

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-10251-2017(O&M)

Date of Decision:-20.12.2022

Jaleb Khan.

.....Petitioners.

Versus

Jan Mohammad & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Mohd. Arshad, Advocate for the Petitioner.

JASJIT SINGH BEDI, J.

CRM-34442-2022

The prayer in the application under Section 482 Cr.PC is for restoration of the main petition which was dismissed for want of prosecution vide order dated 07.09.2022.

Heard.

For the reasons stated in the application duly supported by affidavit, the same is allowed and main case is ordered to be restored to its original number and on request of learned Counsel for the petitioner, the same is taken up for hearing today itself.

CRM-M-10251-2017

The Prayer in this petition under Section 482 Cr.PC is for setting aside the order dated 16.12.2016 (Annexure P-1) passed by the Additional Sessions Judge, Nuh whereby the summoning order dated 07.12.2015 passed in complaint no.383 dated 02.01.2013 titled as Jaleb Khan Vs. Jan Mohd. pending in the court of JMJC, Ferozepur Jhirka, District Mewat was ordered to be set aside.

The brief facts of the case are that the petitioner/complainant

Jaleb Khan filed the instant complaint under Sections 420, 467, 468, 471 and 120-B IPC with the allegations that he was an old man of the age of 65 years. As his daughter-in-law had committed suicide a case was registered against his son and he had been arrested in the said case. Respondent-accused no.1-Jan Mohammad was a distant relative and assured him (complainant) that he would get sanctioned a loan to help him finance the litigation of his son. He (complainant) went to the Tehsildar Office on 17.7.2009 for preparation of the land documents but the accused in conspiracy with the Halqa Patwari, Rashid Lambardar etc., in connivance with each other and by taking advantage of his illiteracy get registered the sale deed of his land in favour of the accused Khurshidan(accused-respondent no.4) and Smt. Fatta(accused-respondent no.3) and on the contrary told him that his loan would be sanctioned in a few days. Pursuant thereto, a sum of Rs.5 lacs was paid to him on 17.07.2009 and a further promise for an amount of Rs.5 lacs to be paid after 10/15 days was made to him. Despite the promise no amount was paid to him. He became suspicious and on inquiry came to know that Jan Mohammad in connivance with the other accused had got registered the sale deed of his agricultural land for a sum of Rs.27 lacs. Nothing had been paid to him. In fact the sale was a result of fraud. Similarly, Jan Mohammad had also duped another person for a similar amount of money. Based on the evidence led the respondent/accused Jan Mohammad, Hakmuddin sons of Chandru, Fata wife of Hakmuddin, Smt. Khurshidan wife of Jan Mohammad all residents of Naheda, P.S. Punhana, District Mewat came to be summoned vide order dated 07.12.2015 (Annexure P-3) for having committed the offence under Sections 420, 467, 468, 471 read with Section 120-B IPC.

The summoned accused preferred a revision petition bearing Criminal Revision No.300 of 2016. The said revision was accepted and the impugned order dated 07.12.2015 was set aside vide order dated 16.12.2016 (Annexure P-1).

It is this order which is under challenge in the present quashing petition.

The Counsel for the petitioner contends that the petitioner/complainant was an old person with weak hearing capacity. He had reposed faith in Jan Mohammad who had mislead him. He had been

called for the purposes of sanctioning of a loan in the Tehsil office on 17.07.2009 but with prior conspiracy hatched with the Patwari and Nambardar taking advantage of his illiteracy and deafness the sale deed had been got registered of his land. A sum of only Rs.5 lacs was paid to him. It was only later that he realised that he had been misled to execute the sale deed of his land. He contends that the Sessions Court had misconstrued the evidence on record by setting aside the summoning order. Undue weightage has been given to the defence evidence and the complainant's evidence remained unrebutted. The impugned order had been passed on the basis of conjectures and surmises and was thus liable to be set aside and the matter be remanded back for a Trial in accordance with law.

I have heard counsel for the petitioner at length.

As per the complaint, the sale deed was executed on 15.07.2009 and he is said to have come to know about the fraud 10/15 days thereafter. Apparently he was aware of the fraud in August 2009 but for some strange reasons the present complaint came to be filed only on 02.01.2013 i.e. after 3-1/2 years of the occurrence. This creates a serious doubt in the case of the complainant.

The application Ex.CW-1/A moved by him to DGP, Haryana on 02.05.2012 also goes to show that the said application had been moved almost three years after he became aware of the knowledge of the alleged fraud. Having said so, this application is a photocopy with no postal receipt of proof that the application had actually been sent to the DGP, Haryana.

Further the sale deed dated 15.7.2009 was challenged by the sons of the complainant/petitioner in a civil suit in which the complainant was also a party. The complainant had not pleaded in the suit that the sale deed was an outcome of a fraud played upon him by the accused. Even the sons of the complainant had not pleaded fraud in the said suit. In fact the said suit was dismissed on 08.02.2012. He filed the present complaint on 02.01.2013. Thus, it is clear that had there been fraud played upon him, he would have filed a complaint immediately after obtaining knowledge of fraud, which as per him was within 10 or 15 days of the execution of the sale deed. On the contrary, he was silent for more than 3-1/2 years.

Further, necessary ingredients of the offences in question have not been established. Admittedly, the petitioner has signed the documents

executing the sale deed so there would be no question of forgery as has been pointed out. Fraud has not been pleaded in the civil suit and the suit and the appeal both stands dismissed.

Thus, no fault can be found in the impugned order which is sought to be quashed.

In view of the above, I find no merit in the present petition and the same is therefore dismissed.

(JASJIT SINGH BEDI)
JUDGE

December 20, 2022

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>