IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-41961-2017 (O&M)

Gurvinder Singh ... Petitioner

Vs.

Parminder Singh and another ... Respondents

2. CRM-M-45480-2017 (O&M)

Taranjit Singh ... Petitioner

Vs.

Parminder Singh and another ... Respondents

Date of Decision:16.09.2019

CORAM : HON'BLE MS. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Raman Sharma, Advocate
for the petitioner (in CRM-M-45480-2017).

Mr. Sukant Gupta, Additional Public Prosecutor
for U.T. Chandigarh.

ARVIND SINGH SANGWAN, J. (Oral)

By this common judgment, both the aforementioned criminal miscellaneous petitions are being decided together being identical in nature.

Prayer in these petitions are for quashing of impugned order dated 27.10.2017 (Annexure P-2) passed by the Court of learned Judicial Magistrate Ist Class, Chandigarh in complaint case bearing No.10957 dated 22.09.2011 (Annexure P-1) whereby the trial Court has issued direction under Section 156 (2) Cr.P.C for registration of the FIR, after taking cognizance of the case and recording the evidence of the complainant and obtaining the report under Section 202 Cr.P.C.

2. The respondent-complainant/Parminder Singh instituted a

complaint under Section 156 (3) Cr.P.C before the Illaqa Magistrate against the petitioner(s) with a prayer to issue a direction to the police authority to register an FIR for the offences of cheating, fraud and tresspassing in House No.3015, Sector 19-D, Chandigarh.

3. In nutshell, the case of the complainant as per para-2 of the impugned order is as under:

> *"Briefly, the facts of the present complaint are that complainant is a permanent resident of 10024, Blue Water, Terrace, Irving Texas-75063, USA, who authorized Gurpreet Singh son of Late Sh. Malkit Singh, resident of VPO Leelan Megh Singh, Tehsil Jagraon, District Ludhiana, Punjab vide Special Power of Attorney dated 16.08.2010 to pursue the litigation and also the present complaint. It is stated in the complaint that on 23.01.2009, respondent No.3 executed agreement to sell and at that time respondent No.4 also became a party along with complainant on the pretext that he being friend of complainant will act bona-fide for complainant and on his behalf and also to the said agreement. He signed that said agreement as complainant could not come to India on the said day, hence, the signatures of complainant were kept pending by them on their plea that the signatures of complainant can be appended on the agreement to sell after complainant came to India. The contents of agreement to sell were not disclosed to the complainant and the complainant was kept in dark by respondents No.3 and 4. Moreover, the material facts related to House No.3015, Sector 19-D, Chandigarh (hereinafter referred to as "demised premises") were not disclosed to complainant, who had been given assurances by respondents No.3 and 4 that the property in question is free from all sorts of encumbrances and on acting the same, the complainant has signed the agreement to sell after coming to India. Thus, in the absence of complainant, the agreement to sell dated 23.01.2009 was already executed by*

respondents No.3 and 4 and only signatures of complainant were to be obtained. Accordingly, a preplanned conspiracy has been hatched by the respondents No.3 and 4 with ulterior motive to cheat complainant by involving him in the agreement to sell on false and frivolous assumptions. When complainant came in India on 05.02.2009, he signed the agreement dated 23.01.2009 and on that very day, respondent No.3 handed over possession of demised premises to complainant. At the same time, complainant also signed lease deed dated 23.01.2009, (which was executed by respondents No.3 and 4 in the absence of complainant and only signatures of complainant were to be obtained on it after coming to India), which respondent No.3 executed with respondent No.4 and because of above mentioned reasons respondent No.4's name was also incorporated in the said document. It is stated in the complaint that in the lease deed it is specifically mentioned that possession has been handed over to complainant by respondent No.3. Upon this, complainant and his brother learnt immediately after the said agreement because both Gurvinder Singh and Taranjit started putting pressure upon complainant to pay whole amount as soon as possible and use to call complainant frequently to do so the same in the shortest possible time, but from reliable sources, complainant came to know that respondent No.3 played fraud with the complainant as he was restrained from selling the said property by civil court vide order dated 29.08.2006 in Civil Suit No.78 of 17.07.2006. This fact was never disclosed by respondent No.3. On this, complainant sent notice to respondent on 10.04.2009, in which complainant specifically told the respondent No.3 to return his hard earned money or admit his claim. Thereafter, complainant clearly told respondent No.4 to get out of the picture as complainant has invested whole of the amount in the said deal and respondent No.4 has nothing to do with the said house, but respondent No.4 clearly told the complainant that if he wants the whole house in his possession then complainant *should pay him money. On this, complainant agreed as he could not afford to leave the house as he invested his hard earned money there. Accordingly, complainant executed a partnership deed/agreement with respondent No.4 in which he gave his share to complainant for the consideration/money and left the possession of the house to the complainant. The brother of complainant namely Harminder Singh went back to USA in December, 2009 and by that time complainant feel that some suspicious things were going on at their back, so he gave intimation to the Police Station-19, Chandigarh i.e respondent No.2 that he is resident of above noted house going abroad and apprehension that in their absence someone may not interfere/trespass in their possession. For that matter he had left a caretaker in the house after the same in their absence. On 04.08.2010, when complainant and his brother were in USA, they came to know that respondents No.3 and 4 have forcibly and illegally entered into the house through the process of Court by misleading the Court for obtaining the warrant of possession of the house in question in the guise of dispossessing evicting the tenant namely Pritam Kaur Sekhon and took away his household articles and threatened caretaker of complainant of dire consequences. Due to that complainant came to India on 05.08.2010 and learnt that respondents No.3 and 4 are hand in gloves with each other wanted to take the possession illegally. Accordingly, complainant immediately filed complaint before respondent No.1 on 06.08.2010 and thereafter another amended complaint was given to respondent No.1 on 16.08.2010, but respondents No.1 and 2 did not taken any action in this regard. Feeling aggrieved from the inaction of police, complainant filed Crl. Misc. No.12065 of 2011 before Hon'ble Punjab and Haryana High Court at Chandigarh, which was disposed off vide order dated 31.05.2011 with the observation that no action is called for. It is further stated in the complaint that respondents No.3 and 4 have not disclosed about the litigations to complainant* *intentionally which were pending in different courts. Further the order/judgment of Rent Controller, Chandigarh vide which eviction application was allowed against one Pritam Kaur Sekhon. The order/judgment of Hon'ble High Court vide which revision petition was allowed against Pritam Kaur Sekhon and the order/judgment of Hon'ble Supreme Court by virtue of which the eviction has been done and other litigations pending in the Courts were never brought to the knowledge of complainant. Hence, the present complaint."*

4. Thereafter, the trial Court took cognizance of the complaint and allowed the complainant to lead his preliminary evidence, the complainant himself appeared as CW-1 and tendered the documents as Ex.C-1 to Ex.C-17 which are the copies of special power of attorney, lease deed, agreement to sell, partnership deed, the notices and complaints given by the complainant, the orders of the Court in an earlier proceedings between the parties. Thereafter, the complainant examined PW-2 S. Lakhwinder Singh in support of his case.

5. The trial Court thereafter sought the report under Section 202 Cr.P.C from the police. Upon receiving the report from the police under Section 202 Cr.P.C, the trial Court reverted back to the procedure under Section 156 (3) Cr.P.C and issued directions to the SHO, Police Station, Sector-17, Chandigarh, to register an FIR and investigate the matter against the petitioner.

6. The petitioner(s) have challenged the aforesaid order in the present petitions.

7. Learned counsel for the petitioner (s) argued that once the trial Court has not followed the earlier procedure and once the Court has taken cognizance and has recorded the preliminary evidence and thereafter have obtained a report under Section 202 Cr.P.C, the trial Court could either

dismiss the complaint under Section 203 Cr.P.C or summon the accused person in exercise of power under Section 204 Cr.P.C. Learned counsel for the petitioner(s), thus, argued that in that eventuality, there was no occasion for the trial Court to revert back to the procedure under Section 156 (3) Cr.P.C.

8. Learned counsel for the petitioner(s) in support of his argument has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of ***Madhao and another*** v. ***State of Maharashtra and another***; 2013 (2) R.C.R. (Criminal) 975 wherein it is held that upon receiving a complaint regarding commission of cognizable offence, the power under Section 156 (3) Cr.P.C can be invoked by the Magistrate before taking cognizance of the offence under Section 190 (1) (a) Cr.P.C. However, if the Magistrate takes cognizance, an embarks upon the procedure embodied in chapter XV, then he not competent to revert back to pre-cognizance stage and follow the procedure under Section 156 (3) Cr.P.C.

9. Learned counsel for the petitioner (s) further relied upon the judgment of this Court rendered in the case of ***Jasvir Kaur and others*** v. ***State of Punjab and another***; 2016 (2) R.C.R. (Criminal) 48 wherein while relying upon the case of Madhao (supra), it is held that it is settled legal position that power under Section 156 (3) Cr.P.C can be invoked by a Magistrate at a pre-cognizance stage whereas the power under Section 202 Cr.P.C are to be invoked, if cognizance is taken before issuance of the process. It is further held that if a Magistrate proceed to take cognizance and pass an order under Section 202 (1) Cr.P.C, then he cannot, thereafter, referred to a procedure prescribed under Section 156 (3) Cr.P.C.

10. In reply, learned counsel for U.T. Chandigarh as well as learned

counsel for the complainant could not dispute the well settled proposition of law.

11. Accordingly, both these petitions are allowed. The impugned order dated 27.10.2017 (Annexure P-2) passed by the Court of learned Judicial Magistrate Ist Class, Chandigarh, is set aside and the case is remanded back to the trial Court with a direction that it should proceed further, in accordance with the procedure provided under Cr.P.C.

12. The parties are directed to appear before the trial Court on 14.10.2019.

(ARVIND SINGH SANGWAN)
16.09.2019 **JUDGE**
rajeev

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**