

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIARH

Date of Decision: July 23, 2015

[1] CRM-A-345-MA of 2013 (O&M)

State of PunjabPetitioner

Versus

Kuldeep Singh and othersRespondents

Present: Shri Vinod S. Bhardwaj, Addl. AG, Punjab

[2] Criminal Revision No.4165 of 2012 (O&M)

Bhajan SinghPetitioner

Versus

Kuldeep Singh and othersRespondents

Present: Shri Jagjit Singh, Advocate, for the petitioner.

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MS. JUSTICE LISA GILL

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

Hemant Gupta, J.

This order shall dispose of CRM-A-345-MA of 2013 filed by the State of Punjab and Criminal Revision No. 4165 of 2012 filed by the complainant, against the judgment dated 12.10.2012 passed by the learned Additional Sessions Judge, Jalandhar, setting aside the judgment of conviction and order of sentence dated 2.7.2011 passed by the Sub Divisional Judicial Magistrate.

On the complaint of Bhajan Singh son of Nagar Singh, made to Senior Superintendent of Police, the respondents herein were prosecuted for the offence under Sections 420, 465, 467, 468, 471, 120-B IPC in FIR No. 247 dated 13.10.2010. The allegations contained in the FIR are that in the year 1999, Tirath Singh son of the complainant had to go abroad and he was in need of Rs.6.00 lacs. The accused was said to be a money lender, who advanced loan of Rs.6.00 lacs to the complainant on interest for which he signed blank stamp papers of the denomination of Rs.300/- which were also got signed from the son of the complainant, namely, Tirath Singh. Since the complainant failed to pay loan amount, the complainant suffered a sale deed of the land owned by his son Tarsem Singh on 6.1.2000 in favour of Gurdeep Singh and his wife Balwinder Kaur and the loan amount and interest was adjusted against the sale consideration, but the blank stamp papers were not returned. On 19.5.2010, when the complainant received summons from the Court of Additional Civil Judge (Senior Division) that the complaintant came to know that respondent-Gurdeep Singh in connivance with Kuldeep Singh and Dalip Singh had forged the agreement for sale dated 25.1.2010 after converting the blank signed stamp papers, which were obtained by him in July, 1999. The agreement was said to be forged to grab the property worth crores of rupees.

On completion of the investigation, report under Section 173 Cr.P.C. was filed to prove the charges against the accused. The prosecution examined as many as eight witnesses, namely, PW1-Vikas Anand, PW2-Sohan Singh, PW3-SI Jagan Nath, PW4-Makhan Singh, PW5- Avinash Chand; PW6-Mandeep Singh Dhillon, PW7-Atul Randev, PW8-HC Kulwinder Singh, PW9-Bhajan Singh and PW10-Tirath Singh. On the other hand, after recording the statement of the accused under Section 313 Cr.P.C., Dalip Singh appeared as DW1,

Kuldeep Singh as DW2, Gurdeep Singh as DW3 and Palwinder Singh as DW4.

The learned trial Court convicted the accused, inter-alia, holding that the stamp papers of the agreement Exhibit PW9/B were purchased on 25.7.1999. This agreement bears the signatures of Tirath Singh on each and every page and almost at similar place. It also contained the thumb impression of complainant Bhajan Singh on the first and second page of the agreement, establishing dubious nature of the document. Signatures of witnesses Kuldeep Singh and Dalip Singh appeared ahead of the signatures of both Tirath Singh and complainant Bhajan Singh. Neither Tirath Singh is executant of the document nor he is witness thereof and as such there was no occasion for him to sign the agreement in question. Witness-Kuldeep Singh is cultivating land of accused Gurdeep Singh whereas Dalip Singh is witness to a couple of other sale deeds of accused Gurdeep Singh. Therefore, there was no reason for the complainant Bhajan Singh to call these persons to attest any document. The learned trial Court found that the stand of the accused that the complainant and his son themselves had brought typed stamp papers was not sustainable because as per the version of Kuldeep Singh, witness DW2-Kuldeep Singh was called by him for attestation of document and as such there was no occasion for getting the name of the above witness typed upon the document prior to the said call.

After considering the surrounding circumstances, the learned trial Court concluded that the blank papers have been got signed from Tirath Singh as a proposed vendee and thumb impressions of Bhajan Singh were obtained on first and second pages of the proposed transaction. Still further, the Court found that blank stamp papers were obtained in the year 1999. The Court also found that the sale deed Exhibit PW9/A dated 6.1.2000 does not support

the case of the prosecution as it does not contain any recital of the previous loan transactions between the parties. After returning such finding, the accused were convicted and sentenced as mentioned in the judgment and order dated 2.7.2011.

The learned first Appellate Court recorded that the agreement was executed on the date it appears on payment of Rs.10 lacs as earnest money which amount was withdrawn by the accused from the banks as deposed by PW1-Vikas Anand. The learned first Appellate Court held that mere fact that the agreement has been prepared on a stamp paper, which was purchased earlier in point of time, is not enough to doubt its genuineness. The Court relied upon the Hon'ble Supreme Court judgment dated Thiruvengada Pillai v. Navaneethammal & Anr., AIR 2008 SC 1541. The Court also noticed that Bhajan Singh in cross-examination stated that he does not know if the agreement dated 25.7.2010 was brought by his son Tirath Singh after getting it typed before receiving the amount of earnest money. He volunteered that all such jobs are got done by the boys. The learned first Appellate Court also referred to the statement of Tirath Singh, PW-10 noticing that Tirath Singh has been going abroad time and again but could not settle and has wasted a lot of money. It also noticed that during the days when agreement in question is said to have been executed, he was facing trial for dishonor of cheque for an amount of Rs.4 lacs under Section 138 of the Negotiable Instruments Act. Tirath Singh also admitted that his family had 8 acres of land and sold away the entire property except the land in question. The Court also found that the argument that the loan amount stood adjusted when the sale deed was executed on 6.1.2000 is not made out for the reason that the sale deed was for Rs.4,02,500/- and that no such recital was made in the sale deed. Had the parties settled the loan account, any prudent person would have taken back the stamp

papers. The first Appellate Court discussed the entire evidence to return a finding that the prosecution has miserably failed to prove the guilt of the accused beyond a reasonable doubt.

The prosecution story is that a sum of Rs.6 lacs was taken on loan in July,1999 on interest @ 2.5% p.a. The said amount is said to have been paid when the sale deed was executed on 6.1.2000, Exhibit PW9/A. The said sale deed is for a sum of Rs.4,02,500/-, which is less than the amount of loan, availed by the appellant. There is no evidence that the complainant had paid any interest on Rs.6.00 lacs before execution of the sale deed. Still further, there is no recital in the sale deed executed by the regular deed writer that the loan amount of Rs.6.00 lacs stands settled with the execution of the sale deed. In the absence of any recital in the sale deed and the fact that the sale deed is of much lesser consideration than the amount of loan and the agreed interest thereon, the sale deed is an independent transaction rather than a transaction in lieu of the loan amount. In fact that is the finding recorded by the Learned Trial Court as well. Such finding cannot be said to unwarranted in any manner.

The agreement dated 25.7.2010 was in respect of the land measuring 73 marlas for a sum of Rs.20 lacs out of which an amount of Rs.10 lacs was paid as earnest money. A perusal of the document Ex PW9/B shows that the first two pages contained typed material which bears thumb impressions of the complainant as also the signatures of Tirath Singh, son of the complainant. All other leaves are blank stamp papers, which bear the signatures of Tirath Singh with absolutely no material written thereon. The genuineness of the document cannot be doubted only for the reason that the signatures or thumb impressions appear at different places than usually in such like agreements. It would be a matter of conjectures and cannot be made basis for convicting an accused.

The earnest money of Rs.10 lacs, is said to have been withdrawn from the bank accounts by the accused as per the testimony of PW1-Vikas Anand. The mere fact that the stamp papers were purchased on 26.7.1999, though the agreement has been executed later on 25.1.2010 cannot be treated as suspicious circumstance to return a conclusive finding of forgery by the accused. The said fact, however suspicious cannot be taken as proof of forgery. Such factum is not conclusive to return a finding that the agreement is forged and fabricated document. The burden of proof in a criminal trial never shifts to the accused. It is for the prosecution to lead evidence so as to conclusively prove the allegations of forgery at the instance of the accused. The conduct of the complainant and his son Tirath Singh does not lead to a conclusion that the accused had forged and fabricated the agreement. The agreement does bear the signatures and thumb impressions of the complainant and his son. For the purpose of conviction, the prosecution has failed to prove the guilt of forgery by way of conclusive evidence. At best, the prosecution has been able to create some suspicion regarding the genuineness of the agreement, but a suspicion howsoever strong it may be cannot take place of the proof. In the absence of proof of forgery, we do not find any error in the finding recorded by the learned first Appellate Court granting benefit of doubt to the accused-respondents.

We may notice that at one stage this Court had adjourned the hearing of the present leave to appeal to await the decision of the civil proceedings. It is needless to say that the burden of proof in civil proceedings is different than the burden of proof in the criminal cases. The judgment of the civil suit or that of a criminal case, is not binding vice versa as has been held by the Hon'ble Supreme Court in Kishan Singh (Dead) through LRs v. Gurpal Singh and Others, (2010) 8 SCC 775. Therefore, the criminal proceedings have to be tested on

the basis of evidence led before it and not on the basis of the findings, which may be recorded by the Civil Court. The Court held as under:-

“18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration”.

Thus we find that the reasoning given by the learned first appellate Court cannot be said to be perverse, irrational and unwarranted, which may warrant interference in the present petition seeking leave to appeal.

In view of the above, the present petition seeking leave to appeal as also the criminal revision, are dismissed.

(Hemant Gutpa)
Judge

(Lisa Gill)
Judge

July 23, 2015
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