

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D No.128-DB of 2015(O&M)

Date of decision:12.5.2015

Ram Ji Dass

....Appellant

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. D.S. Pheruman, Advocate for the appellant.

HEMANT GUPTA, J.(Oral)

The present appeal is directed against an order passed by learned Additional Sessions Judge (Adhoc Fast Track Court), Hoshiarpur on 04.01.2014 whereby the judgment dated 25.11.2011 passed by learned trial Court convicting the respondents for the offences under Section 465, 467, 468, 471, 419, 120-B of Indian Penal Code (for short 'IPC') was set aside and the respondents were acquitted.

First Information Report (for short 'FIR') was lodged on the basis of a complaint filed by present appellant pointing out that the respondent-Joginder Pal executed a forged and fabricated sale deed dated 07.04.2004 presented through unknown lady pretending to be Manso Devi, though she has died in the year 1969. The appellant claims to be son of Manso Devi. It has also come on record that the vendee filed a civil suit for declaration claiming title over the suit property wherein the present appellant raised a counter claim to claim decree for permanent injunction. The counter claim of the appellant

was allowed by the Civil Court on 25.01.2013 but before that day, the plaintiff has withdrawn his suit for declaration.

Before learned trial Court, the appellant appeared as his own witness as PW-2 and also examined Mohinder Singh as PW3, the witness of an affidavit alleged to be executed by Joginder Pal and some other formal witnesses. The appellant relied upon an affidavit Ex.PW2/A dated 05.08.2004 said to be executed by Joginder Pal in support of his allegations. Though, learned trial Court passed an order of conviction but learned first Appellate Court returned a finding that there is absolutely no evidence to prove even date of death of Manso Devi. No death certificate has been produced on file. It has also been found that the complainant has failed to prove that he is son of Manso Devi. No ration card or any other document has been produced on record to prove the relationship of Manso Devi with the present complainant. In fact, the pedigree table shows that Manso Devi is not the mother of the complainant. Manso Devi was identified by Raghunath Singh and Budh Singh at the time of execution of the sale deed but such witnesses have not been examined. It has also been found that the complainant has not filed any suit disputing the sale deed in question. Therefore, the complainant has failed to prove the alleged forgery.

In view of the said facts, learned first Appellate Court set aside the order passed by learned trial Court.

Before this Court, learned counsel for the appellant relied upon a photocopy of an affidavit said to be executed by Joginder Pal on 05.08.2004 produced by PW2 Ramji Dass i.e. the complainant. Mere production of photocopy of affidavit does not prove the

execution of the affidavit by Joginder Pal. Firstly, the document produced is photocopy and secondly such document has not been proved by calling the accused or by calling handwriting expert or by a person, who could depose that the affidavit was executed by accused Joginder Pal. Still further, the affidavit is at best previous statement, therefore, such statement could not be led in evidence unless the same is put to the executants and is confronted with the contents of affidavit.

Learned counsel for the appellant then relies upon the statement of Joginder Pal in civil proceedings to assert that in fact Joginder Pal has admitted the execution of the affidavit. Again such statement cannot be read into the present trial unless the statement is put to Joginder Pal. Joginder Pal has not appeared as a witness. Therefore, in the absence of previous statement put to the accused may be in the affidavit or before the Civil Court, the same cannot be referred to in the present criminal case.

Consequently, we do not find any error in the findings recorded by learned trial Court which may warrant interference in the present appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

MAY 12, 2015
‘D. Gulati’

(DARSHAN SINGH)
JUDGE