

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRM-M-3334 of 2019 (O&M)
Date of Decision: April 4th, 2022

Pardeep Kumar

.... Petitioner

Versus

Keshav Sood and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Akhil Kashyap, Advocate for
Mr. Parveen K.Kataria, Advocate
for the petitioner.

Mr. Arnav Kumar Sood, Advocate
for respondent No.1.

SANT PARKASH, J. (ORAL)

The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of complaint No.18 dated 15.09.2017 (Annexure P-1) pending before the Court of learned CJM, Moga and summoning order dated 10.09.2018 (Annexure P-2), vide which the petitioner has been summoned under Sections 420, 465, 467, 468 and 120-B of IPC.

Brief facts leading to the present case are that the property in dispute measuring 11 marlas was originally owned by Satyawati Sood (grand maternal mother of petitioner). A Will dated 14.10.1982 (Annexure P-3) was executed by Satyawati Sood vide which 06 marla of the the said property was bequeathed to her daughter namely Pushpa and rest 05 marlas were given to her grandsons namely Pradeep Kumar Sood and Rajeev

Kumar Sood (both sons of Bimla Sood). The above said 06 marla share inherited by Pushpa, was sold by her to Bimla Sood vide sale deed dated 11.04.1989 (Annexure P-4). Bimla Sood also executed a Will dated 23.12.1997 (Annexure P-5) in favour of her sons namely Pradeep Kumar Sood and Rajeev Kumar Sood. Bimla Devi's daughter namely Parveen Lata Sood (mother-in-law of respondent No.1) died in the year 2007 before the death of Bimla Devin in the year 2008. The daughters of Parveen Lata had filed a civil suit dated 26.11.2015 (Annexure P-6) claiming their 1/3 share in the aforesaid property measuring 11 marlas and the learned Civil Court vide order dated 12.10.2016 (Annexure P-8) directed the petitioner and his brother that they can alienate/transfer the suit property with the prior permission of the Court thereby bringing proposed vendee/transferee on the record. The petitioner filed an appeal against the said order dated 12.10.2016, which was dismissed by the learned Sessions Court. The petitioner along with his brother, after getting mutation sanctioned in their favour by stating that they are the only legal heirs of Bimla Devi and there is no other legal heir of Bimla Devi, entered into an agreement to sell dated 28.09.2015 with one Rajinder Kumar for a sum of Rs.1,64,00,000/- in respect of the above said inherited property. At this, respondent No.1-Keshav Sood, who is son-in-law of Parveen Lata, filed the impugned complaint No.18 dated 15.09.2017 under Sections 420, 465, 467 and 120-B of IPC at P.S.City Moga (Annexure P-1) against the petitioner and respondent No.2-Swaranjit Singh, Nambardar, Moga, wherein vide order dated 10.09.2018, learned trial Court summoned the petitioner to face trial. Aggrieved with the same, the petitioner has come up before this Court by

way of instant petition.

Learned counsel for the petitioner contends that the complainant while filing the complaint in question, did not disclose the true facts to the learned Court below that the petitioner has legally inherited the property on the basis of the Wills executed by Smt. Satyawati Sood and Smt. Bimla Devi, as per which, the petitioner and his brother are the absolute owners in possession of the entire property with all rights and interest and respondent No.1/complainant, who is son-in-law of Smt. Parveen Lata, can not claim any right on the same. Smt. Bimla Devi in her Will dated 23.12.1997 (Annexure P-5) has clearly mentioned that this immovable house property will be inherited by her sons Pradeep Kumar Sood and Rajeev Kumar Sood jointly and equally and it was further mentioned in the said Will that her daughter namely Smt. Parveen Lata Sood W/o Sh. Ambe Prasad Sood was well settled in her life and had already received enough from Bimla Devi by way of marriage gifts.

He further contended that when respondent No.1/complainant and his wife came to know about the agreement to sell dated 28.09.2015 entered into by the petitioner with one Rajinder Kumar, they along with other daughters of deceased Parveen Lata, became greedy and filed suit for declaration claiming one third share in the residential property owned by Smt. Satyawati Sood. The said suit is pending adjudication and the present case, which is purely of civil nature, is unnecessarily being given colour of criminal case, thereby abusing the process of law.

Contravening the aforesaid submissions made on behalf of the petitioner, respondent No.1/complainant has filed para wise reply to the

petition, which is already on record.

Learned counsel appearing on behalf of respondent No.1/complainant vehemently argued that the petitioner has concealed material facts from the Court below and he in connivance with respondent No.2, got prepared a fake table of inheritance (Kursinama) by omitting the legal heirs of Bimla Devi and making a false statement before the revenue authorities and got the mutation sanctioned in his favour. Copy of jamabandi dated 19.01.2016 has been placed on file as Annexure R-1. He further submitted that the petitioner in parallel proceedings had given consent to the legal representatives of late Parveen Lata regarding their share of inheritance in respect of estate of late Bimla Devi and based on the said consent, learned Court of Additional Civil Judge (Sr. Division), Moga had directed issuance of succession certificate in their favour vide judgment dated 23.10.2019 (Annexure R-2).

The submissions made on behalf of the petitioner are further contradicted by learned counsel for respondent No.1 by submitting that the Will executed by Lt. Smt. Bimla Devi is sub judice and yet to attain finality and the alleged Will dated 23.12.1997 is a fraud and fictitious document, which has been created with the intention to cheat the valuable rights of other legal heirs.

Further in support of his arguments, learned counsel for respondent No.1/complainant has placed reliance upon a judgment dated 11.02.2015 rendered by Hon'ble Supreme Court in the case of **Sonu Gupta versus Deepak Gupta and others**, wherein it has been held by Hon'ble Apex Court that at the stage of cognizance and summoning, the Magistrate is

required to apply his judicial mind only with a view to take cognizance of offence and at this stage, Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant.

After having heard learned counsel for the parties and having gone through the records available on file, this Court is of the considered opinion that the impugned order dated 10.09.2018 (Annexure P-2) does not suffer from any illegality.

In the present complaint, the complainant examined himself as CW-1 and also examined Sujata Sood as CW-2 and Jatinder Pal Singh (Patwari) as CW-3 and placed on record certain documentary evidence in support of his claim. Learned Court below after considering the allegations made in the complaint and evaluating the material placed on record, observed as under:-

“At this stage of summoning, the Court is not bound to examine the allegations and evidence on record meticulously but rather a limited appraisal is to be made of the material on record for ascertaining whether a prima facie case is made out against the persons arrayed as accused or not. From the un rebutted preliminary evidence led by the complainants on record and the supporting documentary record, it emerges convincingly that accused persons in connivance with each other had got sanction the mutation no.4807 in their favour on 16.10.2015 by stating wrong facts to Assistant Collector II Grade, Moga with intention to grab the property of said Bimla Devi and by doing so, they committed fraud with the complainant. In view of the above observations, the accused persons are ordered to be summoned for the commission of offence under Sections 420, 465, 467, 468, 120-B of IPC for

27.11.2018, on filing of PF and copies of complaint.”

A perusal of the file and records available therein reveal that there are various disputed questions involved in the present case, which need to be referred but at this stage of summoning, the Magistrate is not required to evaluate the merits of the materials or evidence placed before it.

The impugned order passed by learned Court below finds support in the judgment rendered by Coordinate Bench of this Court in the case of **Gurdeep Kaur Vs. Balbir Singh and others, 2005(2) RCR (Criminal) P & H 205**, wherein it has been held that the learned trial Magistrate has to be, prima facie, satisfied as to whether there are sufficient grounds for proceeding against the accused named in the complaint or not. It is not the duty of trial Magistrate to enter into detailed discussion on the merits or demerits of the case. The law laid down by Hon'ble Supreme Court in **Sonu Gupta (supra)** further corroborates the stand taken by learned Court below and the said law is reproduced hereunder for ready reference:-

“In a case in which the cognizance of the offence has been taken by the Court by taking into consideration the material available with him and for that a detailed speaking order is not required to be passed. Only the satisfaction of the Court is required to be recorded. For that purpose also i.e. not to be recorded in so many words but for reaching on a prima facie view by taking cognizance the satisfaction of the Court is necessary. The investigation is exclusive domain of the investigating agency and taking of cognizance of offence is the area exclusively within the domain of the summoning Court/Magistrate. At this stage, only the satisfaction is to be seen of the summoning Court as to whether there is a sufficient ground for proceeding further or not. Whether the evidence is adequate for framing of charge or for supporting the

conviction can be determined at the time of the trial and not at the stage of summoning or at the stage of issuing process to the accused. It is not necessary to record the detailed reasons.”

In view of the aforementioned judicial precedents, this fact is not disputed that in a summoning order, a Magistrate is not required to pass a speaking order. At the stage of summoning, the Magistrate has only to evaluate the material placed before him from the prima facie view and not from the point of view for conviction or acquittal of the accused.

It is also pertinent to mention here that the Judicial Magistrate has the discretionary power to summon a person to face trial in a private complaint and this Court does not find it appropriate to interfere in the order passed by Judicial Magistrate in view of the law laid down by Hon'ble Apex Court in the case of **Bhushan Kumar and another Vs. State (NCT of Delhi) and another, 2012(2) RCR (Criminal) 794**, wherein it has been held as under:-

“Once the Magistrate has exercised his discretion, it is not for the High Court or even Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved would ultimately end in conviction of the accused.”

Glancing through the impugned order dated 10.09.2018, it would be revealed that the learned CJM, Moga gave his specific findings that from the unrebutted preliminary evidence led by the complainants on record and the supporting documentary record, it emerges convincingly that accused persons in connivance with each other had got sanction the

mutation No.4807 in their favour on 16.10.2015 by stating wrong facts to Assistant Collector II Grade, Moga with intention to grab the property of said Bimla Devi and by doing so, they committed fraud with the complainant and in view of the said observations, the accused persons have been summoned for the commission of offence under Sections 420, 465, 467, 468 and 120-B of Indian Penal Code.

Keeping in view the aforesaid facts, this Court does not find any illegality and infirmity in the order dated 10.09.2018 passed by learned CJM, Moga and accordingly, the same is upheld by this Court.

Therefore, the instant petition seeking quashing of the impugned order (Annexure P-2) being devoid of merit, is hereby dismissed.

**(SANT PARKASH)
JUDGE**

April 4th, 2022
Maninder

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No