

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24148-2024 (O&M)

Date of Decision: 14.05.2024

Kamal Kuttappan

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Rahul Sharma-I, Advocate for the petitioner

Sandeep Moudgil, J.

(1). The petitioner has filed the present petition under Section 482 CrPC seeking to quash the complaint No.COMI-18-2017 dated 27.01.2017 under Sections 406/420 IPC including the summoning order dated 02.08.2022 whereby the petitioner has been summoned to face trial under Section 420 IPC and the order dated 04.04.2024 passed by the Addl. Sessions Judge, Panchkula whereby the revision filed by the petitioner has been dismissed.

(2). The complainant-respondent No.3 entered into an agreement to sell with the petitioner, qua land measuring 8 Kanal 02 Marlas situated at Bhainsa Tibba, Tehsil and District Panchkula on 12.08.2008. That at the time of entering into the agreement earnest money to the tune of Rs.10 lacs was paid to the petitioner. However, even after postponing the date of execution on numerous occasions when finally fixed on 28.09.2009, even then, the petitioner did not turn up with the balance sale consideration of Rs.1,90,00,000/-. Thereafter, a legal notice dated 17.02.2014 was served on the petitioner which was statedly never replied and resultantly, complainant-respondent No.3 filed a suit for specific performance of the agreement to sell dated 12.08.2008 in the court of Civil Judge (Sr. Divn.), Panchkula which was partly decreed on the

ground that the land regarding which an agreement to sell has been made is already under acquisition under the Land Acquisition Act, 1894 and thus the Civil Court directed the petitioner to refund Rs.10 lakhs with interest @ 6% p.a. from the date of agreement to sell i.e. 12.08.2008. Meanwhile, the respondent No.3 lodged the instant complaint (Annexure P1) against the petitioner and thereafter vide impugned order dated 02.08.2022, the petitioner was summoned to face trial. The said impugned order was also challenged before the revisional court but the same has also been dismissed vide order dated 24.11.2022. Consequently, the aggrieved petitioner has approached this Court.

(3). Learned counsel for the petitioner submits that the dispute is purely of civil nature and the complainant has sought to give it a criminal cloak. He also urged that the respondent No.3 was well aware of the fact that the land in dispute has been notified for acquisition and both the notifications under Sections 4 & 6 under the 1894 Act, had already been issued which fact was very much in her knowledge so much so that respondent No.3 herself assured that the land would be de-notified by exerting political influence of her father Vinod Sharma, who was a sitting MLA at that time and it was on this ground that the time for execution of registry was extended at the instance of respondent No.3 on several occasions for nearly about 4 years and 10 months.

(4). It is vehemently argued that the respondent No.3 and her father had got some blank papers signed from the petitioner on the pretext of using the same for release/de-notifying the land from acquisition, however, respondent No.3 in collusion with various persons got prepared a fabricated receipt purportedly showing the petitioner to have received Rs.70 lakhs in cash on

account of the entire sale proceeds of the land in question and it was on the basis of this fake and forged receipt that Rajnish Kumar filed a criminal complaint under Section 156(3) CrPC against the petitioner at Ambala which culminated into registration of FIR No.118 dated 10.05.2022.

(5). Learned counsel then strenuously urged that there are no allegations against the petitioner as to how the ingredients of cheating and forgery are made out and that the summoning order as well as the revisional court's order have far reaching consequences as both the courts below have passed the orders without application of a judicious mind.

(6). Having heard learned counsel for the petitioner, there can possibly be no doubt that for summoning the accused to face proceeding with respect to criminal proceeding, the Court is not required to make any deep scrutiny of the facts and evidences brought on record albeit what is required to be seen is whether there is some case in hand of the complainant or not. Further merely due to the reason as alleged in the complaint, it is permissible for the complainant to avail civil remedy itself which itself cannot be a ground to dismiss the complaint of the complainant for not initiating civil proceeding against the person named as accused because two liabilities i.e. one civil and another criminal in nature may arise out of the same set of facts.

(7). A perusal of the order passed by the summoning Court as well as the revisional court, this Court is of the considered opinion that the allegations leveled by the respondent No.3 and the counter-allegations raised by the petitioner contradicting the claim of respondent No.3 are solely a disputed questions of facts and as such, the same can only be ascertained by the trial

court on the basis of evidence and materials to be led by both the parties. This Court in exercise of inherent jurisdiction under Section 482 CrPC.

(8). Adverting back to the facts of the present case, this Court does not find any material on record which can be stated to be of sterling and impeccable quality warranting invocation of the jurisdiction of this Court under Section 482 CrPC, at this stage. More-so, the defence raised the petitioner in the petition vis-à-vis the ingredients of the complaint filed by respondent No.3, certainly requires evidence to be appreciated, evaluated or adjudged before the court of law and not in these proceedings under Section 482 of CrPC.

(9). Reliance can be placed upon **HMT Watches Limited vs M.A. Abida (2015) 11 SCC 776** and **State of Madhya Pradesh Vs. Yogendra Singh Jadon & Anr., 2020 (12) SCC 588**, where the Apex Court held that inherent powers under Section 482 of the CrPC cannot be extended for determining question of facts and it is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law. Meaning thereby that the powers under Section 482 CrPC cannot be exercised where the allegations are required to be proved in Court of law, unless and until the parties go to trial and lead their respective evidence. Though invariably the initial phase of a litigation depends on how well the pleadings or the allegations are laid down or articulated, by the parties, however, in the ultimate analysis, it is the trial that alone can bring out the truth so as to arrive at a just and fair decision for the parties concerned.

(10). In view of the above discussion and since the disputed questions of facts are involved which can be adjudicated by the trial Court only after leading evidence, this petition is dismissed. However, the trial court shall certainly consider and deal with the contentions and the defense of the parties in accordance with law.

(11). Ordered accordingly.

14.05.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

Yes/No
Yes/No