

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

CRM-A-562-MA OF 2014
DATE OF DECISION : 26th MARCH, 2015

Nachattar Singh

.... Appellant

Versus

Naib Singh

.... Respondent

**CORAM : HON'BLE MR. JUSTICE S. S. SARON
HON'BLE MR. JUSTICE SURINDER GUPTA**

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Present : Mr. S. K. Singla, Advocate for the appellant.

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SURINDER GUPTA, J.

1. After remaining unsuccessful before the trial Court, to bring home the charge for offence punishable under Sections 195, 196, 211, 468 and 471 Indian Penal Code (IPC - for short) against Harnek Singh (since deceased) and respondent-Naib Singh, the complainant-Nachattar Singh has sought leave to appeal under Section 378(4) Criminal Procedure Code (Cr.P.C.- for short) against the order of acquittal of the respondent by the learned Trial Court.

2. The appellant filed a complaint, Ex.C-13, against Harnek Singh, since deceased and the respondent alleging therein that he had borrowed ₹65,000/- from Harnek Singh (since deceased) and his son Naib Singh (respondent) prior to 28.05.2003. He executed three different pronotes and receipts which were handed over to Harnek Singh. On settlement of accounts on 28.05.2013, Harnek Singh agreed to take an amount of ₹98,000/- from the complainant. The complainant expressed his willingness to sell ½ share of 24 Kanal 12 Marla of his land @

₹1,10,000/- per killa (8 Kanals) to which Harnek Singh agreed. The amount of ₹98,000/- was to be adjusted towards the earnest money. On 28.05.2003 complainant and Harnek Singh went to Tehsil complex where the complainant executed an agreement to sell his ½ share in the land measuring 24 Kanal 12 marlas in favour of Harnek Singh @ ₹1,10,000/- per killa. However, Harnek Singh managed to get recorded the earnest money received by the complainant as ₹1,70,000/- instead of ₹98,000/- in connivance with the scribe Jaswant Singh and Clerk of Sh. Sudarshan Kumar Garg, Advocate. When the complainant demanded return of three pronotes and receipts executed by him, Harnek Singh assured to return the same on reaching the village, but he never complied with his assurance. The date for execution of the sale deed was fixed as 17.04.2004 but Harnek Singh expressed his intention not to purchase the above mentioned land and requested the complainant to return the earnest money. With the intervention of Jagtar Singh son of Gora Singh, Guranditta Singh son of Ajmer Singh and Niranjan Singh Lambardar, the matter was settled and it was agreed to cancel the agreement to sell dated 28.05.2003. As the complainant was not having funds to pay back the earnest money, Harnek Singh allowed him to sell the land, which was subject matter of the agreement, to some other person to raise the funds and to make payment to him for cancellation of the agreement to sell. As per the settlement, the complainant entered into a deal with Jagtar Singh son of Gora Singh resident of Village Tarkhan Wala for the sale of his land and took a sum of ₹1,05,000/- from said Jagtar Singh and paid the same to Harnek Singh on 12.04.2004. This payment was made in

presence of Jagtar Singh son of Gora Singh, Niranjana Singh Lambardar and Guranditta Singh. A cancellation of agreement to sell was made on 12.04.2004 at shop of Bhagwant Rai Commission Agent, Ramman in the presence of aforesaid witnesses and Harnek Singh. Harnek Singh after putting cross lines on the writing of the agreements, handed over the same to complainant. Harnek Singh and his son Naib Singh-respondent left the shop of Bhagwant Rai Commission Agent, while the complainant and aforesaid persons i.e. Jagtar Singh, Niranjana Singh Lambardar and Guranditta Singh stayed to have a cup of tea at the shop of Inderjit Commission Agent at Ramman. In the meantime respondent-Naib Singh came there and demanded the writing of the agreement to sell dated 28.05.2003 as Harnek Singh, his father, wanted to check the amount of interest for his record. The complainant delivered the three written stamp papers of the agreement to sell to respondent and asked him to return the same on reaching Village Tarkhan Wala. He also asked him to return the original three pronote and receipts which were in possession of his father as the accounts for those pronotes were settled. The pages of agreement to sell and the three pronotes and receipts were demanded back from Harnek Singh but he refused to return the same and apprised the complainant that the cancelled agreement to sell had been taken by him in conspiracy with his son i.e. respondent-Naib Singh in order to recover the amount of ₹1,70,000/- or double of it by using this document for filing a civil suit against the complainant claiming the relief of specific performance. On the advice of Niranjana Singh Lambardar the complainant-applicant submitted application before the higher police and

civil authorities complaining about the malicious act and conduct of Harnek Singh and respondent.

3. Harnek Singh in fact had got registered a case bearing FIR No.70 dated 02.07.2004 at Police Station Raman against the complainant and Niranjn Singh for offences punishable under Sections 420 and 211 read with Section 34 IPC in which the Challan was presented. The complainant came to know that on 17.04.2004 Harnek Singh had got his presence marked before the Sub-Registrar for getting the sale deed registered on the basis of the cancelled agreement to sell dated 28.05.2003. This act on the part of Harnek Singh was against law and facts, besides, was an attempt to cheat the complainant by making ground and prepare false evidence to seek specific performance of the agreement to sell which had already been cancelled. While making out a case for offences punishable under Sections 193, 195, 196, 211, 468 and 474 read with Section 34 IPC, the complainant has alleged in para 8 of the complaint as follows:

“That the accused No.1 and 2 have taken the agreement to sell, after cancelling it from the complainant, with the intention of producing it in evidence, falsely, and with malafide intention, in order to implicate the complainant in false prosecution, and litigation, and to use it as piece of evidence, by playing fraud with the complainant and to recover the amount from the complainant which is not due against the complainant and to get the sale

deed executed from the complainant, through court, by filing a false suit so this conduct of the accused persons falls in the ambit of Section 193, 195, 196, 211, 468, 474, 34 I.P.C. so the complainant accused are liable to be prosecuted under Section 193, 195, 196, 211, 468, 474, 34 I.P.C.”

4. After recording preliminary evidence, the respondent and his father Harnek Singh were ordered to be summoned vide order dated 12.09.2008 for offences punishable under Sections 195, 196, 211, 468, 474 read with 34 IPC. On their appearance pre-charge evidence was recorded and charges for the offences punishable under Sections 195, 196, 211, 468, 474 read with 34 IPC was framed against the respondent Naib Singh only as Harnek Singh had died during the pendency of the trial and vide order dated 01.10.2010 proceedings against him stood abated.

5. After completing the evidence and recording statement of respondent-Naib Singh under Section 313 Cr.P.C., the learned Sub-Divisional Judicial Magistrate, Talwandi Sabo noticed that the offence under Section 195 IPC was triable by the Court of Session, as such committed the case for trial to the Court of Session.

6. Learned Additional Sessions Judge (Fast Track Court) Bathinda, chargesheeted respondent-Naib Singh for offences punishable under Sections 195, 196, 211, 468, 471 read with 34 IPC and recorded the statement of prosecution witnesses. On completion of prosecution evidence statement of respondent under Section 313 Cr.P.C. was recorded wherein he denied the allegations levelled against him and pleaded his

false implication. In his defence he stated that the complainant had entered into an agreement with them in the presence of witnesses and had torn the same to cheat them, as the price of land had increased manifold. The learned Additional Sessions Judge, Bathinda disbelieved the entire version as put forth by the complainant-appellant, and observed while acquitting the respondent of the charges that the complaint was a counter blast to the criminal case bearing FIR No.70 dated 02.07.2004 for offences punishable under Sections 420 and 211 read with Section 34 IPC, got registered against the complainant Nachhattar Singh and Niranjana Singh (PW-2).

7. We have heard learned counsel for the applicant and have perused the lower Court record with his assistance.

8. The respondent was chargesheeted for the offences punishable under Sections 195, 196, 211, 468 and 471 IPC on the allegations that he in conspiracy with his father Harneek Singh took pages of cancelled agreement to sell dated 28.05.2003 on the pretext of checking interest amount on outstanding loan, but when the complainant, on the same day asked for return of pages of the cancelled agreement, Harneek Singh refused and stated that the cancelled agreement was taken in conspiracy with the respondent to recover a sum of Rs.1,70,000/- or its double amount by filing a false suit. Harneek Singh also threatened to file a false complaint on the allegations that complainant had destroyed and cancelled the agreement after snatching it from him.

9. Before proceeding further it will be appropriate to first have a look at the provisions of Section 195 and 196 IPC to make out, whether

the same are attracted in this case. Sections 195 and 196 IPC read as follows:

195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment. –

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law for the time being in force in India is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

196. Using evidence known to be false. –

Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

10. The complainant faced trial in case FIR No.70 of 2004 registered at Police Station Raman and was acquitted vide judgment Ex. C-3. The allegation against him was that he had taken the original agreement from the complainant and put cross lines on the same. The Court did not rely upon the prosecution version in the absence of cancelled/crossed/defaced original agreement not being produced or taken

into possession by the police. In para 22 of the judgment in that case (Ex. C-10) the learned trial Court observed as follows:

“22. As per admitted version of prosecution the cancelled/crossed/defaced original agreement three pages were with the complainant (photo copy Mark A, B and C). These written and crossed pages are not produced in the court. It is submitted that these were handed over to police during investigation but no such document is proved on record to have been taken into possession by police. P.W-4 ASI Darshan Singh categorically stated that the original agreement was not taken into possession by the police. Concealment/withholding of original document creates doubt on the bonafide of the complainant.”

11. The Court nowhere observed that any false evidence was given, fabricated or used by the respondent. Moreover, that FIR was got recorded by Harnek Singh and not the respondent-Naib Singh.

12. Learned counsel for the appellant has argued that the respondent had taken away the pages of cancelled agreement and did not return the same with intention to file a suit for specific performance based on that agreement. The respondent also took steps by getting his presence marked before the Sub-Registrar to make a ground for filing the suit for specific performance. This makes out a case for offence punishable under

Section 468 and 471 IPC against the respondent. The said arguments of learned counsel for the appellant calls for rejection on the grounds: Firstly, that the agreement dated 28.05.2003 was in favour of Harnek Singh and not in favour of the respondent. Secondly, the complainant had dealt with Harnek Singh only while settling his loan account, executing agreement to sell his land in his favour and then cancelling the same and Naib Singh-respondent had no role in the entire transaction. The only allegation against him was that he came to the complainant while he was having tea at the shop of Inderjit Commission Agent at Raman and took the cancelled agreement on the pretext that the same was required by his father to check the interest amount.

13. To attract the provision of Section 468 IPC following ingredients are required to be proved.

- (1) the document or electronic record is forged;
- (2) the accused forged the document or electronic record;
- (3) the accused forged the document or electronic record
intending that the forged document would be used for
the purpose of cheating.

14. No document was forged in this case for the purpose of cheating. Documents which find reference in the complaint were genuinely executed by the complainant.

15. In order to attract the provisions of Section 471 IPC following ingredients are required to be proved.

- (1) the document or electronic record is a forged one;
- (2) the accused used the document or electronic record as genuine;

- (3) the accused knew or had reason to believe that it was a forged document or electronic record;
- (4) the accused used it fraudulently or dishonestly, knowing or having reason to believe that it was a forged document or electronic record.

16. In this case there is no evidence that accused at any point of time based his claim on the basis of any forged document.

17. The trial Court has doubted the entire version as putforth by the complainant with observation in para 12 of the judgment as follows :

“12. Coupled with this, the prosecution story also seems to be suspicious, as after the alleged cancellation of agreement to sell in question, when the crossed writing/agreement to sell was handed over to complainant, it is highly doubtful that accused Naib Singh would have again approached the complainant to get the agreement back, so as to calculate the amount of interest. Had there been any settlement for the cancellation of the agreement to sell, the accused Harnek Singh is supposed to have allegedly crossed the agreement to sell, after making all calculations and no wise man would cancel any document, without calculating the entire account between the parties, More so, the act of the complainant also cannot said to be free from suspicion, who at first sight reposed faith in accused Naib Singh, to hand him the alleged crossed

three written papers of the agreement to sell, but apprehending something wrong, he retained the three blank papers with him. Coupled with this, when the accused did not return the three pages of agreement to sell, which were allegedly crossed with pen by the accused Harnek Singh, then, as to why the complainant did not complain the matter to police or got passed resolution in the village panchayat. Though the complainant alleged that he moved application to higher police authorities, in this regard, but no copy of such application has been proved on record by the complainant, in support of his case.”

18. The trial Court has rightly observed that this complaint was a counter blast to the criminal case registered against the complainant and his associate Niranjana Singh (PW-2). As per the complainant the pages of the cancelled agreement to sell were taken from him by the respondent on 12.04.2004 to check the interest on the loan amount. On the same day Harnek Singh turned down the request of complainant to return the cancelled agreement and made clear his intention by informing the complainant that he had taken back the cancelled agreement in conspiracy with accused No.2 (respondent) in order to recover the amount of ₹1,70,000/- or double of it, by using it for filing a false suit, against the complainant, and to seek specific performance of the said agreement to sell, after the date of execution of sale deed mentioned in the agreement to sell. The allegation in para 4 of the complaint make it clear that Harnek

Singh made his future course of action very clear leaving no reason for complainant to wait for taking further immediate action. It is alleged in para 4 of the complainant as follows:

“The complainant, threatened to lodge a false complaint with the police, for destroying the agreement to sell, by alleging that the complainant and Niranjana Singh Lamberdar, have snatched the agreement to sell from the accused No.1, and then cross lined the same, in order to make it cancelled, on this the complainant and Niranjana Singh requested the accused person not to harass them, by implicating them in false litigation and to deliver the written pages of the agreement to sell, (three blank papers were kept by the complainant while delivering the written part of the agreement to the accused No.2 on 12.04.2004), but the accused person did not agree, rather the accused No.1, threatened the Niranjana Singh Lamberdar, to implicate him also in the false criminal case, if he (Niranjana Singh Lamberdar) failed to support the accused No.1, in the false litigation, against the complaint, as the evidence of Niranjana Singh Lamberdar will be helpful for the accused No.1, in the process of getting the decree against complainant, on the basis of agreement to sell

dated 28.5.2003, because Niranjn Singh Lamberdar was witness of the agreement to sell which had already been cancelled by the accused No.1. On this Niranjn Singh Lamberdar, told the accused No.1, that the accused No.1, have already taken the amount of Rs.1,05,000/- from the complainant, in settlement of the cancellation of the agreement to sell dated 28.05.2003, and have also adjusted the amounts of pronote and receipt, in the earnest money of the said agreement to sell, and all the accounts of the accused No.1 have already been settled and paid, by the complainant, in his presence so he will not give false evidence to support, his false claim as demanded by accused No.1, and the Niranjn Singh Lamberdar told the complainant to send the applications to the higher civil and Police officials, regarding the conduct of the accused No.1, and to get the case registered against the accused No.1 for making threats to implicate the complainant and Niranjn Singh in false litigation. ”

19. As per the above allegation, on 12.04.2004 the complainant was aware that Harnek Singh intended to take civil and criminal action against him and PW-2-Niranjn Singh. FIR against him and Niranjn Singh was lodged by Harnek Singh on 02.07.2004. The instant complaint was filed

on 03.09.2004. This clearly depicts that the complainant filed this complaint only to counter the criminal case registered against him.

20. On perusal of the trial Court record and judgment passed by the learned Court below, we find no evidence to suggest the commission of offences punishable under Sections 195, 196, 211, 468, 471 IPC by the respondent.

21. The learned trial Court has committed no error of law and fact while dismissing the complaint. This application for grant of leave to appeal has no merits and the same is accordingly dismissed.

(S. S. SARON)
JUDGE

(SURINDER GUPTA)
JUDGE

26th March, 2015
'raj'

Whether referred to the reporter ? Yes