

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-14132 of 2014(O&M)
Date of decision: 29.01.2015

Sukhwinder Singh and another

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.M.L. Sagar, Senior Advocate with
Mr.Gaurav Grover, Advocate for the petitioners
Mr.Ashish Sanghi, DAG Punjab
Mr.R.S.Sidhu, Advocate for respondent No.2

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

Kuldip Singh, J.

Sukhwinder Singh and Tirath Singh have filed this petition under Section 482 Cr.P.C. for quashing FIR No.13 dated 12.8.2013 under Sections 420 and 120B IPC registered at Police Station NRI, District Kapurthala (Annexure P1) along with all the consequential proceedings, on the basis of compromise dated 25.9.2013 (Annexure P2).

The brief facts are that Amar Singh – respondent No.2 being attorney of Balbir Singh Lally, Ranvir Singh Lally, Kamaljit

Singh Lally sons of Gurmel Singh and Amarjit Kaur Aujla daughter of Gurmel Singh, resident of U.K. had filed a complaint that in the year 2002 when Gurmel Singh was in India, Balbir Kaur sister-in-law of Gurmel Singh procured a forged agreement regarding 12 kanal 4 ½ marla of land, to grab the property of Gurmel Singh. She, in connivance with the relations, put the signatures of Gurmel Singh on the forged agreement. At present Sukhwinder Singh, brother of Balbir Kaur used to reside in their house and was threatening the complainant. The police conducted the inquiry and it was found that agreement, in dispute, is dated 3.4.2002, which is stated to have been executed by Gurmel Singh in favour of Balbir Kaur. Gurmel Singh had died on 5.4.2002. In the agreement, said land stated to have been transferred in the name of Balbir Kaur, on the basis of which she has given power of attorney to her brother Sukhwinder Singh. During inquiry, it was found that on 3.4.2002, Gurmel Singh was admitted in Tagore Hospital, Jalandhar due to increase in sugar level. Stamp paper was purchased by a person in the name of Kartar Singh. It was found that a forged agreement has been prepared by Balbir Kaur in criminal conspiracy with Tirath Singh and Sukhwinder Singh, who had attested the agreement.

After completion of investigation, the challan has since been presented in the Court of learned Additional Chief Judicial Magistrate, Kapurthala, who has framed charge sheet under Sections 420 read with Section 120B IPC against present petitioners. Case is now fixed for prosecution evidence. Balbir Kaur is proclaimed offender.

Now the question would arise whether there is a compromise between the victim and both the accused petitioners? The trial Court filed was summoned and it was found that Balbir Kaur main accused is proclaimed offender and only Sukhwinder Singh and Tirath Singh have been charge sheeted. Even with the charge sheet, report of the finger print expert has been produced to show that the signature of Gurmel Singh deceased is a copied forgery.

Unluckily, the trial Court, while framing the charge, did not mention any reason as to why it is not framing charges for forgery. The challan was presented under Sections 420 and 120B IPC and the learned Additional Chief Judicial Magistrate, Kapurthala simply framed the charge under those sections. Further, in the present petition only Amar Singh – respondent No.2 complainant is party. Victim Gurmel Singh or his legal heirs are not party either personally or through power of attorney. Admittedly, Gurmel Singh victim is dead and he was succeeded by his three sons Balbir Singh Lally, Ranvir Singh Lally, Kamaljit Singh Lally and daughter Amarjit Kaur Aujla. Copy of power of attorney from the said persons in favour of Amar Singh shows that they have nowhere specifically authorized Amar Singh to get the present FIR quashed. Amar Singh has been made party in the present petition not as attorney of the said victims but in his personal capacity. In this way, when Amar Singh has been made party in his personal capacity, he cannot enter into compromise. Consequently, the power of attorney of the said victims i.e. sons and daughter of Gurmel Singh does not given any specific authority to Amar Singh to enter into compromise with the accused to

get the FIR quashed. Therefore, on the basis of said compromise, the present petition cannot be quashed. Further, it is a case of partial compromise. Here main accused Balbir Kaur is proclaimed offender and even if this Court would have allowed the petition it would mean only partial quashing of the FIR qua present two petitioners and not Balbir Kaur.

Learned counsel for the petitioners has relied upon authorities in the case of Gian Singh v. State of Punjab and another, 2012 (4) R.C.R. (Criminal) 543 and Kulwinder Singh and others v. State of Punjab and another, 2007(3) R.C.R. (Criminal) 1052 and has pressed that compromise should be allowed.

I am of the view that in this case, the victim Gurmel Singh was lying ill and was on the death bed when his real sister-in-law Balbir Kaur forged her signatures and prepared fake agreement showing the payment of Rs.12 lac to him. This is an offence against the society and therefore, it is not a fit case where the FIR should be partially quashed qua the present petitioners. Therefore, the present petition is dismissed.

Before parting with the order, it is observed that the trial Court had not framed any charge for the offence of forgery for which sufficient evidence has been attached with the challan in the shape of report of handwriting expert Arvind Sood, who has also been mentioned as witness. The charges are to be framed on the basis of report under Section 173 Cr.P.C., statements of witnesses recorded under Section 161 Cr.P.C. and the documents relied upon by the prosecution. In the circumstances, charge sheet suffers from

infirmity. Therefore, charge sheet dated 13.5.2014 framed by learned Additional Chief Judicial Magistrate, Kapurthala is set aside and the learned Additional Chief Judicial Magistrate, Kapurthala is directed to re-hear the prosecution and the accused on the question of charge sheet and record specific reason for framing or not framing charges for forgery.

29.01.2015*gk***(Kuldip Singh)
Judge**