

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-464-MA of 2010

Date of Decision: 10.02.2015

Raj Kumar

---Petitioner

versus

Rajinder Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Vikas Mohan Gupta, Advocate
for the petitioner**

**Mr. S.S.Narula, Advocate
for the respondents**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the Digest?**

REKHA MITTAL, J.

The present appeal has been directed against the judgment dated 25.1.2010 passed by the Sub Divisional Judicial Magistrate, Khanna whereby complaint filed by the petitioner for offence punishable under Sections 181, 193, 196, 199, 200, 209, 467, 471 read with Section 34 and 120 of the Indian Penal Code (in short "IPC") has been dismissed and the respondents-accused have been acquitted of the offence charged against them.

The petitioner filed complaint on the premise that agreement to sell dated 18.1.986 purported to be executed by Shanti Devi in favour of

Mahesh Chander attested by Rajinder Kumar and Brij Mohan and typed by Raj Pal, accused Nos. 1 to 4 is the result of forgery.

After conducting preliminary enquiry, the accused were summoned for commission of offence punishable under Sections 181, 193, 196, 199, 200, 209, 467 and 471 read with Section 120-B IPC. Mahesh Chander was declared as a proclaimed offender and the remaining accused faced the proceedings. On completion of trial, the learned trial court in view of its findings in paras 8 to 10 eventually concluded in para 11 that the complainant has failed to prove allegations against Rajinder Kumar and others beyond shadow of reasonable doubt and accordingly the accused were acquitted of the offence by extending benefit of doubt.

Feeling aggrieved by the judgment of the learned trial court, the present appeal has been preferred by petitioner Raj Kumar with an application for leave to appeal.

Counsel for the petitioner contends that one of the grounds on which the complaint was dismissed is the embargo created under Section 195(1)(a)(i) of the Code of Criminal Procedure (in short "Cr.P.C.") which provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 IPC except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in his behalf, or of some other Court to which that Court is subordinate. It is argued that as the agreement in question was forged prior to its custody with the Court, the aforesaid reason described in para 10 of the judgment cannot be upheld in view of decision of the Constitution Bench of the Hon'ble Supreme Court of India *Iqbal Singh Marwaha & Another vs*

Meenakshi Marwaha & Another 2005 (2) RCR (Criminal) 178.

Counsel has further argued that the alleged forged agreement to sell was the subject matter of civil suit filed by Mahesh Chander seeking specific performance of the agreement and the civil court recorded a categorical finding that the agreement is the result of forgery. The first appeal and the second appeal preferred against the judgment of the trial court were dismissed and the findings of the trial court were affirmed and had attained finality qua status of the agreement to sell. It is further argued that as the agreement in question is held to be a forged document, the respondents are liable to be convicted and sentenced for the offence charged against them.

Counsel for the contesting respondents has supported the judgment passed by the trial court with the submissions that there is not even an iota of evidence adduced by the complainant to prove that the agreement in question is the result of forgery. The original agreement to sell has not been produced in the criminal proceedings and copy thereof is marked as 'A'. It is further argued that any findings recorded by the civil court in the suit filed by Mahesh Chander against Smt. Shanti Devi are not binding upon the respondents who were not party to the civil litigation.

I have heard counsel for the parties and perused the records.

The petitioner failed to adduce any evidence to prove that the agreement to sell is the result of forgery to which the respondents were a party being the attesting witnesses and scribe thereof. Concededly, the respondents were not party to the civil litigation between Mahesh Chander (proclaimed offender) and Smt. Shanti Devi. This apart, the judgment passed by the civil court is not binding upon the Criminal Court and in the

criminal proceedings, the complainant/prosecution has an obligation to establish culpability of the accused beyond shadow of reasonable doubt. In this context, reference can be made to judgment of the Hon'ble Supreme Court of India ***Kishan Singh (Dead) through L.Rs. vs. Gurpal Singh and others 2010(8) SCC 775.***

The alleged forged document has not been produced during criminal proceedings. In absence of the said document being proved in accordance with law, no offence of forgery can be said to be established. For this purpose, reference can be made to judgment of this Court ***Budh Ram vs. State of Haryana 2010(2)RCR(Criminal) 352.***

The mere fact that the learned trial court has also discussed implications of Section 195(1) Cr.P.C. itself is not sufficient to set aside the judgment which is based upon correct appreciation of entire matter in right perspective. I find merit in the contention of counsel for the petitioner that in view of judgment of the Hon'ble Supreme Court of India in ***Iqbal Singh Marwaha & Another's case (supra)***, there is no bar to initiate criminal proceedings at the instance of a private person if the document which came in custody of the Court was forged before it was produced in the Court. I would hasten to add that bar created under Section 195 Cr.P.C. would be attracted only if forgery has been committed when the document was in custody of the Court.

The petitioner failed to adduce any evidence on record to establish guilt of the respondents much less beyond shadow of reasonable doubt. Therefore, I do not find any error much less illegality in the judgment passed by the trial court.

For the reasons aforesaid, the application filed by the petitioner for leave to appeal is rejected. As a natural corollary, the appeal fails and is accordingly dismissed.

(REKHA MITTAL)
JUDGE

10.02.2015

PARAMJIT