

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

**CRM-M-24198-2019
Reserved on : 18.12.2019
Pronounced on : 19.12.2019**

Gian Chand

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. J. S. Cooner, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Anshul Gupta, Advocate
for respondent Nos. 2 and 3.

ARVIND SINGH SANGWAN, J.

Prayer in the present petition is for setting aside the order dated 23.10.2018 (Annexure P-1); passed by the SDJM, Kalka, vide which, an application filed under Section 311 Cr.P.C. by the complainant for leading additional evidence in Criminal Complaint No. COMI/30/13 dated 21.08.2013, under Sections 420, 467, 468, 471, 472, 506, 120-B of the IPC, Police Station Pinjore, District Panchkula, titled as ***Gian Chand vs. Tarsem Gupta and another***, seeking to compare the signatures of Jagat Ram Singla on the disputed documents/SPA dated 29.08.2005 and affidavit dated 31.07.2006 with his standard signatures on the original sale deed dated 20.12.2015 registered at Sub-Registrar, Kalka by a handwriting expert; was dismissed.

Brief facts of the case are that respondent No. 2/accused Tarsem Gupta claimed that he is the owner in possession of land to the

extent of 8/209 share i.e. 8 Biswas out of land bearing Khewat/Khatauni No. 12/13/14, Khasra No. 53, total measuring 10 Bighas and 9 Biswas, on the basis of mutation No. 781 and also claimed that he has purchased the said land in the name of his father-in-law Jagat Ram Singla and on the basis of the same, an agreement to sell dated 29.04.2006 was entered into between respondent No.2/accused Tarsem Gupta and complainant/petitioner Gian Chand with regard to the said land and an amount of Rs. 19.80 Lakh was received by the accused persons as earnest money. It was agreed between the parties that the sale deed shall be executed by the accused/respondent No. 2 Tarsem Gupta as GPA of his father-in-law on or before 31.07.2006, however, on 09.05.2006, the complainant/petitioner came to know that land in question is under acquisition by the State of Haryana and cannot be sold by the accused persons.

The complainant/petitioner, after the summoning of the accused persons/private respondents, is leading pre-charge evidence.

Learned counsel for the petitioner has placed on record interim order dated 20.11.2018, passed by the SDJM, Kalka to show that the statement of CW-1 Nand Kumar was recorded and the case was thereafter adjourned for remaining pre-charge evidence of the complainant. During this period, the complainant has moved an application under Section 311 Cr.P.C. seeking to compare the signatures of Jagat Ram Singla on the disputed document/SPA dated 29.08.2005 and affidavit dated 31.07.2006 with his standard signatures on the original sale deed dated 20.12.2005 registered at Sub-Registrar, Kalka by a handwriting expert, which are part of record of civil suit titled as ***“Gian Chand vs. Tarsem and others”***, decided by Additional Civil Judge (Sr. Divn.), Kalka on 23.01.2015, and

permission be also granted to take the photographs of the same for the purpose of comparison.

It is also stated in the application that the petitioner/complainant, through a handwriting expert, got the disputed signatures of Jagat Ram Singla on the said SPA/affidavit, compared with that of sale deed dated 20.12.2005 and the forensic expert has given report that the signatures on the SPA are not by the person who has put the signatures on the original sale deed.

Learned counsel for the petitioner has submitted that since Jagat Ram Singla had died in the year 2007, his signatures on the SPA/affidavit can only be compared through his admitted signatures present on public documents like original sale deed.

Learned counsel for the petitioner has further submitted that since the case is at the stage of recording the evidence of complainant, therefore, no prejudice will be caused to the rights of accused persons if permission is granted to examine a handwriting expert to prove the allegations in the complaint that SPA dated 29.08.2005 and affidavit dated 31.07.2006 are the forged documents and since the original of the sale deed was not available, the petitioner could not produce the same on earlier occasion.

In reply, learned counsel for respondent Nos. 2 and 3/accused persons has argued that in fact respondent No. 2, being SPA of his father-in-law Jagat Ram Singla, had entered into agreement to sell dated 29.04.2006 and received an amount of Rs. 19.80 Lakh as earnest money. The stipulated time of execution of sale deed was fixed as upto 31.07.2006 and the petitioner never appeared before Sub-Registrar and the said affidavit of

Jagat Ram Singla was executed on that day.

It has further been argued that later on, in 2009, a civil suit for recovery of aforesaid amount was filed by the petitioner which was dismissed by the Civil Court, vide judgment dated 23.01.2015. The first appeal preferred by the complainant was also dismissed and the Regular Second Appeal is pending before this Court.

Learned counsel for the private respondents/accused has further argued that the petitioner has moved a similar application in the civil suit proceedings and the same was not allowed as the said affidavit is attested by the Tehsildar on 31.07.2006, it bears the original signatures of Jagat Ram Singla.

In reply, learned counsel for the petitioner has argued that the suit for recovery of earnest money was filed for the reasons that before execution of sale deed, the land was acquired by the State of Haryana and there was no reason to file a suit for specific performance of agreement to sell.

Learned counsel for the petitioner has further argued that the application before the Civil Court was dismissed only for the reason that the petitioner could not lay hand on a public document like registered sale deed which bears admitted signatures of Jagat Ram Singla and now after obtaining the copy of the said sale deed, he got the signatures of Jagat Ram Singla on SPA/affidavit compared through a handwriting expert and found that the same were forged by the private respondents/accused.

Learned counsel for the petitioner has further argued that the application before the Civil Court was moved without the availability of original document and, therefore, mere rejection of such application has no

bearing on the present case where the petitioner is to prove if the forgery is committed by the accused.

Learned counsel for the petitioner has lastly argued that since the case is at the stage of recording pre-charge evidence, no prejudice will be caused to private respondents/accused if the application moved by the petitioner is allowed on payment of some cost.

After hearing learned counsel for the parties, I find merit in the present petition.

The execution of agreement to sell as well as civil litigation between the parties is not disputed. It is also not disputed that the special power of attorney dated 29.08.2005 and affidavit dated 31.07.2006, bearing signatures of Jagat Ram Singla, are part of the civil suit which was decided on 23.01.2015 and file is consigned to the record room. It is also not denied that Jagat Ram Singla had died in the year 2007.

Learned counsel for the private respondents/accused could not dispute that the sale deed bearing No. 3465 dated 20.12.2005 was executed by Jagat Ram Singla and it bears his admitted signatures.

Considering the fact that the case of the petitioner/complainant is that the accused persons have played a fraud with him as at the time when the agreement to sell was entered into between them, the land in question was already acquired by the State of Haryana and, therefore, the accused persons had no authority to sell the land, even on the basis of the SPA.

As per the complaint, the accused persons, by hatching a conspiracy, have allured the petitioner to pay a huge amount of Rs. 19.80 Lakh, in a fraudulent manner by making him to believe that they are the holder of valid SPA and were competent to alienate the land on behalf of

Jagat Ram Singla.

Therefore, in view of the facts and circumstances of the case, considering the stage of trial and also in view of the fact that application under Section 311 Cr.P.C. can be filed and allowed at any stage of trial, if the proposed additional evidence enables the Court to come to a just and fair conclusion regarding the dispute, this petition is allowed and the impugned order dated 23.10.2018 (Annexure P-1) is hereby set aside.

The trial Court is directed to fix a date for allowing the petitioner to lead his additional evidence by way of examination of a handwriting expert, who after examining the admitted signatures on the sale deed may submit his report while appearing as a witness.

Needles to say, the accused persons will have a right to lead their defence evidence to additional evidence of the petitioner/complainant, as and when the stage arrives.

19.12.2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No