

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Misc. No. M-1628 of 2009

Date of Decision:- 12.1.2015

Asha Rani

...Petitioner

Versus

State of Punjab & Anr.

...Respondents

CORAM:- HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR

Present:- Mr.Ashok Aggarwal, Advocate for the petitioner.

Mr.R.P.S.Sidhu, AAG Punjab for respondent No.1.

Mr.G.S.Gill, Advocate for respondent No.2.

Mehinder Singh Sullar, J. (Oral)

The contour of the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant petition and emanating from the record, is that, one Jaswant Singh Grewal s/o Sardara Singh Grewal was the owner of plot in question, bearing No.42, measuring 1050 square yards, situated at Club Road, near Rakh Bagh, Ludhiana. After his death on 2.6.1989 in England, his property was inherited by her widow Sukhdev Kaur, daughter Kamaljit Kaur and son Nirmal Singh, in natural succession. The complainant claimed that, as soon as, they visited India in the year 1990, they came to know that all the accused have connived and illegally sold their plot through fake power of attorney by forging their signatures and impersonating them.

2. Leveling a variety of allegations and narrating the sequence of events, in detail in the FIR, in all, according to the complainant that the petitioner and her other co-accused have hatched a criminal conspiracy, cheated the pointed owners, prepared, forged and fabricated the power of attorney, in favour of accused Jagmohan Singh @ Mohan Singh s/o Sohan Singh, illegally transferred their plot by forging their signatures and impersonating them. In the background of these allegations and in the wake of complaint of complainant, a criminal case was registered against the petitioner and her other co-accused, namely, Satnam Singh, Daler Singh, S.P. Singh, Chaman Lal Ahuja, Subhash Dabar, Rupinder Singh, Harjit Singh, Mohan Singh and Manjit Singh etc., vide FIR No.297 dated 10.9.1998, on accusation of having committed the offences punishable under Sections 419, 465, 467, 468, 471 and 120-B by the police of Police Station Civil Lines, Ludhiana in the manner depicted here-in-above.

3. During the course of investigation, petitioner-accused Asha Rani, one of the subsequent vendees and some other co-accused, were found innocent and were exonerated by the police, whereas after completion of the investigation, the police has submitted the final police report (challan) against the remaining accused.

4. Aggrieved by the tainted investigation, a complaint was moved on behalf of the complainant for re-investigation of the case to Chief Minister, Punjab and an inquiry was marked by I.G. Patiala range. Consequently, Devinder Singh DSP, having conducted the inquiry came to a definite conclusion that petitioner had purchased the disputed plot from her vendor, who in turn had purchased the same on the indicated forged power of attorney. Therefore, petitioner and her other co-accused Jagmail Singh

alias Harmail Singh, Chaman Lal Ahuja, Subhash Dalar, Sat Pal Jain, Harjit Singh Saikhon, Manjeet Singh, Inspector Raj Kumar etc., are also involved in the commission of heinous offences in question. In this manner, the additional challan (Annexure P1) was submitted against the petitioner and other accused as well in the Court.

5. Instead of submitting to the jurisdiction of the trial Court, the petitioner-accused has straightway jumped to file the present petition, to quash the impugned additional challan (Annexure P1) and all other subsequent proceedings arising therefrom, invoking the provisions of Section 482 Cr.PC.

6. Likewise, the respondent-State has refuted the prayer of the petitioner, filed the reply, stoutly denied all the allegations contained in the main petition and prayed for its dismissal. That is how I am seized of the matter.

7. After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, there is no merit in the present petition in this context.

8. Ex facie the main argument of learned counsel, that since the petitioner was found innocent and was exonerated at initial stage, so, the prosecution is debarred to further investigate the case, is not only devoid of merit but misplaced as well.

9. As is evident from the record, that in the wake of complaint of Arvinder Singh Kahlon s/o Niranjana Singh Kahlon, to CM, Punjab, the inquiry was marked. The DSP conducted the inquiry and concluded that earlier the investigating officer has wrongly exonerated the petitioner etc. In fact she had purchased the plot in dispute from her vendor who got it on the

basis of forged power of attorney. Hence, she is directly involved in the commission of pointed offences and recommended to file the additional challan. Consequently, the police filed the additional challan in the trial Court. Sub-section 8 of Section 173 Cr.PC postulates that nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2). That means, the police has the vast power, has rightly further investigated the matter and submitted the additional challan (Annexure P1) against the petitioner, as contemplated u/s 173(8) Cr.PC. in the trial Court.

10. Sequely, the next contention of learned counsel that there is no evidence to convict the petitioner on record, lacks merit as well at this stage. It is not a matter of dispute that petitioner had purchased the disputed plot, illegally transferred in favour of her vendor Jagmail Singh on the basis of indicated forged and fabricated documents. As to whether all the essential ingredients of hatching conspiracy, cheating, forgery and using the forged documents as genuine are complete, whether the evidence brought on record by the prosecution is sufficient or not and all other submissions, relatable to the appreciation of evidence, as now sought to be urged on behalf of petitioner, would be the moot points to be decided during the course of trial after receipt of evidence of parties by the trial Court. If all such points and

other arguments directly relatable to and which require determination by the trial Court, after the production of evidence, are to be decided by this Court in the garb of petition under section 482 Cr.PC (without evidence), then the sanctity of the trial would pale into insignificance and amount to nullify the statutory procedure of trial as contemplated under the Code of Criminal Procedure, which to mind is not legally permissible.

11. Moreover, it is now well settled principle of law that the High Court should not ordinarily embark upon an inquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it the accusation would not be sustained, are the functions of the trial Judge to do so. The High Court must be careful to see that its decision in exercise of its power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. Reliance in this connection can be placed upon the judgment of Hon'ble Apex Court in case U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi and another (2009) 2 SCC 147.

12. Therefore, the ratio of law laid down by Hon'ble Apex Court “mutatis mutandis” is applicable to the facts of the present case, is the complete answer to the problem in hand and hence the contrary arguments of learned counsel for petitioner “stricto sensu” deserve to be and are hereby repelled in the obtaining circumstances of the present case.

13. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

14. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the main case, as there is no merit, therefore, the

instant petition is hereby dismissed with costs as such.

15. Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits during the trial of the main case, as the same has been so recorded for a limited purpose of deciding the present petition in this relevant direction.

12.1.2015
AS

(Mehinder Singh Sullar)
Judge

Whether to be referred to reporter? **Yes/No**