

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

CRM-M-20756-2017
Reserved on 18.07.2022
Pronounced on: 25.07.2022

Ajay Singh Cheema

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. P.S. Ahluwalia, Advocate, and
Mr. J.S. Dhindsa, Advocate, for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

Mr. Satbir Singh Katnoria, Advocate, with
Respondent No.2-Amrita Singh, in person.

HARNARESH SINGH GILL, J.

By way of the present petition, the petitioner seeks setting aside of the order dated 21.02.2014 (Annexure P.1) passed by the trial Court, whereby the petitioner was summoned under Section 319 Cr.P.C., and the order dated 08.05.2017 passed by the learned Additional Sessions Judge, Amritsar, dismissing the revision filed against the order dated 21.02.2014.

Learned counsel appearing for the petitioner would vehemently contend that the summoning of the petitioner, by invoking the provisions of 319 Cr.P.C. is wholly untenable for the reasons; i) the petitioner was found innocent during investigation and placed in Column No.2; ii) in the civil suit filed by Smt. Amrit Kaur and Smt. Harpreet Kaur Bhal, both daughters of Dr. Jeet Kaur, through respondent No.2-Amrita Singh, a compromise had been entered between the parties and accordingly, the said suit was dismissed withdrawn on 8.11.2011; iii) that in the said suit, respondent No.2

had made statement that the defendant-Company (M/s Impact Projects Pvt. Ltd.) was a bona-fide purchaser for valuable consideration; iv) that respondent No.2 had suffered a statement that the plaintiffs would extend full cooperation in the matter for withdrawal/cancellation of FIR against the defendants and that in lieu of the withdrawal of the suit, respondent No.2 had received an amount of Rs.25 lakh.

It is submitted that initially, FIR No. 356 dated 09.09.20007 under Sections 419, 420, 467, 471, 120-B IPC at Police Station Civil Line, Amritsar, was registered by Rajdeep Singh, the Power of Attorney of respondent No.2; that, however, as a dispute arose between said Rajdeep Singh and respondent No.2, the latter filed an application under Section 311 Cr.P.C. and she was substituted as a complainant; and that thereafter, her testimony was recorded in the Court as PW5 on 27.09.2013 and 10.12.2013 and that accordingly, the prosecution had moved an application under Section 319 Cr.P.C., wherein, as noticed above, the trial Court, had passed the order dated 21.02.2014 summoning the petitioner and thereafter, vide order dated 08.05.2017, the learned Additional Sessions Judge, dismissed the revision filed by the petitioner.

Eloquently arguing the case, learned counsel for the petitioner submits that once the very civil suit, which was filed in the year 2007 in respect of the sale deed dated 22.01.2003, was dismissed as withdrawn on 8.11.2011 on the basis of compromise and respondent No.2 had also received the settlement amount, and had also made a statement to cooperate in quashing/cancellation of the FIR; appearing before the civil court and making a statement regarding the involvement of the petitioner, is nothing, but a well thought out mechanism to grab more money from the petitioner. It is further submitted that the order dated 08.11.2011 passed by the Civil

Court, has attained finality, as no appeal or revision, there-against has been filed till date; that if respondent No.2 was of the view that the statement dated 08.11.2011 made by her before the Civil Court, was a procured one, she could have sought restoration of the suit or challenged the said order before the higher Court(s), which was never done. It is, thus, submitted that filing of the application under Section 319 Cr.P.C. is not only motivated, but also against the very statement of respondent No.2 in the Civil Suit and yet further both the Courts below, have summoned the petitioner in a mechanical manner, without applying their judicious mind.

On the other hand learned counsel for respondent No.2 along with respondent No.2- in person, submits that the amount of Rs.25 lakh paid to respondent No.2 by the petitioner in the Civil Suit, was/is a paltry amount as against the worth of the land that runs into crores; that the petitioner had assured respondent No.2 to make good the loss by paying a suitable amount; but after the withdrawal of the suit, the petitioner had switched off his mobile phone and had did not respond to respondent no.2's call and/or request in any manner and that the petitioner is a colonizer and he had grabbed the land in question under deception and by playing fraud upon the late father of respondent No.2.

It is further submitted that Dr. Jeet Kaur, sister of respondent No.2 and mother of the plaintiffs in the suit i.e. Smt. Amrit Kaur and Smt. Harpreet Kaur, had already died at the time of the alleged execution of the sale deed and as a matter of fact, she (Dr. Jeet Kaur) was impersonated by someone else, with the illegal designs and active connivance of the petitioner and other accused in the FIR. It is further submitted that even if in the Civil Suit, a statement was made by respondent No.2 and the suit was withdrawn, then also, the criminal proceedings, being independent in nature, which specifically

proceeds on the ground of impersonation of Dr. Jeet Kaur with the active connivance of the petitioner, there lies no embargo in proceedings ahead with the criminal proceedings.

It is yet further submitted that the petitioner had managed his being declared as innocent during investigation by exercising and exerting his influence and that the fact remains that the petitioner and all the other accused in the FIR, had been well aware of the fact that Dr. Jeet Kaur, had already died when the sale deed was executed on 22.01.2003 in favour of M/s Impact Projects Pvt. Ltd. and that the impugned orders passed by the Courts below did not suffer from any illegality.

Respondent No.2, who is present in person, submits that her father late Brigadier Balbir Singh, was awarded 25 acres of land for Gallantry in World War-II. Her father gifted the said land to his four children, including respondent No.2 and Dr. Jeet Kaur; that all the four children had given a Power of Attorney to their father; that the accused in the FIR, including the petitioner, had persuaded her late father to sell the said land; that firstly, three shares were purchased; that, later on as Dr. Jeet Kaur, had already died, the accused got a sale deed executed by and on her behalf by impersonation and by taking undue advantage of the old age of her father.

I have heard the learned counsel for the parties and have also gone through the impugned orders.

This Court is called upon to look up the legality contained in the impugned orders passed by the Courts below, summoning the petitioner under Section 319 Cr.P.C.

Undisputed facts on record are that FIR No. 356 aforesaid was registered on 09.09.2007 by Rajdeep Singh, Power of Attorney of respondent No.2, alleging that the sale deed dated 22.01.2003 was a

result of a fraud. As noticed above, during investigation, the petitioner was found innocent and was kept in column No.2. Besides, a Civil Suit was filed by respondent No.2 being the General Power of Attorney of Smt. Amrit Kaur and Smt. Harpreet Kaur, both daughters of Dr. Jeet Kaur, in the Civil Court, at Amritsar. In the said suit, relief of declaration to the effect that the sale deed dated 22.01.2003 executed by Smt. Jeet Kaur @ Jeet Singh in favour of defendant No.1-Company (i.e. the Company of the petitioner) relating to the suit land is illegal, null and void, without consideration and is the result of impersonation and fraud and is not at all binding and operative qua the rights of the plaintiff and thus, liable to be set aside.

In the said suit, respondent No.2-Amrita Singh @ Amrit Kaur, suffered a statement on 08.11.2011, which reads as under:-

“The matter has been compromised. The compromise deed is Ex.C1 and carries my signature. The plaintiffs have instructed me to withdraw the present suit as they are satisfied that defendant Company is bonafide purchaser of the suit property for valuable consideration and is in possession of the same as its own rights. This undertaking is given by me on behalf of the plaintiffs that defendant or any of its official/Director shall not be dragged in any civil and criminal litigation pertaining to the subject matter of the suit hereinafter. The plaintiffs and the aforesaid attorney shall extend all cooperation in the matter of withdrawal/cancellation of FIR against the defendants. This compromise has been arrived by me with the defendant to buy peace. The suit may be dismissed as withdrawn.”

Pursuant to and on the basis of the aforesaid statement, the said Civil Suit was dismissed as withdrawn vide order dated

08.11.2011 passed by the Civil Judge (Sr. Division), Amritsar. The said order reads as under:-

“File taken up today on an application filed by the attorney of the plaintiff. Both the parties have recorded their statements in the Court separately. In view of the statement of Amrit Kaur, attorney of the plaintiff, countersigned by her counsel Ms. Rita Gupta, the present suit is ordered to be dismissed as withdrawn. File be consigned to the record room.”

The aforesaid order of dismissal of the suit as withdrawn has attained finality as the same has not been challenged by way of an appeal or revision. Therefore, respondent No.2 cannot wriggle out of her statement in the said suit and plead that the same was given under pressure, without challenging the said order.

Still further, it is the case of respondent No.2 herself that her father had sold the shares of his three children, including respondent No.2 to the petitioner's Company. To that extent, she does not lay any challenge. Her grievance is that the share of her sister Dr. Jeet Kaur was sold by impersonation.

The matter needs no dilation as far as the issue of civil and criminal proceedings being initiated simultaneously, is concerned. They can be as such, provided the criminal intent from the very beginning of the act/transaction is established. However, the case in hand stands on a different footing. Having withdrawn the Civil Suit as compromised, and having suffered a statement therein that the petitioner's Company is a bona-fide purchaser, virtually there remains no space for respondent No.2 to turn round and state in the criminal proceedings otherwise.

Admittedly, in the criminal proceedings respondent No.2's testimony was recorded later at point of time (27.9.2013 and 10.12.2013) than the withdrawal of the Civil Suit on 08.11.2011. As noticed above, the petitioner was found innocent during investigation. Thus, the statement of respondent No.2 in the criminal proceedings clearly goes in contradiction to the stand taken in the Civil Suit.

Apart from that respondent No.2 has admitted having received the amount of Rs.25 lakh as the settlement amount. If respondent No.2 was not satisfied with the settlement or if the suit was got withdrawn by her, under pressure, influence, coercion or any other intimidation etc., she could have sought her legal remedy. But taking a contrary stand in the criminal proceedings, so as to seek summoning of the petitioner, seems to be motivated.

Both the Courts below while passing the impugned order, has neither adverted to nor taken into consideration the said factual aspect of the matter.

In view of the above, the present petition is allowed. The impugned orders passed by the Courts below are set aside and as a consequence thereof, the application under Section 319 Cr.P.C. moved by the prosecution is dismissed.

25.07.2022
ds

(HARNARESH SINGH GILL)
JUDGE

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