

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

117-1

Date of decision: 16.04.2024

1. CRM-M-32326-2014

RAJIV THAKUR
Versus
....Petitioner

STATE OF PUNJAB AND ORS.
...Respondents

2. CRM-M-40159-2014

GARISH KHURANA
Versus
....Petitioner

STATE OF PUNJAB AND ORS
...Respondent

3. CRM-M-52286-2019

RAJIV THAKUR
Versus
....Petitioner

STATE OF PUNJAB AND ANOTHER
...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Amtiaz Sandhu, Advocate for
Mr. Karan Bhardwaj, Advocate
for the petitioner in CRM-M-32326-2014.

Mr. Surinder Sharma, Advocate
for the petitioner in CRM-M-40159-2014.

Mr. J.S. Thakur, Advocate
for the petitioner in CRM-M-52286-2019.

Mr. Pardeep Bajaj, DAG, Punjab.

Mr. Inderjeet Singh, Advocate
for respondent No.2.

KULDEEP TIWARI. J.(Oral)

1. All the three petitions have been filed, invoking the inherent power of this Court under Section 482 Cr.P.C, for seeking quashing of FIR No.222, dated 31.08.2011, under Section 420 of IPC, 1860, registered at Police Station Division No.7, Jalandhar, District Jalandhar (Annexure P-4), and all consequential proceedings arising therefrom, and therefore, being amenable by common decision, same are taken up together. For the sake of brevity the facts are being extracted from CRM-M-32326-2014.

2. The instant FIR was lodged on a complaint made by one Jagtar Singh Chandi, son of Sh. Laxman Singh, resident of Village Kania Khurd, Tehsil Shahpur, District Jalandhar, who is holder of General Power Attorney of one Sewa Singh, and alleged that one Varinder Singh, has sold his property to Sewa Singh, after taking due consideration, and the sale deed was duly executed and registered. However, now his wife-Vimla Devi, who is not happy about the transaction, has estranged relationship with his husband Varinder Singh, and is trying to re-assume the possession of some part of the said land.

3. During the investigation of the FIR (supra), a parallel complaint was submitted by Vimla Devi-wife of Varinder Singh with the allegations that the sale deed was a result of fraud, as her husband is a person of unsound mind, therefore, he is not able to execute the said sale deed at the relevant time. It was further alleged that the sale deed in question was in fact executed without any sale

consideration.

4. During investigation it was further transpired that, Varinder Singh has opened a separate saving account, which was witnessed by one Rajiv Thakur (petitioner in CRM-M-32326-2014), and wherein, the entire sale consideration was deposited, and which was subsequently withdrawn by one Garish Khurana (petitioner in CRM-M-40159-2014).

5. In view of the above facts, the prosecution agency concluded that in fact the money was never came into the account of Varinder Singh, therefore it is sham transaction, and accordingly, Rajiv Thakur (petitioner in CRM-M-32326-2014), and Garish Khurana (petitioner in CRM-M-40159-2014) were nominated as accused persons. Finally, after investigation, the final report under Section 173 Cr.P.C. was filed against all the three accused persons.

5. Learned counsel for the petitioner submits that Varinder Singh, is a person of sound mind, and there is no evidence collected by the Investigating Agency, to establish that Varinder Singh is a person of unsound mind, and in absence of such evidence, which is the sole ground, for putting the petitioners/accused to face trial, in the subjected FIR, is nothing, but a sheer abuse of the process of law. Learned counsel for the petitioner further draws attention of this Court to the order dated 22.01.2019, whereby, the application preferred by Vimla Devi, seeking declaration to the extent that her husband Varinder Singh is a person of unsound mind, was declined. Learned counsel for the petitioner also submits that in fact Varinder Singh, in his sound mind executed the sale deed in favour of Sewa Singh, and he is hail and hearty.

6. At this stage, learned counsel for respondent No.3 (Varinder Singh),

submits that in fact respondent No.3-Varinder Singh is hail and hearty, and there is a dispute between him, and his wife-Vimla Devi-respondent No.4, who is creating all such problems in the sale deed, executed in favour of Sewa Singh. Learned counsel for respondent No.3 further submits that sale deed is legally executed, and he received the entire sale proceeds in lieu of the said sale transaction.

7. On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner, and submits that much water has flown, after filing of the instant petition, as total 28 prosecution witnesses have been cited in the final report, and out of those 28 prosecution witnesses, 15 prosecution witnesses have been examined so far. Learned State counsel further submits that the issue which is raised before this Court is whether, Varinder Singh is of sound mind or not, is a disputed question of fact, which cannot be adjudicated before this Court by exchange of affidavits or by appearance of respondent No.3-Varinder Singh.

8. I have considered the submissions made by the learned counsel for the parties.

9. This Court is of the considered view that the issue which is raised before this Court is primarily a disputed question of fact, which requires adjudication by the learned trial Court concerned, therefore, this Court refrains at this stage, to make any observation, regarding the issue which is raised by the petitioner(s), however, the petitioner(s) is at liberty to raise all such pleas, as raised herein, before the learned trial Court concerned, and it is also expected from the learned trial Court concerned, to consider all such pleas, at the relevant time of

disposal of the trial.

9. Further a direction is also issued upon the learned trial Court concerned, to make every endeavor to decide the trial, expeditiously, as it is pending since long, as the FIR was registered in the year 2011.
10. All the three petitions are **disposed** of with the aforesaid directions.

16.04.2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No