

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

**COCN No. 3196 of 2019
Date of Decision: 22.10.2019**

Mr. Sandip Somany and another

.....Petitioners

Versus

Mr. Subhash Nagpal and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Manav Gupta, Advocate,
Mr. Abhinav Sood, Advocate and
Mr. Shekhar Verma, Advocate
for the petitioners.

AVNEESH JHINGAN, J.(oral)

The present contempt petition has been filed pleading wilful disobedience of order dated 23.2.2016 passed in CRM-M No.8431 of 2014 and for violation of Memorandum Of Understanding (MOU) entered between the petitioner and respondent No.1.

The facts in brief are that the petitioners were owner of a chunk of land in Karnal which was sold to Sh. Vinod Saini by Sh. Ram Niwas Singh allegedly claiming himself to be General Power of Attorney of petitioner. FIR No. 263 of 2009 was registered against Sh.Vishal Guptan, Ms. Bhavana Gupta and Mr. Vinod Saini, under Sections 406, 420, 465, 467, 468, 471 and 120-B IPC. During the course of investigation, the police authorities came to the conclusion that there is an active role of the petitioner and his name was added in the charge-sheet. There was no challenge made to the charge-sheet rather MOU was entered into with the respondent stating that the petitioner will pay a sum of Rs. 10 crores in full and final settlement of all the disputes.

In the MOU it was agreed that a petition would be filed before the

High court for withdrawing the complaints and for quashing of the proceedings

arising from FIR No. 263 of 2009.

FIR qua the petitioner was quashed on 23.2.2016. Though the said order were challenged by respondent No.1 in the Supreme Court but was unsuccessful. Learned counsel for the petitioner submits that on 1.7.2017 an application under Section 319 Cr.P.C. was filed for summoning of Satpal Chauhan and the petitioner but application was withdrawn qua the petitioner. Thereafter another application dated 4.4.2018 under Section 319 Cr.P.C. has been filed. Aggrieved of filing of application, the petitioner filed CRM No. 24457 of 2019 in CRM No.M-8432 of 2014. The same was dismissed as withdrawn as not pressed with liberty to press the same before the Trial Court. The grievance in the present contempt petition is that the application moved under Section 319 Cr.P.C. is violation of the MOU entered between the parties.

The onus in the contempt proceedings to prove violation is on the person who alleges the same. In the contempt proceedings, the violation is to be proved by leading a positive evidence. The violators cannot be proceeded against on conjectures and surmises. Reliance in this regard is placed upon the decision of this Court in **Chhotu Ram V. Urvashi Gulati and another** (2001) 7 SCC 530.

No case is made out for initiation of proceedings in the facts of the present case. An application placed on record by the petitioner is made basis for contempt. The application is not signed by the respondent. From its perusal it is evident that the application is filed through Public Prosecutor and there are signatures only of the counsel for complainant.

It would be pertinent to mention here that no notice has been issued in the said application of the petitioner. The petitioner had withdrawn the criminal miscellaneous application filed in this Court challenging the filing of application under Section 319 Cr.P.C., with liberty to contest the same before the Trial Court. No opinion is being expressed on the merit of the application filed under Section 319 Cr.P.C., however, it is not considered to be a fit case for proceeding under the Court of Contempt Act, 1971.

The petition is dismissed.

22.10.2019

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**(AVNEESH JHINGAN)
JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable:	No