

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 29.07.2015

CRM-A-432-MA of 2015 (O&M)

Sarabjit Kaur

...Appellant

Versus

Bhag Singh & others

...Respondents

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

Present : Mr. A.P.S.Deol, Senior Advocate, with
Mr. Vishal Rattan Lamba, Advocate, for the appellant.

HEMANT GUPTA, J.

The present appeal is directed against an order dated 02.01.2015 passed by the Additional Sessions Judge, Bathinda, whereby an appeal filed by respondents No.1 to 13 herein was accepted and the complaint dismissed.

The present appellant filed a complaint under Sections 420, 465, 467, 471, 500, 120-B, 149 IPC against respondent Nos.1 to 13 herein alleging that the said respondents opposed complainant in the election of Sarpanch and supported their own candidate namely Baljit Kaur. Since the appellant was declared a winning candidate, so the respondents nourished grudge against her. In order to defame and falsely implicate her in a false case, the respondents lifted the signature and stamp of the complainant as Sarpanch of the Village Bangi Deepa Singh by making photostat copy of the said signatures and rubber stamp from other documents. Thereafter, the respondents drafted two receipts receiving the payment of Rs.35,000/- for giving 'Hadda Rori' in contract to Dara Singh and Rs.21,000/- for the purpose of contract of fish keeping to Angrej Singh. It was alleged that said receipts were prepared falsely to cause harm to

the complainant. After preparation of receipts, the accused-respondents filed a complaint against the complainant on 27.09.2004 to the Director, Panchayat Punjab, Chandigarh, which was inquired by the Additional Chief Executive Officer, Zila Parishad, Bathinda. After obtaining the reports of the Hand Writing Experts namely Dr. Inderjit Singh of Patiala and Anil Gupta of Fazilka to the effect that receipts are forged and fabricated, the Additional Chief Executive Officer found the complainant innocent. The grievance of the appellant is that since no action was taken against the accused on her complaint regarding forgery, she filed the present complaint.

To prove her case, the complainant herself stepped into witness-box as CW-1 and also examined Anil Kumar Gupta and Dr. Inderjit Singh, Hand-writing and Finger Prints Experts as CW-2 & CW-3 respectively; Joginder Sharma, Clerk of the office of Director, Rural Development & Panchayats, Chandigarh as CW-4 and Mohinder Pal, Clerk, Rural Development & Panchayat Development as CW-5.

On the other hand, the accused in their statements recorded under Section 313 Cr.P.C. denied all the incriminating evidence appearing against them and pleaded innocence. In their defence, they examined DW-1 Gurbachan Singh.

The learned trial Court convicted the accused-respondents by rejecting an argument that there is no direct evidence to prove the commission of forgery by the accused. The trial Court noticed that receipts Exs.CW5/G & CW5/H have been held to be forged by the Chief Executive Officer, Zila Parishad vide his report Ex.CW5/B. The trial Court found that though the handwriting experts have failed to bring on record the photographs and negatives prepared by them, but there is no ground to doubt about the genuineness of their report, when the receipts appear to be forged to a naked

eye. The trial Court also noticed that no doubt the evidence led by the complainant only proves that the said receipts are forged and there is no evidence forthcoming to prove that it is the accused, who had forged the receipts, but referring to the judgment of Hon'ble Supreme Court reported as Bank of India Vs. U.D.Yesuri Meridu Shanker Rao AIR 1987 SC 821, the learned trial Court drawn inference that it was the accused Dara Singh and Angrej Singh, who had forged the receipts and produced the same, so as to take action against complainant for misappropriation of the amount received from them.

However, in appeal, the learned first Appellate Court found that there was unexplained delay inasmuch as the inquiry was concluded on 31.03.2005, whereas the complaint was filed on 02.08.2007. The complainant has not produced on record DDR or any application moved before the Police Station. The first Appellate Court also found that admittedly there was a party faction in the village, so there was motive to rope in all the accused. Since the whole case is based upon receipts produced by Dara Singh and Angrej Singh, proper procedure has not been followed to prove the expert opinion and the reports. No comparison of hand writing of the accused with those signatures appended on the receipts has been made and that receipts have not been produced by all the accused except Dara Singh and Angrej Singh. The complainant-appellant failed to prove that all the accused were conspiring to do an illegal act. Had receipts being in possession of the accused, they would have attached with the application Ex.CW5/A, which was moved before the Director Panchayats, Punjab. Since no evidence has been brought by the complainant to prove that the alleged receipts were prepared or forged by the accused, mere possession of the receipts would not constitute the offence of forgery.

Consequently, while allowing the appeal, the learned first Appellate Court acquitted all the accused of the charges framed against them.

Before this Court, learned counsel for the appellant-complainant refers to the judgment relied upon by the learned trial Court in Yeturi Meredu Shanker Rao's case (supra), to contend that beneficiary of the forgery is accused Dara Singh and Angrej Singh, therefore, they cannot be absolved of the charges of committing criminal offence of forgery. It is contended that onus is on them i.e. accused to discharge that the receipts were genuine in view of the provisions of Section 106 of the Evidence Act.

Having heard learned counsel for the appellant-complainant at length, we do not find any merit in the present appeal. It appears that handwriting experts i.e. CW-2 Anil Kumar Gupta and CW-3 Dr. Inderjit Singh produced by the appellant rely upon their report prepared during the course of inquiry before the Chief Executive Officer, Zila Parishad. No independent inquiry was conducted. The appellant felt satisfied only with production of the reports in support of the allegation of forgery though examined the authors of the reports. The reports produced by the complainant would only show that the receipts are forged, but there is no proof that such receipts are forged by any of the accused. The findings recorded in the departmental inquiry cannot be made basis of complaint for an offence under the penal code. In departmental inquiry, the provisions of the Evidence Act are not applicable. In the criminal trial, the burden of proof of an offence, never shift to the accused. It was for the appellant to prove beyond reasonable doubt that it is the accused and the accused alone, who has committed the forgery. Even the trial Court while convicting the accused-respondents has given a categorical finding that the complainant has not proved that who forged the receipts. The receipts were relied upon by Dara Singh and Angrej Singh. There is no allegation that they

have committed forgery. Mere fact that they have produced the receipts, the basis of the complaint, will not make them culpable for forging such receipts. A person may rely upon a document for lodging a complainant without realizing that the receipt is forged.

In Yeturi Meredu Shanker Rao's case (supra), it was a Bank Manager, who had the confidence of an account holder. He used to fill up the withdrawal slips and was proved to have withdrawn amount from the Bank account of the customer. It was, in these circumstances, the Bank official was made liable for forging the signatures. However, in the present case, two of the accused alleged that they have paid certain amount for contract and in proof thereof referred to the receipts. In the absence of any evidence that such receipts were forged by accused Angrej Singh and Dara Singh, they could not have been convicted and have been rightly acquitted by the learned first Appellate Court. In respect of other accused, there is absolutely no evidence of conspiracy or any covert act in the commission of forgery.

In view of the above, we do not find any patent illegality or irregularity in the order passed by the learned first Appellate Court, which may warrant any interference by this Court.

Dismissed.

(HEMANT GUPTA)
JUDGE

29.07.2015
Vimal

(LISA GILL)
JUDGE