

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

**CRM-M No.29160 of 2014
Decided on: 06.04.2015**

Sudhanshu . . . Petitioner

Versus

State of Punjab & others . . . Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Dilpreet Singh, Advocate
for the petitioner.

Mr. Varun Sharma, A.A.G. Punjab.

RAJ MOHAN SINGH, J.

Prayer in the present petition under Section 482 Cr.P.C is for issuance of direction to respondents No.1 to 5 to investigate the matter fairly and impartially in view of complaint dated 15.02.2014 (Annexure P-5) and inquiry reports (Annexure P-7 and P-8). Further petitioner seeks direction to respondents No.2 to 6 for protection of his life and liberty from being invaded at the hands of respondents No.7 to 14.

2. Petitioner alleged that his father late Shri Jagdish Kumar was co-owner in possession of agricultural land in different villages. He died on 06.01.1988. Respondent No.10 Raghubir Singh is

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maternal uncle of the petitioner. Respondent No.7 Banwari Lal is a domestic help with aforesaid Raghubir Singh. Both had attended the funeral of father of the petitioner and had the knowledge about death of his father.

3. Respondents No.7 to 14 in order to grab property of the petitioner hatched a conspiracy. General power of attorney dated 20.06.2006 was prepared allegedly on behalf of father of the petitioner by Mani Ram, a non-existent identity by way of impersonation. The said power of attorney was registered with Sub Registrar on 20.06.2006. On the basis of aforesaid general power of attorney, after hatching conspiracy, land of the father of the petitioner was sold through two sale deeds dated 02.08.2006. Very meager amount was shown as sale consideration whereas as per Collector rate, the rates were in crores. After the death of father, petitioner along with his sisters became owner of the land by way of inheritance. In December 2013, respondent No.7 disclosed regarding factum of forged and fabricated general power of attorney and on coming to know, petitioner made complaint to respondents No.2 to 5 against respondents No.7 to 14 on 15.02.2014.

4. When no action was taken in respect of cognizable issue, the petitioner met respondents No.3 about the status of the complaint and he was accordingly informed that private respondents have committed cognizable offence and the case has been sent to respondent No.2 for taking necessary action.

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5. On earlier occasion, petitioner filed Criminal Miscellaneous No.17904 of 2014 in the High Court which was disposed of vide order dated 22.05.2014 with a direction to respondent No.2 to consider and dispose of the complaint dated 15.02.2014 as expeditiously as possible. For ready reference, order dated 22.05.2014 is reproduced as under:-

"Heard.

According to the petitioner, respondent Nos.6 to 13 having hatched a criminal conspiracy to grab his property dishonestly, prepared a General Power of Attorney on behalf of his father Jagdish Kumar after his death by impersonation and on the basis of said Power of Attorney, sold land owned by his father through two separate sale deeds. In the matter, he made a complaint dated 15.02.2014 (Annexure (P-5) to Senior Superintendent of Police, Fazilika, but no action has been taken thereon.

Without issuing notice of motion so as to avoid unnecessary delay, this petition is disposed of with a direction to Senior Superintendent of Police, Fazilika, to consider and dispose of the complaint dated 15.02.2014 (Annexure P-5) stated to have been made before him by the petitioner, as expeditiously as possible, but not later than two months from the date of receipt of a certified copy of this order."

6. Petitioner has alleged that respondent No.3 vide his report dated 08.04.2014 found as under:-

"My investigation transpired that the names of father of the complainant namely Jagdish Kumar and Mani Ram S/o Chaudhary Shiv Dayal alias Sho Lal, were entered in the revenue record of village Sherwala as cultivatable land, whereas, Jagdish Kumar died on 06.01.1988 as mentioned in the complaint, Raghubir Singh was brother-in-law of Jagdish Kumar and he was fully aware of the fact that Jagdish Kumar has since died, in order to grab his property he formed a bogus person pretended to be Jagdish Kumar executed a forged power of attorney on 20.06.2006, in favour of Banwari Lal S/o Surja Ram, R/o Village Wariyam Kheda who was working in his house, upon the said power of attorney Beg Raj Harijan Nambardar Bhagirath S/p Devi Lal R/o Wariyam Khera in connivance with each other knowing fully well that it is illegal, and by using the said power of attorney, prepared a forged sale deed No.2388 and 2391, sold the land pertaining to father of the complainant Sudhanshu, to Vinod Kumar and his wife indu Bala, Leelawati W/o Varinder Singh on 02.08.2006. Upon the registries, Daljeet Singh S/o Lakha Singh R/o Village Kala Tibba and Beg Raj Harija, Nambardar R/o Village Wariyam Kheda appended their signatures as a capacity of witnesses. The purchasers of the land Vinod Kumar and others are close native of Raghubir Singh who might have entered into the sale deed after thorough examination about the gentility of the property after satisfying themselves with regard to the property in question as such a huge amount was involved in the sale consideration. So the purchasers also found guilty in the present case. It is further transpired about the witness Daljeet Singh that he usually remains available in the Tehsil Complex with regard to

deposing himself as witness in sale purchase dealings. Since he is literate, so it is wrong to suggest that he was unaware about legality/illegality of the present land deal. It transpired that the names of accused persons mentioned in the complaint; in connivance with each other committed a fraud with the complaint is proved.

During investigation it transpired that as per the record of department of revenue the names of Jagdish Kumar S/o Girdhari Lal and Mohinder Kumar S/o Ram Chand, are mentioned in same handwriting, whereas by overwriting it has mentioned as Jagdish Kumar S/o Girdhari Lal S/o Amar Singh is mentioned afterwards and different handwritings are quite diverse. This is not possible for common man to do this kind of cheating without the connivance of revenue officials, to unearth the truth; the thorough probe is subject matter of separate investigation. In my opinion all the persons whose names are mentioned in the complaint namely Banwari Lal S/o Surja Ram S/o Gheru Ram, Beg Raj Harijan Nambardar, Bhagirath S/o Dei Lal, Raghubir S/o Devi Dayal S/o Ram Jas R/o Wariyam Kheda, Vinod Kumar, Indu Bala, Daljeet Singh, Leelawati and the officials of the department have committed the crime U/s 420/419/465/467/468/471/477-A/120-B of IPC. So a case is to be registered in Police Station City – Abohar, and further investigation is to be initiated in the matter.”

7. Learned counsel for the petitioner again submitted that investigation was again done by DSP, Abohar, who submitted his report dated 27.06.2014 to the respondent No.2 in the following manner:-

"During investigation of the above mentioned complaint it transpired that as per Mutation No. 607, the land comprising of 377 Kanals 13 Marlas, were sold to Jagdish Kumar S/o Girdhari Lal and Mahinder Kumar S/o Ram Chand, by Shiv Dayal for the total sale consideration of Rs.3070.50, moreover, as the record placed on record by concerned Patwari i.e. Jamabandi for the year 1985-86, the property stands in the name of Jagdish Kumar S/o Girdhari Lal S/o Amar Singh and Mahinder Kumar S/o Ram Chand in equal share. In this regard the same fact has been mentioned in the report of investigation conducted by Sh. Kuldeep Singh Chahal, Superintendent of Police, Abohar that in the revenue records the names of Jagdish Kumar S/o Girdhari Lal and Mohinder Kumar S/o Ram Chand, are mentioned in same handwriting, whereas by overwriting it has mentioned as Jagdish Kumar S/o Girdhari Lal S/o Amar Singh is mentioned afterwards and different handwritings are quite diverse. Keeping in view the report of Superintendent of Police, Abohar, it is recommended to register a case in the matter."

8. Later on, one more report was prepared by Superintendent of Police, PPS, Fazilika on 24.07.2014 in utter conflict with the aforesaid two reports. The Superintendent of Police opined that civil cases at the instance of Raghubir Singh are pending adjudication in the Court and therefore, no separate investigation is called for by the police and the complaint was ordered to be consigned.

9. At the time of issuance of notice of motion, following order dated 28.08.2014 was passed:-

“Learned counsel for the petitioner submits that the father of the petitioner died on 06.01.1988 and the petitioner earlier approached this Court by way of filing Criminal Misc. No.M-17904 of 2014, which was disposed of vide order dated 22.05.2014, with a direction to Senior Superintendent of Police, Fazilka to decide the complaint moved by the petitioner on 15.02.2014. Learned counsel further submits that in spite of said direction and the inquiry conducted by Superintendent of Police, Fazilka and also the fact that during investigation, which was conducted by Superintendent of Police, Abohar and Deputy Superintendent of Police, Abohar, the documents were found to be forged but no action was taken against the accused persons.

Notice of motion to respondents No.1 to 6 only at this stage.

Notice on behalf of State of Punjab has been accepted by Ms. Ritu Punj, Additional Advocate General, Punjab.

Adjourned to 06.10.2014.

Learned State counsel is directed to place on record the status report and original record of the case be produced by the next date of hearing.

Learned counsel for the petitioner is directed to supply two copies of the petition to learned counsel for the respondent-State during the course of the day.”

10. Respondents No.1 to 4 and 6 contested the case and took the stand that the inquiry file has been rightly consigned

because of pending civil suits. The entire controversy has civil profile in nature and therefore, it will be just and appropriate to consign the case at this juncture.

11. Learned State counsel relied upon **2008 (1) R.C.R. (Civil) 392** titled **Sakiri Vasu versus State of U.P.**, to contend that the petitioner can avail his remedies in accordance with law before the Magistrate or the petitioner can invoke the jurisdiction of Magistrate by filing criminal complaint in accordance with law.

12. I have considered the submission made by both the sides.

13. This Court on earlier occasion directed the respondent No.2 to consider and dispose of the complaint of the petitioner within specific period. Now only fact that has come up for consideration is whether respondent No.3 is justified in foreclosing the investigation or consigning the complaint of cognizable issue by recommending that matter involves is of civil nature? The proposition here in above is purely on legal proposition that has its roots in the interpretation of law as given in '**Iqbal Singh Marwah and Another V. Meenakshi Marwah and Another (2005) 4 SCC 370**'. The constitution bench of Hon'ble Supreme Court held that both the civil and criminal cases can go simultaneously without commenting upon the merits of the complaint and the issue involved therein. This Court is of the opinion that respondent No.2 can be asked to visualize and look into the complaint and the entire material collected by the police so far and

apply his mind in the light of observations made by the Hon'ble Apex Court in **Iqbal Singh Marwaha (supra)** and thereafter take all remedial steps in order to do justice with the parties.

14. The observations made in preceding paras may not be construed as mandate to prosecute the accused without adverting to cognizable nature of offence if not made out from the complaint. In any case, complaint and investigation thereupon should not be consigned to record room merely on the basis of controversy having civil profile.

15. In view of aforesaid, this Court hereby casts honourous duty upon respondent No.2 to appreciate the controversy in terms of legal criteria and take all corrective steps without being influenced by any consideration. If the respondent No.2 ultimately comes to the conclusion that cognizable offence is made out then consequential action be ordered. On the other hand, if the conclusion of respondent No.2 is otherwise, then the present course may be retained.

16. In view of aforesaid, the petition is disposed of.

[Raj Mohan Singh]
Judge

06. 04.2015
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