
(2010) 04 P&H CK 0197
In the Punjab And Haryana At Chandigarh

Divya Jain and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 41
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2010) 04 P&H CK 0197

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—Present petition has been filed u/s 482 Cr.P.C. praying for quashing of FIR No. 325 dated 18.06.2005 registered at Police Station City Yamuna Nagar under Sections 420/467/468/471 read with Section 120B IPC as well as further proceedings emanating therefrom.

2. In the present case, FIR was lodged by Vijay Pal Singh son of Bani Singh. In the FIR, it is stated that he had purchased a plot bearing khasra No. 115 situated within the revenue estate of village Chandpur, District Yamuna Nagar. This was purchased through a registered sale deed from Aalam son of Nassirudeen, Sofia Begam wife of Aalam and Wahid Hussan son of Jamil Hassan. It is further stated that complainant had constructed a room/shop and raised a boundary wall and had given the building so constructed on rent. Later Wahid Hussan in collusion with Virender Malik had sold this plot for consideration of Rs. 1,35,000/- to Divya Jain. It is further stated that this fact was in their knowledge that the plot was in the name of the complainant and forged document was prepared.

3. Counsel for the petitioners submits that this is a disputed fact that Wahid Hassan had sold the plot to complainant. Counsel further states that it is also disputed that Sofia Begam or Aalam were the owners of the plot. Counsel states that in the revenue record, Wahid Hassan is recorded as owner of the plot.

4. In the present petition filed u/s 482 Cr.P.C. as per contention of counsel

disputed questions of fact are involved. Furthermore, revenue record is not per se admissible. Parties have to adduce their evidence in support of contentions raised before me. It is a well settled legal proposition of law that disputed questions of fact cannot be determined in a petition u/s 482 Cr.P.C. Truth and veracity of allegations cannot be gone into unless oral and documentary evidence is led by both the parties before the trial Court. Furthermore, petitioners would have an opportunity to examine the revenue officials to prove that Wahid Hassan was the true owner and no forgery had been committed and the fact that Aalam and Sofia Begam mother of the Wahid Hassan had sold the property to the complainant was not in the knowledge of the petitioner. It has been held by a Constitutional Bench of Hon"ble the Supreme Court in M.S. Sheriff Vs. The State of Madras and Others, that the criminal proceedings ought to be given precedence over the civil proceedings. Furthermore, contention of the learned Counsel that civil suit (Annexure P-7) pending between the parties will have no bearing as it has been held by another Constitutional Bench of Hon"ble the Supreme Court in Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr. 2005(2) RCR (Criminal) 178 that only those cases which fall u/s 41 of the Indian Evidence Act, the judgment of the Civil Court would be relevant. Therefore, there is no merit in this petition. It is hereby dismissed.

5. Since the present petition is pending since 2005, personal appearance of the petitioners is exempted before the trial Court subject to their filing an undertaking that they shall cause appearance as and when required by the trial Court. They shall also file an undertaking that the evidence, if any, recorded in their absence but in the presence of their counsel shall be binding upon them. The trial Court may also incorporate any other condition in the undertaking to be submitted by the petitioners. Trial Court is further directed to conclude the proceedings within six months from the date of receipt of copy of order.