

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 540 of 2017

Date of Decision: 16.12.2019

Saurabh

.....Petitioner

Vs.

Dinesh

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sushil Saini, Advocate,
for the petitioner.

Mr. Kulbhushan Sharma, Advocate,
for the respondent.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order of the learned appellate Court, i.e. the learned Additional Sessions Judge, Faridabad, dated 30.01.2017, by which an appeal filed by the respondent against the dismissal of his complaint by the trial Court, has been allowed, with the petitioner as also the complainant ordered to appear before the trial Court.

Very briefly, as regards the complaint itself, the allegations made by the respondent complainant are to the effect that the petitioner and his father (now stated to have died), had forged, in collusion with the attesting witnesses, a will of the grand-father of the petitioner (and the father of the respondent-complainant).

The trial Court, i.e. the JMIC, Faridabad, vide its order dated 07.04.2016, dismissed the complaint, holding that “the original alleged forged will” had never been produced in Court and therefore only on the basis of oral evidence, the complaint could not be entertained.

The said order was passed without any summons having been issued in the complaint filed by the respondent.

The appellate Court has held that without recording any finding as to the truthfulness of the allegations made in the complaint, simply on the 'technical ground' of non-production of the alleged will and the report of the hand-writing expert, the complaint could not have been dismissed.

Learned counsel for the petitioner first points to an order passed by the learned Civil Judge (Senior Division), Faridabad, in a suit instituted by the respondent herein seeking a declaration and a consequent decree of injunction (copy Annexure P-3), wherein an application filed by the respondent (plaintiff in the suit) under the provisions of Order 39 Rules 1 and 2, had been dismissed. However, it is admitted that the said civil suit is still pending adjudication.

Mr. Raheja, learned counsel for the complainant, submits that as the complainant only had a photo-stat copy of the will allegedly forged by the complainant, he naturally could not have produced any original will, and that in fact was needed to be summoned by the trial court itself from the petitioner, i.e. the accused.

Having considered the matter, keeping in view the above, I see no infirmity in the impugned order, except as has been pointed out by learned counsel for the petitioner, that while remitting the matter to the trial Court, the appellate Court could not have directed the petitioner to appear before that Court, as prior to the dismissal of the complaint, the petitioner had actually never been summoned by that Court, on the complaint filed by the respondent.

That factual position is very fairly not denied by Mr. Raheja, learned counsel appearing for the respondent.

Consequently, this petition is dismissed, with the impugned order essentially upheld, to the extent that it sets aside the order of dismissal passed by the trial Court, but with that part of the order (of the appellate Court) by which the petitioner has been ordered to appear before the trial Court, set aside.

Consequently, the trial Court would now proceed from the stage immediately prior to it having dismissed the complaint, and would determine on the merits of it, as to whether or not the petitioner is to be summoned, in terms of the order passed by the appellate Court, but without obviously insisting on the petitioners' presence prior to any summons being issued to him.

December 16, 2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes