

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

CRM-M-33444 of 2020(O&M)

Date of Decision:27.10.2020.

Narinder Singh

Petitioner

Versus

Deepinder Kaur and others

Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Rahul Singh Birdi, Advocate
for the petitioner.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Petitioner is aggrieved of order dated 22.07.2020, passed by the learned Judicial Magistrate Ist Class, Ludhiana, a copy of which is attached as Annexure P-1.

Learned Judicial Magistrate Ist Class, Ludhiana, vide order dated 22.07.2020 (Annexure P-1), declined the petitioner's prayer for registration of an FIR on the allegations raised in his application under Section 156 (3) Cr.P.C and directed that the matter be registered as a complaint case. The matter was adjourned for recording the statement of the complainant.

As per the petitioner's case, the petitioner and his mother were owners of a parcel of land which they agreed to sell to respondent no.1. The deal was carried out through respondent no.2, who is stated to be a property dealer. It is averred that no agreement to sell etc., was executed and it was decided that the sale deed in respect to the property would be executed straightway. The property was agreed to be sold for a sum of Rs. 24,50,000/-. Accordingly, sale deed

(Annexure P-3) in respect to the property was executed on 19.07.2017.

Learned counsel for the petitioner submits that though, there is a specific recital regarding the receipt of Rs.24,50,000/- i.e., Rs. 12,00,000/- through two demand drafts and Rs.12,50,000/- in cash, the petitioner received only a sum of Rs.12,00,000/- through two demand drafts and a sum of Rs.50,000/- in cash. As the petitioner reposed full trust and faith in respondent no.2, the petitioner believed the assurance set-forth by the said respondent that an amount of Rs.12,00,000/- would be paid later during the day on 19.07.2017. However, the amount was not paid for two years. The petitioner kept asking for the rest of the amount, but when the same was not paid, complaint (Annexure P-4), was ultimately filed before the police authorities on 19.07.2019. The matter was enquired into by the police authorities. However, it was recommended that no action is required to be taken as per the enquiry report dated 18.11.2019 (Annexure P-9). Accordingly, application under Section 156 (3) Cr.P.C., was moved, seeking registration of an FIR on the basis of the allegations.

Learned Judicial Magistrate Ist Class, Ludhiana, finding no merit therein, declined the direction for registration of an FIR and directed that the matter be registered as a complaint vide impugned order dated 22.07.2020.

Aggrieved therefrom, this petition has been filed.

Learned counsel for the petitioner vehemently argues that the learned Judicial Magistrate Ist Class, Ludhiana, has recorded incorrect facts in the impugned order 22.07.2020 and has accordingly grossly erred in law and on facts in declining the petitioner's application under Section 156 (3) Cr.P.C. It is submitted that a bare reading of the impugned order reveals that the learned Judicial Magistrate Ist Class, Ludhiana, has proceeded on a premise that the sale

deed was executed in favour of both the respondents namely Deepinder Kaur and Gurpreet Singh @ Vicky, whereas the sale deed was executed in favour of Deepinder Kaur, alone. Moreover, the learned Judicial Magistrate Ist Class, Ludhiana, has erred in giving detailed reasoning for declining the application under Section 156 (3) Cr.P.C., as the said observations are likely to affect the outcome of the petitioner's complaint. Learned counsel also points out to the statement of respondent-Deepinder Kaur (Annexure P-6) recorded by the police authorities to submit that she was unable to show that a sum of Rs. 12,00,000/- was ever paid to the petitioner. Therefore, in such a situation, dismissal of the petitioner's application under Section 156 (3) Cr.P.C., is submitted to be arbitrary, unjustified and illegal. It is thus prayed that the present petition be allowed.

I have heard learned counsel for the petitioner at length and have gone through the file with his assistance, however, I do not find any ground whatsoever to set aside order dated 22.07.2020.

It is not in dispute that the petitioner along with his mother executed a duly registered sale deed regarding the property on 19.07.2019 in favour of respondent-Deepinder Kaur. There is a specific recital in the said sale deed (Annexure P-3) that total amount of Rs.24,50,000/- has been received by the seller. It is mentioned that Rs.12,50,000/- was received from the purchaser in cash and Rs.12,00,000/- through demand drafts. The petitioner for the first time complained about the same on 19.07.2019. Admittedly, a civil suit also stands filed by the petitioner challenging the said sale deed.

Keeping in view the entire facts and circumstances of the case, I do not find any infirmity in the decision of the learned Judicial Magistrate Ist Class,

Ludhiana, in declining the request for registration of an FIR. Learned Judicial Magistrate Ist Class, Ludhiana, has directed the matter to be registered as a complaint case. It is clearly open to the petitioner to prove his case before the learned trial Court.

I do not find any merit in the argument raised by learned counsel for the petitioner that the impugned order should be set aside on the ground of recital of inaccurate facts. In the given factual matrix and keeping in view the facts as above, I do not feel it appropriate to set aside the impugned order merely on this ground and remand the matter to the learned Judicial Magistrate Ist Class, Ludhiana for a decision afresh. This is so for the reason that such a recital in any case does not have any bearing on the ultimate and final decision.

Needless to say, the observations regarding payment having been advanced by the other accused or payment having been made by loan etc., or the possibility of the dispute being of civil nature, shall not have any bearing whatsoever on the merits of the complaint case pending before the learned Judicial Magistrate Ist Class, Ludhiana.

Petition is accordingly dismissed.

None of the observations in this order will have any bearing on the pending complaint and are confined for the purpose of decision of this petition.

27.10.2020
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.