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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12396-2019 (O&M)

Date of decision-16.1.2020

Om Parkash

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sushil Kumar Verma, Advocate for the petitioner.

MANOJ BAJAJ, J. (Oral)

CRM-17181-2019 & CRM-30004-2019

Applications are allowed as prayed for.

Annexures P-3 to P-6 are taken on record.

Main case

Petitioner has filed this petition under Section 482 Cr.P.C for challenging the order dated 01.10.2018 (Annexure P-2) passed by the Additional Sessions Judge, Gurgaon whereby the order of discharge passed by the trial Court on 11.03.2014 (Annexure P-1) in complaint case No.72809 of 2013 dated 08.09.2004 registered under Sections 420, 406, 467, 468 and 471 read with Section 120-B IPC, at Police Station City Gurgaon, titled as “Om Parkash Vs. Amar Singh and others”, was upheld.

The brief facts leading to the present petition are as under:-

Om Parkash brought a complaint against accused, namely,

Amar Singh, Ravinder Singh, Sukhbir Singh and Mahesh Chand on the allegations that an agreement to sell dated 27.09.2001 was executed for purchase of 2 biswas of land comprising khasra No.351/1 situated at revenue estate of village Nathupur, between Amar Singh (vendor) and the complainant. As per the vendor, the land was free from all encumbrances and the sale consideration was fixed at Rs.2650/- per square yard and at the same time, sum of Rs.50,000/- was paid as earnest money to the complainant in cash, in presence of Sudesh Kumar (brother of complainant) and Ravinder Singh. The agreement was signed by the vendor and the vendee besides witnesses, namely, Sudesh and Ravinder Singh. The sale deed was to be executed on 20.12.2001, however, the same was extended on 18.12.2001 till 10.01.2002 on the request of the accused Amar Singh. According to the complainant, the possession of the land was delivered by Amar Singh on 18.12.2001, when the time for execution of sale deed was extended. It was further narrated that Sukhbir Singh-accused No.3, raised construction over the land in question and committed violence against the complainant which resulted into registration of FIR No.362 dated 24.12.2001 under Section 148, 323, 325, 506 and 307 IPC against Sukhbir Singh and his brothers. On the date fixed for registration of the sale deed, when the vendor did not appear before the Sub Registrar, Gurgaon, a legal notice dated 16.02.2002 (Exhibit P-8), was served by complainant and in response, it was disclosed by accused No.1 that he has executed an agreement to sell dated 11.06.2001 with Mahesh Chand (accused No.4) and pursuant to that sale deed dated 27.03.2002 was executed in favour of

Mahesh Chand and his brother Sukhbir Singh. On these broad allegations, it was alleged that the respondents have committed the offence punishable under Section 420, 406, 467, 468, 471 and 120-B IPC.

After examining the pre-summoning evidence, accused were summoned vide order dated 07.11.2006 for facing trial for commission of offence under Section 420 read with Section 120-B IPC.

After appearance of the accused, the pre-charge evidence was recorded and after examining the same, trial Court proceeded to discharge the accused Nos.2 to 4, however, the charge against accused No.1 (Amar Singh) was ordered to be framed. Aggrieved against the order of discharge, passed by the trial Court, the complainant preferred the revision petition before the Court of Sessions and the same was also dismissed vide order dated 01.10.2018 (Annexure P-2). In this background, petition has been filed by the complainant under Section 482 Cr.P.C.

Learned counsel for the petitioner has contended that there was cogent evidence against the accused, namely, Ravinder Singh, Mahesh Chand and Sukhbir Singh whereas the Court has wrongly proceeded to discharge them. He submits that the civil suit filed by the complainant for specific performance of the construction dated 27.09.2001 was though dismissed, however, Regular Second Appeal No.2917-2017 arising against the said judgment and decree dated 31.10.2013 is pending before this Court. He submits that the accused were involved in the criminal conspiracy with the main accused-Amar Singh and therefore, interference is warranted by this Court against the order of discharge which has been upheld by the

revisional Court as well.

After hearing learned counsel for the petitioner, this Court finds that the trial Court has carefully examined the entire material on record before the passing the order of discharge in respect of accused Nos.2 to 4. It may be added that these three accused persons were not beneficiary of the said agreement dated 27.09.2001 executed between the petitioner and vendor Amar Singh. The said finding of the trial Court has been further upheld by the Revisional Court. The relevant observation of the Revisional Court are extracted below:-

“The complainant alleges that respondent No.1 Ravinder was the attesting witness of his agreement with main accused Amar Singh, since deceased, which has been entered into regarding the suit property on 27.09.2001 and he was also a witness of the agreement to sell allegedly dated 11.06.2001. So, he was in the knowledge that there is charge or encumbrances on the suit property and the same was not clean. So, he does have criminal conspiracy with the other respondent-accused to cheat the complainant. It is pertinent to mention here that merely agreement to sell either entered into prior to agreement dated 27.09.2001 or after words cannot be said to have created a charge on the property. It was merely an agreement and cannot be amounted to sale. It has not been brought on record how respondents No.2 & 3 have cheated the complainant. It has not been rebutted that the respondent-accused in case FIR No.362 dated 24.12.2001 under Sections 148, 323, 325, 506 & 307 of Indian Penal Code pertaining to Police Station DLF Gurgaon have already been acquitted. That case too was

pertaining only to physical violence, so there cannot be said to have any criminal conspiracy to cheat or commit forgery upon the complainant on the part of respondent-accused No.2 & 3. More so, perusal of the file shows that no intention to cheat the complainant since beginning has been pointed out when he has also stated that the alleged agreement to sell dated 27.09.2001, which has been entered into with him, has to be executed on 20.12.2001. Had there been any intention to cheat him when alleged earnest money of Rs.50,000/- stated to have already been received by accused persons then for what agreement to sell was further extended to 10.1.2002. So, the material on record is deficient to frame charges against the respondents-accused.”

A perusal of the above indicates that the Courts below have carefully examined the material on record and a possible view has been adopted. It is well settled law that if there are two views, the Court is justified in discharging the accused. It will be useful to refer the judgment of Hon'ble Supreme Court in “**Central Bureau of Investigation, Hyderabad Vs. K.Narayana Rao**” 2012 (4) R.C.R.(Criminal). The relevant portion of the judgment reads as under:-

11) 11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

Exercise of jurisdiction under Sections 227 and 228 Criminal Procedure Code

21. On consideration of the authorities about the scope of

Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the

ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

In view of the above, it is clear that the trial Court at the stage of framing of charges was well within its powers to discharge the accused, if the material on record is not sufficient for framing of the charges. Apart from it, even otherwise, the rights of the parties have been decided by the Civil Court and mere pendency of the RSA before this Court cannot be a sufficient ground for interference with the order of discharge.

Resultantly, petition is dismissed.

(MANOJ BAJAJ)
JUDGE

16.01.2020
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No