

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

CRM-M-18700-2015

Date of decision: 01.06.2015

Harnek Singh

... Petitioner

Vs.

State of Punjab and anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

**Present: Mr. P.S. Dhaliwal, Advocate
for the petitioner.**

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J. (ORAL):

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks cancellation of anticipatory bail granted to respondent No.2-namely Harjiwan Singh, by the Court of learned Additional Sessions Judge, Bathinda, vide order dated 13.05.2015 in FIR No.5 dated 21.04.2015 under Sections 420, 467, 468, 471, 120-B of the Indian Penal Code ('IPC' for short), registered at Police Station NRI Bathinda.

Learned counsel for the petitioner submits that petitioner who is NRI has been defrauded by his own brother Baldev Singh, who is the main accused, in connivance with respondent No.2-Harjiwan Singh

and his other co-accused. He further submits that in the circumstances of the case, it was not a case of anticipatory bail and the learned Additional Sessions Judge has misdirected himself, while passing the impugned order dated 13.05.2015, whereby concession of pre-arrest bail was granted to respondent No.2. He also contended that a clear case under Sections 420, 467, 468, 471 and 120-B IPC has been made out against all the accused, including respondent No.2-Harjiwan Singh. He prays for allowing the present petition, by setting aside the order dated 13.05.2015 and cancelling the anticipatory bail granted in favour of respondent No.2.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that present one has not been found to be a fit case for cancellation of anticipatory bail granted to respondent No.2, for the following more than one reasons.

Firstly, petitioner did not issue any notice to his brother Baldev Singh, disclosing his intention for cancellation of Power of Attorney dated 12.07.1996, which was executed by the petitioner in favour of his brother Baldev Singh, before sub-Registrar, Rampura Phul, District Bathinda. Secondly, no reason is forthcoming as to why petitioner executed the cancellation deed at a different place, i.e., before sub-Registrar at Bhagta Bhaike.

At this stage, learned counsel for the petitioner sought to

explain that the cancellation deed was executed at Bhagta Bhaike because in the meantime, Bhagta Bhaike came to be a sub Tehsil in District Bathinda. However, this explanation has not been found justified by this Court, for the reason that the sub-Registrar, Rampura Phul would not come to know about this cancellation, it being at a different place because of which the record of Power of Attorney dated 12.07.1996 remained intact, in the office of sub-Registrar, Rampura Phul.

Thirdly, before purchasing the land for a huge amount, respondent No.2 proceeded on a bonafide approach and sought the report from the office of Deputy Commissioner, Bathinda about the validity of abovesaid Power of Attorney dated 12.07.1996. It was reported by the office of Deputy Commissioner, Bathinda that the said Power of Attorney dated 12.07.1996, was still operative and valid.

Proceeding on the abovesaid bonafide impression, as per report dated 20.06.2014 made by the office of Deputy Commissioner, Bathinda, respondent No.2 purchased the land in question. In such a situation, bonafide purchaser namely Harijwan Singh-respondent No.2, himself would be a victim because his title on the land purchased by him, would be under cloud despite the fact that he was a bonafide purchaser for a huge amount. Having said that, this Court feels no hesitation to conclude that learned Additional Sessions Judge, Bathinda committed no error of law, while passing the order dated 13.05.2015, whereby respondent No.2 was granted the concession of anticipatory bail.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Md. Ibrahim and others Vs. State of Bihar and another, 2009 (8) SCC 751**. The relevant observations made by the Hon'ble Supreme Court in paras 14 and 15 of the judgment in Md. Ibrahim's case (supra), which can be gainfully followed in the present case, read as under: -

“When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of

being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

A clarification

*When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term 'fraud' is not defined in the Code. The dictionary definition of 'fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines 'fraud' with reference to a party to a contract. In **Dr. Vimla v. Delhi Administration, AIR 1963 Supreme Court 1572**, this Court explained the meaning of the expression 'defraud' thus:*

"The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury

is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

*The above definition was in essence reiterated in **State of UP vs. Ranjit Singh - 1999 (2) SCC 617.**"*

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

With the abovesaid observations made, present petition stands dismissed.

[RAMESHWAR SINGH MALIK]
JUDGE

01.06.2015
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