

CRM-M-30558-2019 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-30558-2019 (O & M)

Date of decision: 16.03.2023

Amritpal Singh

..... Petitioner

V/s

State of Punjab and ors.

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. B.S. Bhalla, Advocate,
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

Mr. L.S. Sidhu, Advocate, for respondents No.3 and 4.

JASJIT SINGH BEDI, J. (Oral)

CRM-11192-2023

The application for placing on record the reply on behalf of respondents No.3 and 4 alongwith Annexures R-1 and R-2 is allowed as prayed for. The reply alongwith the documents, Annexures R-1 and R-2 is taken on record.

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The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 30.01.2018 (Annexure P-3) in FIR No.172 dated 17.10.2015 under Sections 420, 120-B IPC registered at Police Station Dharamkot, Distt. Moga, whereby the application under Section 65 and 66 of the Indian Evidence Act, 1872 for proving the agreement dated

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30.08.2012, 06.11.2012 undertaking dated 30.11.2012, agreement dated 30.11.2011 and application dated 31.12.2012 has been dismissed.

2. The brief facts of the case are that the complainant-Amrit Pal Singh had moved an application before the Senior Superintendent of Police, Moga on 23.07.2014 against the accused. An enquiry was conducted and an FIR came to be registered against the accused. At the time of making the complaint, the complainant had produced copies of documents i.e. agreement dated 15.12.2011 and receipts dated 21.06.2012, 16.05.2012, 18.05.2012, 30.08.2012, 06.11.2012 undertaking dated 30.11.2012, agreement dated 30.10.2011 and application dated 31.12.2012 which were issued by Sushil Gandhi (accused) in favour of the complainant. The complainant had also filed a civil suit against the accused and other persons who had executed the agreement with him which was pending in the Court of Additional Civil Judge (Senior Division), Moga. All the original documents had been produced in the said civil case and the complainant had obtained certified copies from the judicial department. Permission was sought to prove the said documents by way of a secondary evidence.

3. The Court of Additional Civil Judge (Senior Division), Moga vide its order dated 30.01.2018 came to the conclusion that the details of the civil suit in which the original documents had been stated to have been filed had not been provided and in the absence of the said details, the documents could not be proved by way of secondary evidence as an application to lead secondary evidence was only maintainable when it was proved that the original record was in existence but had been destroyed. Therefore, once the existence of the original documents itself had not been proved, the question

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4. When the instant petition came to be filed on 19.07.2019, the following order was passed:-

“Present petition under Section 482 Cr.P.C. for quashing of order dated 30.01.2018 (Annexure P3), passed in case FIR No. 172 dated 17.10.2015, registered under Sections 420 & 120-B IPC at Police Station Dharamkot, District Moga, whereby application under Sections 65 & 66 of the Indian Evidence Act, 1972 filed by the petitioner, who is complainant of the case, was dismissed.

Learned counsel for the petitioner contended that the original documents are available in the civil court proceedings; as such, petitioner could not produce the same and the learned trial Judge decided the application against him on that account.

Notice of motion for 09.09.2019.

On asking of the Court, Mr. Pawan Sharda, Senior Deputy Advocate General, Punjab accepts notice on behalf of respondent No.1. A complete copy of paper-book be provided to him during the course of the day.

Meanwhile, pronouncement of final judgment by the learned trial Court shall remain stayed.”

5. The learned counsel for the petitioner contends that all the documents and receipts were a part of the record in the civil case and therefore, the present application to lead secondary evidence ought to have been allowed as the existence of the primary evidence was beyond doubt.

6. The learned counsel for the State while referring to the reply dated 23.11.2020 states that after due enquiry, the FIR came to be registered and after completion of investigation, the challan was submitted against respondents No. 2 to 4.

7. The learned counsel for respondents No.3 and 4 has filed a

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that the original agreement dated 15.12.2011, the receipts in question were a part of the Civil Court Record is baseless. In fact, as per the judgment rendered by the Additional Civil Judge (Senior Division), Moga on 21.01.2023 (Annexure R-2), a finding has been arrived at in Para 17 of the judgement based on the deposition of the petitioner (plaintiff-PW-5 in the said civil proceedings) that the document in question i.e. agreement Ex.PX dated 15.12.2011 was a photocopy and the original has not been produced on the file. Therefore, the suit for possession by way of specific performance of the agreement dated 15.12.2011 had been dismissed. Once the original was not available on the file of the civil case, the question of allowing the instant application for leading the secondary evidence does not arise. The originals of the receipts sought to be proved by leading secondary evidence also do not exist either with the petitioner or as a part of any judicial record.

8. I have heard the learned counsel for the parties.

9. The entire case of the petitioner-complainant is that there was agreement to sell dated 15.12.2011, the original of which was on the Civil Court file and he sought to lead secondary evidence in that regard in the instant civil proceedings. However, a categoric finding has been arrived at, based on the deposition of the petitioner as a plaintiff in the said suit that no such original document is on the file. The suit for specific performance of the said agreement has also been dismissed. In such a situation, the question of allowing the petitioner to lead secondary evidence when the existence of the primary evidence in the shape of the original documents itself is in doubt, does not arise. In addition, it is not the case of the petitioner that the originals of the other documents sought to be produced are either with him

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10. In view of the above, I find no merit in the present petition.

The same is, therefore, dismissed.

(JASJIT SINGH BEDI)
JUDGE

March 16, 2023

sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No