

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-6911-2020 in /and
CRM-M No.124 of 2020 (O&M)
Date of decision: 26.02.2020

Pramila and another

... Petitioners

Vs.

Shri Krishan

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ajay Jain, Advocate for the petitioners.

SUVIR SEHGAL J. (ORAL)

CRM-6911-2020

Prayer in the application is for placing on record statements and certificate Annexures P-4 to P-6.

Application is allowed. Annexures P-4 to P-6 are taken on record.

CRM-M-124-2020

Prayer in the instant petition filed under Section 482 of the Code of Criminal Procedure is for quashing of the order dated 04.05.2018, Annexure P-2 in CIS No.COMI/270/2014 titled as ***Shri Krishan vs. Parmila and another*** passed by Judicial Magistrate Ist Class, Rewari, vide which petitioners have been summoned under Sections 420, 120-B IPC and judgment dated 05.12.2019, Annexure P-3 in CRR/121/2018 titled as ***Pramila and another Versus Shri Krishan*** passed by Additional District Judge, Rewari vide which revision petition preferred by the petitioners against the summoning order, Annexure P-2,

has been dismissed.

Facts in brief are, a complaint, Annexure P-1, was filed by Shri Krishan son of Kalu Ram, respondent, to the effect that they are three brothers namely, Ratti Ram, Shri Krishan, himself and Rattan Lal. Ratti Ram was the owner of plot measuring 239 sq.yards situated in Revenue Estate of Village Mundaliya Tehsil and District Rewari. During his lifetime, Ratti Ram executed a Will dated 01.09.2003 in favour of his brothers, i.e. the complainant as well as Rattan Lal, whereby he bequeathed the said plot in their favour. In his Will he had specifically mentioned that he had two sons namely, Tota Ram, who had unfortunately expired and Mahavir, who was of a feeble mind. In the Will, it has also been mentioned that Mahavir was not in a position to take care of himself and was being looked after by the respondent. The present petitioners had hatched a conspiracy and taking benefit of the feeble mind of Mahavir, son of Ratti Ram, got a sale deed dated 13.10.2014 executed from him after showing a fictitious exchange of amount Rs.8 lacs in cash whereas no money had actually been paid to him. The accused persons, i.e. petitioners herein, belonged to the same village and had knowledge that the plot in question was in the ownership of the respondent and his brother, Rattan Lal. Despite this, with the intention of cheating them, they hatched the conspiracy and got the sale deed executed. On these allegations, a complaint was filed by Shri Krishan before the Judicial Magistrate Ist Class, Rewari.

In the preliminary evidence led before the Magistrate, the complainant-respondent, Shri Krishan, examined himself as PW1 and reiterated the version taken by him in the complaint. After considering

the material brought on record, the learned Magistrate by impugned order dated 04.05.2018, Annexure P-3 recorded his *prima facie* satisfaction to the effect that there were sufficient grounds for proceeding against the accused persons for offence punishable under Sections 420, 120-B of IPC and ordered them to be summoned. The accused-petitioners challenged the order by filing a revision before the Sessions Court. By impugned judgment dated 05.12.2019, Annexure P-3 the Sessions Court dismissed the revision petition. The said orders have been challenged by the petitioners in the instant petition.

Counsel appearing for the petitioners has argued that there was no material before the trial Court to summon the petitioners for the alleged offence. It was next argued by him that only Mahavir could have filed the complaint and that the complainant, Shri Krishan has no *locus standi* to do so. It was further argued that Mahavir had been cited as a witness in the complaint case which actually shows that Mahavir was not of a feeble mind. Reliance had been placed upon the judgment of the Hon'ble Supreme Court in ***Rajinder Kumar Versus State of Haryana***, 2018 (4) RCR Criminal 288 to contend that a charge under 420 of IPC cannot stand against the appellant who is merely a purchaser of land.

Submissions made by the counsel for the petitioner have been considered. There is no dispute about the fact that Ratti Ram was the owner of the land in dispute. He had executed a Will dated 01.09.2003 in favour of the complainant and his brother, Rattan Lal. In the Will, he had specifically mentioned that he had two sons, namely, Tota Ram who had expired and his second son, Mahavir, was of a feeble mind. It was also mentioned in the Will that Mahavir did not know worldly affairs and he

was living with the complainant and his brother's family who were looking after him in respect of his day to day needs. Ratti Ram expired on 20.09.2003. Certificate issued by the PGIMS Rohtak, bearing No.2105 dated 12.09.2017 establishes that Mahavir is a case of “*border line intellectual functioning*”. This establishes that he was of a weak mind and not in a position to take decisions for himself. The accused belong to the same village as Mahavir and were aware of his weak intellect. Taking advantage of this fact, the accused took Mahavir along with them to the court complex and got his thumb impression on blank piece of paper on which petitioner No.2 got a sale deed dated 13.10.2014 executed in the name of his wife petitioner No.1 for the land in dispute by mentioning therein that a sum of Rs.8 Lacs had been paid in cash to Mahavir. Actually no amount had been paid to him. During the course of inquiry under Section 202 CPC, the accused, produced before the police authorities, two cheques of different dates showing the payment of the amount of Rs.1.5 lacs and Rs. 4.4 Lacs to Mahavir, whereas the sale deed shows that the amount had been paid in cash.

Shri Krishan, complainant-respondent in his evidence had produced the copy of the Will dated 01.09.2003. He had also categorically mentioned about the conspiracy hatched by the accused petitioners whereby in collusion with each other, they have taken undue advantage of the poor mental condition of Mahavir and got a sale deed executed without having paid any amount. It was also mentioned that the attesting witness of the sale deed namely, Rajiv son of Ram Chander did not affix his signatures on the deed as petitioner No.2 did not pay the consideration amount to Mahavir. The two cheques, photocopies of

which were submitted to the police, were also produced in the preliminary evidence. It was further mentioned that thumb impression of Mahavir had been obtained by defrauding him. The certificate issued by the hospital showing that Mahavir was of a feeble mind was also produced. The trial Court on the basis of the preliminary evidence and the documents produced, *prima facie*, came to the conclusion that an offence of cheating and conspiracy had been made out and accordingly issued summons for appearance of both the petitioners. No fault can be found with the satisfaction recorded by the trial Court.

From a perusal of the complaint, the preliminary evidence as well the documents produced by the complainant, it is apparent that *prima facie* the offences under Sections 420/120-B of IPC are made out and the accused have been rightly summoned by the Judicial Magistrate vide order dated 04.05.2018, Annexure P-2.

The judgment of the Hon'ble Supreme Court relied upon by the counsel for the petitioner in ***Rajinder Kumar's*** case is distinguishable on facts. The Hon'ble Supreme Court found that in the absence of any allegations of conspiracy under Section 120-B of IPC, a single charge under Section 420 IPC cannot stand against the accused as he was merely a purchaser of land which the seller is said to have sold to the complainant. It was in these circumstances that the charge framed under Section 420 of IPC against the accused was quashed by the Supreme Court. This judgment is therefore of no help to the petitioner.

Finding no merit in the present petition, the same is accordingly dismissed with no order as to costs. It is further clarified that the observations made hereinabove shall not be construed as an

expression on the merits of the case.

26.02.2020

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No