

(2011) 09 P&H CK 0153

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 40664 of 2009 in Criminal Miscellaneous No. M-34361 of 2008

Sharda Kadan

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Sept. 15, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 195, 340
- Penal Code, 1860 (IPC) - Section 191, 193, 471

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

L.N. Mittal, J.

Sharda Kadan filed Crl. Misc. No. M-34361 of 2008 in this Court arraying Ashok Kumar, Des Raj Karma and Amarnath as Respondents No. 4 to 6. Prayer in the petition was for direction to Respondents No. 2 and 3 (police authorities) to initiate action against Respondents No. 4 to 6 for having sold the land of Petitioner Sharda Kadan on the basis of false and forged Special Power of Attorney prepared on her behalf in favour of Respondent No. 4 in connivance with Respondents No. 5 and 6. The aforesaid petition was dismissed by this Court vide order dated 24.12.2008. Along with this petition, Sharda Kadan annexed her affidavit stating inter alia that nothing relevant has been kept concealed.

2. Ashok Kumar - Respondent No. 4 has filed the instant petition (Crl. Misc. No. 40664 of 2009) u/s 340 of the Code of Criminal Procedure (in short - CrPC) for initiating criminal proceedings against non-applicant/petitioner Sharda Kadan for offence under Sections 193 and 471 of the Indian Penal Code (in short - IPC). It is alleged in the instant application that Petitioner Sharda Kadan had earlier filed criminal complaint dated 12.08.2006 (Annexure P-3) on same averments against

Respondents No. 4 to 6 herein and the said complaint was dismissed in default by learned Sub Divisional Judicial Magistrate, Malout vide order dated 04.05.2007 (Annexure P-4). It is further stated that Petitioner had also filed criminal complaint on 07.06.2007, but these material and relevant facts were concealed by the Petitioner in Crl. Misc. No. M-34361 of 2008, and thereby, the Petitioner committed offence under Sections 193 and 471 Indian Penal Code, for which the complaint is required to be made u/s 340 Code of Criminal Procedure.

3. In reply, filed on behalf of Petitioner Sharda Kadan, it has been admitted that she had earlier filed criminal complaint, but it was on account of typographical error or oversight that this fact was not mentioned in the petition.

4. I have heard learned Counsel for the parties and perused the case file.

5. Learned Counsel for the applicant/respondent No. 4 contended that the Petitioner concealed material and relevant facts of filing criminal complaint (Annexure P-3) and of dismissal of the said complaint in default vide order dated 04.05.2007 (Annexure P-4) and also regarding filing of fresh criminal complaint on 07.06.2007, thereby falsely stating in her affidavit filed with the petition that nothing relevant has been kept concealed, and therefore, Petitioner committed offence u/s 193 Indian Penal Code by making false affidavit.

6. On the other hand, learned Counsel for non-applicant/petitioner contended that it was due to oversight that filing of criminal complaint and dismissal thereof was not mentioned in the petition and accompanying affidavit and there was no mala fide intention, and therefore, no offence u/s 193 Indian Penal Code is made out.

7. I have carefully considered the rival contentions.

8. The Petitioner, in her petition and accompanying affidavit, concealed the material and relevant fact of filing of criminal complaint (Annexure P-3) and dismissal thereof in default vide order dated 04.05.2007 (Annexure P-4) and also regarding filing of fresh criminal complaint on 07.06.2007, and by misleading the Court, the Petitioner wanted to seek registration of FIR against Respondents No. 4 to 6, having already availed remedy of criminal complaint. This concealment of very very material and relevant facts is of serious consequences. False statement has been made in the affidavit. The same, therefore, comes within the purview of giving false evidence, as defined in Section 191 Indian Penal Code and punishable u/s 193 Indian Penal Code. Consequently, criminal complaint u/s 340 Code of Criminal Procedure is required to be made against the Petitioner for prima facie committing the said offence because no Court can take cognizance of the said offence except on such criminal complaint filed by the Court, as stipulated in Section 195 Code of Criminal Procedure Keeping in view the nature of the false averment and concealment of very material and relevant facts, I am of the considered opinion that it is expedient in the interest of justice to file such a complaint against the Petitioner.

9. For the reasons aforesaid, the instant Crl. Misc. No. 40664 of 2009 in Crl. Misc. No. M-34361 of 2008 is allowed. Registrar General/authorized Officer of this Court is directed to file necessary criminal complaint in accordance with law against the Petitioner Sharda Kadan u/s 340 Code of Criminal Procedure for offence u/s 193 Indian Penal Code in the Court of competent jurisdiction.