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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41450-2015

Date of Decision : April 08, 2019

Sudhir Kumar and others

.... Petitioners

Versus

State of Haryana and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Sanjay Vashisth, Advocate,
for the petitioners.

Mr. Ashish Sanghi, DAG, Haryana
for respondent No.1/State .

Mr. N.S. Shekhawat, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for setting-aside order dated 19.3.2013 (Annexure P/21) whereby the petitioners were ordered to be summoned by learned Judicial Magistrate, Rewari in Criminal Complaint No. 40 of 2011/2012 and petitioners No.1 and 2 were summoned to face trial under Sections 420, 467, 468, 471 read with Section 34 IPC and Petitioners No. 3 and 4 for the offence punishable under Section 120-B IPC. Petitioners have also challenged order dated 7.11.2015 passed by learned Additional Sessions

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Judge, Rewari whereby revision petition filed by the petitioners against the summoning order was dismissed by learned Revisional Court. Petitioners have also challenged Criminal Complaint No. 40 of 2011/2012 (Annexure P/10) titled – **Smt. Veena Vs. Sudhir Kumar etc.**

2. Learned counsel for the petitioners contended that in fact, one Bhupender Narain Bhargav died in April, 2000 and his agriculture land was inherited by (1) Smt. Brij Rani Bhargav (widow) (2). Veena (daughter); (3) Sudhir (son), (4) Meenakshi and (5) Anju both daughters and all of them inherited the property to the extent of 1/5th share. General Power of Attorney (GPA) was executed by the owners. Subsequently, Release deed No. 5030 dated 11.11.2008 was executed by Smt. Veena and Smt. Brij Rani in favour of petitioner No.1. Another Release Deed No. 549 dated 8.5.2009 was executed by Smt. Anju and Smt. Brij Rani in favour of petitioner No.1. Release Deed No. 5333 dated 3.12.2009 was executed by Meenakshi in favour of petitioner No.1. Subsequently, some part of land was transferred by way of Gift deed No. 4649 dated 27.09.2010 in favour of Gautam son of petitioner No.1, Sudhir. Because of some disturbance in the family and with the change of mind of all the three sisters, civil litigation was started amongst petitioner No.1 and others for declaration and injunction challenging the GPA, Release deeds and compromise was effected and suit filed by Anju was withdrawn. Subsequently, respondent No.2, Smt. Veena filed Criminal Complaint No. 40 dated 23.3.2011/3.9.2012 under Sections 420, 467, 468, 471 and 34 IPC against all the petitioners. Simultaneously, the complainant also submitted a police complaint No. 495-P dated 24.3.2011 (Annexure P/10) and the said police complaint was converted into FIR No. 138 dated 17.5.2011

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(Annexure P/15) under Sections 420, 467, 468, 120-B IPC registered at Police Station Model Town, Rewari.

3. During investigation, specimen signatures of Anju and Veena were taken and the same were got compared from FSL, Haryana, Madhuban and the same were found to be of the same persons and report of FSL dated 19.1.2012 is Annexure P/17 on the file. Police had also recorded statement of complainant, Smt. Veena and Anju on 19.4.2011 and 2.6.2011 respectively under Section 161 Cr.P.C. On that basis, police prepared cancellation report on 3.2.2012 and the same was submitted to the Court and the statements were also recorded before the Court on 8.12.2014.

4. Learned counsel for the petitioner further contended that vide order dated 19.3.2012 (Annexure P/21), petitioners No.1 and 2 were summoned to face trial under Sections 420, 467, 468, 471 read with Section 34 IPC and Petitioners No. 3 and 4 for the offence punishable under Section 120-B IPC which was challenged before the Revisional Authority but the same was dismissed by learned Additional Sessions Judge, Rewari.

5. Learned counsel for the petitioners challenged the summoning order and the order passed by the Revisional Court as also the Criminal Complaint on the ground that the complainant has resorted both the remedies, i.e. police case and complaint case, whereas proceedings in this case were finalized and culminated in to cancellation report, Annexure P/19 and as such, the summoning order is not maintainable on same facts. On these facts, reliance was placed upon judgment from Hon`ble Apex Court in **Jile Singh Vs. State of U.P. and another, 2012 (2) SCC (Cri)**

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175. On the same point, reliance was also placed upon judgment from the co-ordinate Bench of this Court in **Kuldip Raj Mahajan Vs. Hukan Chand, 2008 (1) R.C.R. (Criminal) 370.**

6. Learned counsel for respondent No.2 contended that the order passed by learned Magistrate as well as by learned Additional Sessions Judge are based on factual and legal position and the same do not call for any interference and the present petition is not maintainable while practically exercising powers of second revisional Court.

7. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file and factual and legal proposition, this Court is of the considered view that the dispute regarding property was under litigation at different stages. The first round of litigation was civil litigation. Thereafter, police had investigated the matter and submitted the cancellation report, wherein statements of the parties were recorded and summoning order dated 19.3.2013 (Annexure P/21) was passed. As per view taken by Hon`ble Apex Court in **Jile Singh's case (supra)** and by this Court in **Kuldip Raj Mahajan's case (supra)**, such an summoning order in complaint on the same set of facts is legally not maintainable and both the Courts below have not taken into consideration the above mentioned factual and legal proposition.

8. In view of the above, the present petition is accepted and the impugned summoning order dated dated 19.3.2013 (Annexure P/21); order dated 7.11.2015 passed by learned Additional Sessions Judge, Rewari, whereby revision petition filed by the petitioners against the summoning order was dismissed are set-aside and the Criminal Complaint

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No. 40 of 2011/2012 (Annexure P/10) stand quashed qua the petitioners.

(SHEKHER DHAWAN)
JUDGE

April 08, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes