

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on: 22.10.2024

1. CRM-M No.34730 of 2016

Brig S.C. Kuthiala

...Petitioner

Versus

Radha Krishan Kuthiala

...Respondent

2. CRM-M No.36274 of 2016

Rajan Kuthiala and Another

...Petitioners

Versus

Radha Krishan Kuthiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R. Kartikeya, Advocate with
Ms. Sidhi Bansal, Advocate for the petitioner(s)
In CRM-M-34730-2016.

Ms. Jaspreet Kaur, Advocate for
Mr. Mohit Jaggi, Advocate
for the petitioner(s) in CRM-M-36274-2016.

Mr. Sunil Chadha, Sr. Advocate with
Ms. Taanvi Dhull, Advocate and
Mr. Paras Chander, Advocate
for respondent No.1 in CRM-M-34730-2016 &
CRM-M-36274-2016.

ANOOP CHITKARA, J.

IPC Complaint	No. 199 of 2013 dated 22.11.2013 Date of Institution: 22.11.2013 titled as “Radha Krishan Kuthiala Vs. Lakhwinder Singh and another”
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1. Seeking quashing of the above-captioned complaint as well as the summoning order and further proceedings, the accused, namely S.C. Kuthiala, Rajan Kuthiala, and Deepak Kuthiala, had come up before this Court by filing the present petition in the year 2016. During the pendency of the petition, the respondent, Radha Krishan Kuthiala,

expired.

2. I have gone through the record, and its analysis would lead to the following outcome.

3. Radha Krishan Kuthiala, then aged 87, filed the complaint in question against eight accused persons on the allegations of cheating etc.. He alleged that he is a citizen of the United States of America and has ancestral property in Jammu & Kashmir, Himachal Pradesh, Delhi, Punjab, and is a resident of Hoshiarpur. The accused, S.C. Kuthiala, was his stepbrother because the complainant's father had two wives. The feud was between the petitioner and the other family members. The complainant owned agricultural land in Hoshiarpur. The accused, Ratan Singh, accused No.8, introduced Lakhwinder Singh, accused No.1, to the complainant to give his Power of Attorney. Consequently, the complainant sent his Power of Attorney dated 22.12.2008 appointing Lakhwinder Singh as his attorney and authorizing him to dispossess, vacate, and cultivate the properties situated in the villages of Bullowal, Dalamwal, Allowal, Kheran, Khablan, Fattowal, Dhade, Tehsil and District Hoshiarpur. Thus, a power of attorney was only to dispossess from the properties and cultivate the land but was not to sell, mortgage, or relinquish any property. At the time, the properties belonged to the complainant's HUF and were under the stay orders of the Delhi High Court in a case filed by S.C. Kuthiala in the year 2006. The complainant alleged that he was in regular touch with Deepak Kuthiala, accused No.3, regarding the Delhi case, and even Deepak was regularly contacting him through email and phone calls.

4. The complainant alleged that in December 2009, Deepak started behaving strangely, and his emails became formal, which was different from his earlier behavior. Contacting Deepak on the phone became difficult, and he started avoiding taking calls with one pretext or another. Between January 2010 and May 2010, Lakhwinder Singh sold the complainant's property using his power of attorney in conspiracy with S.C.Kuthiala, Rajan Kuthiala, and Deepak Kuthiala. The complainant submits that all the people conspired together, and the accused withdrew the case from the Delhi High Court in 2009. On 05.05.2010, the complainant got a call from Mr. Ajay Sood, Advocate, who informed the complainant about the sale of his property, i.e., Carlingford in Shimla. After that, he called Delhi's lawyer and learned about the case withdrawal. Thus, based on these allegations, Radha Krishan Kuthiala filed the present complaint against the petitioner and other accused.

5. Vide the impugned order dated 12.06.2015, the concerned Judicial Magistrate Hoshiarpur summoned the petitioner(s) to face trial alongwith other accused by passing

a detailed order.

6. Aggrieved by this order, the petitioner and accused had come up before this Court under section 482 Cr.P.C.

7. The petitioner contends that an FIR dated 24.07.2010 was already registered on the same set of allegations at Shimla. As such, an investigation was underway, and the present complaint is not maintainable. This prayer is meaningless for the reasons that the majority of the properties were in Hoshiarpur and only one property was sold in Shimla, and as such, the said FIR cannot be a ground to quash the summoning order which pertains to the properties in Hoshiarpur and fabricated power of attorney which was run in the State of Punjab. As such, based on this point, neither the complaint nor the summoning order can be said to be incorrect.

8. The petitioner's next contention is that an FIR No.4 dated 18.11.2010 was registered at Police Station NRI Hoshiarpur, and as such, on the same facts, the complaint cannot be maintained. However, this argument is also fallacious because a massive scam was played upon the complainant, Radha Krishan Kuthiala (deceased). There is prima facie evidence of a conspiracy of the accused, which would make out a different offense than what was alleged in the complaint. As such, it cannot be said to violate Section 300 CrPC, 1973, or Article 20 of the Constitution of India.

9. The petitioner's next contention is that he did not initiate any step for annulment of the sale deeds and did not even challenge the MoU. This submission is meaningless because someone not challenging the sale deed would not waive or concede the criminal intent and fraud. As such, this point is also not worth closing the complaint or setting aside the summoning order.

10. The petitioner's next contention is that he and the other co-owners have committed no offense. Even this submission is meaningless because the Magistrate has only summoned the petitioner and not framed any charges. The petitioner has legal rights to bring to the notice of the concerned trial Court about these aspects before the stage of framing of charges. As such, he cannot seek the quashing of the complaint and the summoning order only by preponing such statutory and legal remedies.

11. The petitioner's next submission is that the Magistrate did not proceed under Section 202 CrPC while issuing the summons. On the face of it, this submission is contrary to the provisions of Section 202 CrPC for the reasons that 202 CrPC would not apply, on the face of it, it appears to the Magistrate that the accused is not an outsider

to his jurisdiction. The accused are the co-owners of the property allegedly sold on an unlawful power of attorney. Simply because they have another address of residence, which is outside the jurisdiction, would not mean that the Magistrate still has to conduct an inquiry or direct an investigation before issuance of summons. The property was sold on fabricated power of attorney for the joint property, and the petitioners were co-sharers; as such, Section 202 CrPC would not apply to the facts of the case.

12. Given the above, the petition is dismissed in the facts and circumstances peculiar to this case. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

22.10.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.