither having any power of attorney of Pinki to sell her share in land measuring 24 kanals 5 Marlas nor she has given any power of attorney to Rajesh Kumar-accused No.1 and Pinki is the owner of 8 kanals in agricultural land measuring 24 kanals 0 marla situated at Village Barna, Tehsil Thanesar, District Kurukshetra and just to cheat the complainant and to fetch the money from the complainant all the accused persons and hatched a criminal conspiracy by dishonestly showing/claiming the accused no.1 as owner of 24 kanals 3 marlas of Pinki having power of attorney and induce the complainant to pay the accused for the above said property.”

Learned Chief Judicial Magistrate after examining the contents of the complaint *prima-facie* came to a conclusion that the matter is of civil nature and, therefor, no ground is made out for exercise of powers under Section 156(3) of the Code of Criminal Procedure. Hence, the complainant was directed to lead preliminary evidence vide order dated 14.07.2016, which is extracted as under:-

“Complaint presented today. It is checked and registered. Complainant has also moved an application under Section 156(3) Cr.P.C. Heard. Documents perused. The matter in hand is of civil nature and as such, no ground is made out for exercise of powers

under Section 156(3) Cr.P.C. Application to that effect is hereby dismissed. Now to come upon 11.08.2016 for preliminary evidence of complainant.”

The aforesaid complaint remained pending. The complainant-respondent no.2 filed a fresh complaint under Sections 406/420/506 IPC, this time impleading only the petitioner as an accused. Same story with regard to agreement to sell, receipt of Rs.75,00,000/- out of Rs.80,00,000/- was repeated. This time, it was alleged that the complainant has now come to know in January, 2018 that the petitioner-accused had falsely disclosed to him about power of attorney executed by Pinki. The relevant part of the allegations are contained in paragraph 6, which is extracted as under:-

“6.That now in January 2018 the complainant came to know that the above said accused falsely disclosed him as power of attorney of Pinki and as such he has falsely disclosed about the power of attorney and has obtained the amount falling as per the share of Pinki in the above said land and shop.”

This time, learned Chief Judicial Magistrate send the complaint to the concerned Station House Officer under Section 156(3) Cr.P.C. The order passed on 30.04.2018 is extracted as under:-

“Heard. Complainant Balwan Singh had presented the complaint against Rajesh Kumar for alleged commission of offences under Sections 406/420/506 IPC on the ground that he had executed impugned agreement to sell dated 12.5.2015 in favour of complainant being General Power of Attorney holder of Premo Devi, Isham Singh,

Manisha and Pinki but upon enquiry it was learnt that accused did not have General Power of Attorney of said Pinki but had received money consideration from the complainant running in lacs of rupees. Along with the complaint, an application under Section 156(3) Cr.P.C. was also moved for registration and investigation of the case. Heard. File perused. The complaint in hand be sent to SHO PS city, Thanesar under Section 156(3) Cr.P.C to register FIR and investigate into the matter. Ahlmad to make necessary compliance.”

On the basis thereof, FIR has been registered.

The petitioner filed a revision petition against order dated 30.04.2018, which has been dismissed by the learned Additional Sessions Judge, Kurukshetra, vide order dated 22.04.2019.

This court has heard learned counsel for the parties at length and with their able assistance gone through the documents filed which are part of paper book.

It is apparent that respondent no.2-complainant filed two complaints, one in the year 2016, Annexure P-9 and second in the year 2018, Annexure P-11. In the second complaint, factum of filing of the first complaint was not disclosed. Even the pendency of the first complaint on same subject matter was also not disclosed.

This is clearly a very disturbing trend and in the considered view of this court, *prima-facie* amounts to abuse of the process of Court. This Court is not giving any final opinion, however, if the *prima-facie* view of this Court is correct, the Courts must come down very heavily on such

attempts to abuse the process of Court. However, the matter is left to the concerned Chief Judicial Magistrate to form a final opinion thereon.

Learned Additional Sessions Judge has chosen to dismiss the revision petition merely by saying that his attention was not drawn to any law that second complaint is not maintainable.

In the considered view of this Court, such observations do not lead the Court to any conclusion. The revisional Court atleast should have examined the first complaint and the second complaint and thereafter returned a finding as to how the second complaint was maintainable.

Accordingly, the order passed by the learned Chief Judicial Magistrate dated 30.04.2018 as also the order passed by the revisional Court dated 22.02.2019 are set aside. Learned Chief Judicial Magistrate is directed to re-decide the maintainability of the complaint keeping in view the order passed on 14.07.2016. It may be noted here that the first complaint has been withdrawn by the complainant-respondent no.2 on 09.05.2018 after registration of the FIR on 03.05.2018.

In the meantime, it is directed that proceedings pursuant to the FIR shall remain stayed till decision by the learned Chief Judicial Magistrate on the point that whether second criminal complaint was maintainable and in the facts of the case, directions under Section 156(3) of the Code of Criminal Procedure are required to be issued.

Disposed of accordingly.

May 28, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No