

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

**Crl. Revision No. 188 of 2006
Date of decision : 29.09.2015**

Ram Karan & Anr. ... Petitioners

versus

State of Haryana ... Respondent

with Crl. Revision No. 189 of 2006

Ved Ram ... Petitioner

versus

State of Haryana ... Respondent

and Crl. Revision No. 277 of 2006

Sajjan Singh ... Petitioner

versus

State of Haryana ... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Ms. Aditi Girdhar, Amicus Curiae
for petitioners Ram Karan, Ravinder and
Sajjan Singh.**

**Mr. S.S. Narula, Advocate
for petitioner Ved Ram.**

Mr. G.S. Salwara, DAG Haryana.

ANITA CHAUDHRY, J.

Three criminal revisions had been filed against the judgment dated 18.01.2006 vide which the appeals filed by the petitioners against the judgment and order of conviction and sentence dated 25.07.2000 and 26.07.2000, had been dismissed

and their conviction and sentence had been maintained.

A narration of the facts as they unfold. Smt. Santosh had levelled allegations of cheating and forgery by accused Ram Karan and Ravinder sons of Sultan Singh in connivance with the revenue officials in her complaint. Her husband had purchased land measuring 55 kanals 07 marlas situated in village Nathera from Sultan Singh for Rs.84000/- on 08.08.1994 and mutation No.954 was sanctioned. Entry was also made in their field book which is handed over to the owner after mutation. Sultan's sons filed a pre-emption suit and challenged the sale-deed. The suit was dismissed on 11.03.1986. The appeal was also dismissed on 27.09.1986. To defeat the right, Sultan's sons filed a collusive suit against Sultan, which came to be decreed on 09.03.1991 and they succeeded in getting mutation No. 1156 dated 23.06.1995 entered in their favour. On the basis of aforesaid mutation, both the accused with a view to encumber the property, mortgaged the land with State Bank of India, Jatusana Branch. The complainant's husband meanwhile died on 14.01.1998. Neither the complainant or her husband were aware of the developments. The complainant approached the revenue authorities for getting the mutation of inheritance in her favour after the death of her husband, when the fraud was discovered. The police did not take any action on her complaint.

The complainant then approached the Court who forwarded the complaint to the police under Section 156(3) Cr.P.C. FIR No.52 dated 23.03.1999 was registered and

investigated.

During investigation, it was found that accused Dilbagh Singh Patwari had made remarks about the mortgage of the land with Land Mortgage Bank for Rs.22,510/- and about revision/ review of mutation No.954 in the jamabandi for the year 1986-87, but while preparing jamabandi for the year 1992-93 he intentionally omitted the said remarks and also failed to mention about the sale of land in the report dated 11.01.1990. On the basis of jamabandi for the year 1992-93, Ravinder and Ram Karan filed the suit and fraudulently obtained collusive decree in their favour and got the land mutated in their favour vide mutation No. 1150 dated 29.06.1995.

It was further revealed that Ved Ram Patwari took charge from Dilbagh Singh on 20.07.1994 and mutation No.954 was handed over to him, but he did not place it before the Authorities in connivance with the accused and consequently, before mutation No.954 could be decided, vide rapat No. 349 dated 16.06.1995 he issued copy of mutation No.1150 regarding change of ownership in favour of Ravinder and Ram Karan and entry of decree was made on 18.06.1995. Both the accused obtained a loan of Rs.1,98,000/- from State Bank of India, Jatusana Branch and mortgaged the land. It was came to light during investigation that mutation No. 1150 was sanctioned by the Tehsildar on 29.06.1995, whereas entry regarding loan from SBI, Jatusana had been entered earlier.

The investigation revealed that Ved Patwari handed

over the charge to Sajjan Singh Patwari vide rapat No. 252 dated 27.02.1996 and he handed over mutation No.954 to him. Sajjan Singh gave the charge of the post to Rajinder Singh, Patwari on 26.07.1996, but failed to mention about review/pendency of mutation No.954 and failed to submit the same before higher authorities. Remarks column of the jamabandi for the year 1986-87 was found torn and record pertaining to mutation No.954 was also found missing.

It was also revealed that Randhir Singh Patwari took charge from Ranbir Singh Patwari on 28.08.1998 and record of mutation No.954 was also handed, but during his tenure 'Parat Patwar' of mutation No.954 was found torn.

The police took the record into possession. On completion of formalities of investigation, challan was filed against accused Ravinder, Ram Karan and Patwaris namely Ved Ram, Sajjan Singh, Dilbagh Singh and Randhir Singh. Sultan Singh was reported to have died.

Charge under Sections 420, 467, 468 read with Section 120, 471, 418 and 201 IPC was framed against all the accused, to which they pleaded not guilty.

The prosecution examined 08 witnesses, including complainant and brought on record various revenue documents pertaining to the transactions.

The incriminating circumstances led by the prosecution were put to the accused in their statements under Section 313 Cr.P.C., which they denied and pleaded false

implication. They examined three witnesses.

On appraisal of the evidence produced on record, the trial Court vide judgment dated 25.07.2000 held accused Ram Karan and Ravinder guilty under Sections 420, 467, 468 and 471 IPC and substantively sentenced them to undergo rigorous imprisonment for three years and pay a fine of Rs. 3000/- under each head. In default of payment of fine, they were sentenced to further undergo rigorous imprisonment for three months under the defaulting clause. The sentences were ordered to run concurrently.

Accused Ved Ram and Dilbagh Singh were held guilty under Section 218 IPC and sentenced to undergo rigorous imprisonment for one year along with a fine of Rs.1000/- each. In default of payment of fine, they were directed to undergo rigorous imprisonment for one month.

Accused Sajjan Singh and Randhir Singh were held guilty under Section 201 IPC and sentenced to undergo rigorous imprisonment for one year along with a fine of Rs.1000/- each. In default of payment of fine, they were directed to undergo rigorous imprisonment for one month.

Dis-satisfied with the conviction and sentence, separate appeals were filed by accused Sajjan Singh, Randhir Singh, Ved Ram and one jointly by Ram Karan and Ravinder. The appeals were heard together and decided vide common judgment dated 18.01.2006. The appeals filed by accused Sajjan Singh, Ved Ram and Ravinder and Ram Karan were dismissed. The

appeal filed by accused Randhir Singh was accepted and he was acquitted.

Dis-satisfied with the same, these revisions have been filed.

I have heard learned counsel for the parties and with their able assistance gone through the record carefully.

Learned counsel for the petitioners Ram Karan and Ravinder had urged that there is no evidence against them to connect them with the offence. It was urged that the very foundation of the case i.e. sale-deed in favour of Sultan Singh was not proved, as such it cannot be said that there was intention on the part of these accused to commit fraud or cheating with the complainant. It was submitted that the FIR was registered in the year 1999 while the entries were of the year 1995, therefore, it was barred by limitation. She had further urged that the document i.e. jamabandi for the year 1992-93, which was claimed to be forged was submitted in the Court, therefore, the remedy available to the complainant was to file a complaint under Section 340 Cr.P.C.

On behalf of petitioner Ved, it was urged that being a Government official he was duty bound to issue copies of revenue record and make entry on the basis of Court decree, even otherwise, mutation did not confer any title nor it had presumptive value of title. He had further urged that there is no evidence to show that petitioner Ved was part of conspiracy and there was no intention on his part to cause loss of injury to the

complainant and the mutation was entered by him as per rules. Reliance has been placed on **Smt. Sawarni Vs. Smt. Inder Kaur, 1997(1) RCR(Civil) 41, Bachan Singh & Ors. Vs. Financial Commissioner, Appeal (1), Punjab and others 2008(3) RCR(Civil) 887, Kashmir Singh Vs. State of Haryana & Ors., 2011(3) RCR(Civil) 56, Supreme Singh Vs. The Financial Commissioner Revenue Punjab & Ors. 2010 (5) RCR(Civil) 833, Surjit Kaur Vs. Jaimat Rai, 2011(1) RCR(Crl.) 563, Raghubansh Lal Vs. State of U.P. 1957 AIR (SC) 486, Md. Ibrahim & Ors. Vs. State of Bihar & Anr. 2009(1) RCR(Crl.), M/s Zandu Pharmaceutical Works Ltd. Vs. Md. Sharaful Haque, 2004(4) RCR(Crl.) 937, Ramesh Chandra Sinha & Ors. Vs. State of Bihar & Ors. 2003(1) RCR(Crl.) 235, Dara Singh & Ors. Vs. State of Rajasthan, 2005(2) Crl. C.C. 521, Jaswinder Kaur Vs. State of Punjab & Ors. 2013(2) Law Herald 1024, Asraf Ali Vs. State of Assam, 2008(3) RCR(Crl.) 835, Ratan Sao Vs. State of Bihar, 2010(3) PLR 664, State of Haryana Vs. Kishan & Ors. 2004(1) RCR(Crl.) 340 and Shaukat Ali Vs. State of Haryana 1996(2) RCR(Crl.) 235.**

On behalf of petitioner Sajjan Singh, it was submitted that no evidence was led by the prosecution to show that record pertaining to mutation No. 1986-87 had been lost or remarks column of jamabandi for the year 1986-87 was torn during his tenure as Patwari. Elaborating the submissions, learned counsel has referred to the statement of prosecution witnesses to urge

that none of the witnesses had stated about the involvement of Sajjan Singh and in absence of statement of investigating officer, there was nothing to prove that Sajjan Singh had caused the evidence to disappear.

Complainant Santosh had introduced the certified copy of sale-deed of land measuring 55 kanal 07 marlas purchased by her husband from Sultan on 08.08.1984 and had stated that mutation No. 954 was entered. She further deposed that after mutation, halqa Patwari had issued khatoni Ex.PW1/B. She further deposed about filing of civil suit by the accused Ravinder and Ram Karan and about the mutation entered in connivance with the Patwari. PW2 Suresh Singh from DC Office produced the copy of sale-deed. PW3 Prabhu Dayal proved his signatures on the sale-deed Ex.PW1/A. PW4 Yad Ram deposed that he was put in possession of the land after the sale dated 08.08.1984. He further deposed that the suit filed by Ravinder and Ram Karan was dismissed and both brothers in connivance with revenue officials got the land mutated in their favour. PW5 Rajesh Kumar, Registration Clerk deposed about mortgage deed No. 261 dated 23.06.1995 vide which Ram Karan and Ravinder mortgaged the land with State Bank of India, Jatusana for Rs.1,98,000/-. PW7 Chander Bhan Sadar Kanugo deposed that as per jamabandi for the year 1986-87, mutation No.954 was kept under review and there is no reference of review in the jamabandi for the year 1992-93. PW8 Babu Lal Patwari proved the postings of Ved Ram and Sajjan Singh Patwaris. As per his deposition, on 8.9.1994

Dilbagh Singh Patwari handed over the charge to Ved Ram Patwari and he handed over the charge to Sajjan Singh Patwari on 29.02.1996 and Sajjan Singh gave charge to Rajinder Singh Patwari on 06.08.1996. He further deposed that remarks column of jamabandi for the year 1986-87 pertaining to khewat No. 76, khatoni No. 78 was torn. He further deposed that after mutation No.953 there is mutation No. 954 and it was missing from the 'parat patwar'. PW9 brought the file pertaining to civil suit No.60 of 1991.

The prosecution case rests upon the documentary evidence. Complainant Santosh had filed the complaint intimating about the cheating and forgery committed by accused Ravinder and Ram Karan, which she came to know when she approached the revenue authorities for entering the mutation of inheritance in her favour after the death of her husband. Her husband had died on 14.01.1998. She intimated the matter to the police, but no action was taken. Thereafter, she lodged the complaint on 09.03.1999, which was forwarded under Section 156(3) Cr.P.C. and consequently FIR was registered on 23.03.1999. The sequence of events suggest that fraud came to the knowledge of complainant after January 1998. It is settled that the limitation runs from the time when fraud comes to light and not from the date when it was actually committed.

Ravinder and Ram Karan throughout were trying to defeat the rights of the complainant and her husband. The complainant, PW2 Suresh Singh and PW3 Prabhu Dayal proved

the sale-deed dated 08.08.1984 executed by Sultan in favour of husband of the complainant. Ravinder and Ram Karan cannot dispute that they had filed the pre-emption suit. This fact strengthens the fact that the sale-deed 08.08.1984 was in their knowledge. After they lost the case, to wriggle out of the sale, they filed a collusive suit against their father Sultan and this time by concealing true facts, they succeeded in getting the decree in their favour and got an entry in the record. They also managed the revenue officials, therefore, there was no reflection about the sale in favour of husband of the complainant. The jamabandi was issued by Dilbagh Singh, Patwari. Ravinder and Ram Karan knew that the land had already been sold by their father to Virender, but to defraud them, both the brothers in connivance with revenue officials got prepared a forged jamabandi and obtained the collusive decree. Not only that, both the brothers went ahead and got the land mutated in their favour vide mutation No. 1150. Before mutation No. 1150 could be sanctioned, they succeeded in mortgaging the land with the Bank so as to encumber it and deprive the complainant of her land. Ravinder and Ram Karan hatched the conspiracy in connivance with co-accused to cheat the complainant. They had dishonest intention right from the beginning and on the basis of forged and fabricated document they had conspired and cheated the complainant. The jamabandi was prepared before the collusive suit was filed.

The connivance of revenue officials i.e. Ved Ram and Sajjan Singh, Patwaris is writ large. It has come on record that

mutation No.954 was sanctioned in favour of husband of the complainant after the sale dated 08.08.1984. Field Book Ex.PW1/B shows that land was recorded in the name of complainant and her husband on the basis of mutation No.954 and even in jamabandi, Ex.P4 there is a reference to mutation No.954. No document on the contrary had been produced by the defence to prove that there was no entry of mutation No. 954.

Much stress had been laid by counsel on jamabandi Ex.DX to urge that the entry regarding civil suit decree was already made on 10.07.1991 by the Patwari posted at that time, which was signed by Kanungo on 06.08.1991 and sanctioned on 13.06.1992 and at that time also there was no reference of mutation No. 954. On the basis of Ex.DX, the subsequent jamabandis were issued by petitioner Ved Ram. Petitioner Ved was bound to make entries of the decree, but he intentionally omitted to mention about the revision/ review of mutation No. 954 and it was in his (Ved Ram) knowledge. This fact is strengthened from the fact that while handing over the charge to Sajjan Singh, he handed two mutations of village Nathera bearing No. 954 and 956 which were under review/ reconsideration. But while entering mutation No. 1150 and issuing its copy and preparing jamabandi for the year 1992-93 he failed to mention about the pendency of mutation No. 954. It had come in the testimony of defence witness i.e. DW3 Chander Bhan, Naib Sadar Kanungo that if any mutation was kept under consideration/

review, then no new mutation could be entered in respect of the same property without decision of mutation under review. On the basis of jamabandi for the year 1992-93 issued by Ved Ram, co-accused Ravinder and Ram Karan succeeded in getting the major chunk of land mortgaged with the Bank. Petitioner Ved Ram facilitated his co-accused Ravinder and Ram Karan in securing the loan from the bank even before sanctioning of mutation No. 1150. There was undue haste on the part of petitioner Ved Ram and is apparent from the fact that he handed over the copy of mutation reflecting entry of mutation No. 1150, on the basis of which the loan was taken on 23.06.1995. He made the loan entry on 28.06.1995 while the mutation No. 1150 was in fact sanctioned on 29.06.1995. It was all done with an intention to cause wrongful loss to the complainant. As regards the sanction under Section 197 Cr.P.C., this issue was adequately dealt with by the Appellate Court in para No.31 of its judgment. Sanction provided under Section 197 Cr.P.C. is mandatory where the public servant is not removable from office without the prior sanction of the Government. It was found that the Collector was competent to terminate his services and thus, the protection under Section 197 Cr.P.C. was not available. The authorities relied upon are not applicable to the case in hand.

Coming to the case of petitioner Sajjan Singh, he was held guilty under Section 201 IPC on account of disappearance of record pertaining to mutation No. 954. It has come in evidence that vide Ex.PW8/A Ved Ram handed over the charge of Patwari

to Sajjan Singh and there was reference of mutation No.954 being under consideration/ review. But when Sajjan Singh handed over the charge to Rajinder Singh, there he failed to mention the pendency/ review of mutation No. 954, meaning thereby during his tenure record pertaining to mutation No. 954 had gone missing. The appellate Court dealt with this aspect of the matter and held as follows:-

"42. As per the second contention of learned counsel for appellant Sajjan Singh, the appellant was not to get any benefit out of disappearance of mutation No. 954 and therefore, he could not be held guilty Under Section 201 IPC. Again, I find this argument to be devoid of force because as discussed earlier, vide Ex.PW8/A, record of mutation No. 954 was handed over to appellant Sajjan Singh, but as per Ex.PW8/B, he did not hand over the same to his successor. He knew very well that the aforesaid mutation had been kept under consideration/ review and instead of presenting the same before his higher authorities for its decision, he became instrumental in its disappearance despite knowing well that mutation No. 1150 had already been sanctioned in respect of the same land in June 1995 before, he took over the charge on 27.2.1996. These circumstances speak volume of the fact that he intentionally caused disappearance of mutation No. 954 as he knew well that it had not been considered at the time of sanctioning of mutation No. 1150."

The argument that the investigating officer had not been examined and its benefit should go to the accused, is not

acceptable. There is ample proof in the shape of ocular as well as documentary evidence that accused Ravinder and Ram Karan with a dishonest intention cheated the complainant by preparing forged documents and petitioner Ved Ram facilitated them by preparing wrong record in order to cause wrongful loss to the complainant and Sajjan Singh caused disappearance of evidence. The inevitable conclusion is that the conviction of petitioners Ravinder and Ram Karan under Sections 420, 467, 468 and 471 IPC, of petitioners Ved Ram and Sajjan Singh under Sections 218 and 201 IPC respectively was rightly recorded and there is no reason to interfere with the concurrent findings recorded by the Courts below. It is well settled that there is a limited scope of interference while exercising revisional jurisdiction. Re-appraisal of evidence is not permitted save in case of manifest error. The findings recorded by the Courts below are neither illegal nor perverse.

Faced with the situation, it was urged by learned counsel for the petitioners that the matter pertained to the year 1999 and the petitioners had undergone the agony of criminal proceedings for the last more than 15 years. It was urged that the petitioners were first offenders and there is no other case pending against them.

It was urged that the petitioner Ved Ram is about 67 years of age and had remained in custody for more than nine months. He had retired from the service and was suffering from age related diseases.

It was urged that petitioner Sajjan Singh had remained in custody for little more than a month. He is a Government employee and had undergone the agony for the last more than fifteen years.

So far as petitioners Ram Karan and Ravinder are concerned, it was urged that they had remained in custody for about four months and eighteen days and they were the only bread earner and they had families to support.

Taking into account the facts of the case, in the considered opinion of the Court, petitioners Ravinder and Ram Karan do not deserve any leniency in the matter of sentence. The gravity of the offence committed by them is of such magnitude that no interference is warranted on the quantum of sentence. A widow had to run from pillar to post to get justice. She had been deprived of the land purchased by her husband. There exists no mitigating circumstances on account of which their sentence can be reduced. Consequently, the conviction and sentence awarded to the petitioners Ram Karan and Ravinder is maintained. Their petition stands dismissed. Their bail bonds and surety bonds stand cancelled. They are directed to surrender before the Court of CJM concerned within 15 days from today to undergo the remaining part of the sentence. In case they fail to surrender before the Court within the stipulated time, the CJM would take appropriate action to secure their presence and commit them to custody to undergo the remaining sentence.

So far as petitioners, Ved Ram and Sajjan Singh are

concerned, this Court is of the considered opinion that their case can be considered. As noticed above, petitioner Ved Ram had undergone more than nine months and Sajjan had undergone little more than a month. They had been convicted under Section 218 IPC and 201 IPC respectively. Maintaining their conviction, the sentence of petitioners Ved Ram and Sajjan Singh is reduced to the period already undergone by them. However, the fine imposed on petitioner Ved Ram is enhanced to Rs.25,000/- over and above the fine imposed by the Courts below and additional sum of Rs.15,000/- is imposed on petitioner Sajjan Singh. The enhanced amount shall be deposited within two months from today with the CJM, Rewari. In default of payment of fine, the defaulter would undergo imprisonment for four months and two months respectively. The enhanced fine amount, on realization, shall be paid to the complainant Santosh on identification. On deposit, intimation shall be sent to the complainant.

Before parting, it needs to be mentioned that accused Dilbagh Singh had also been convicted and sentenced by the trial Court. It is not clear whether he had filed any appeal or not. The fact has to be verified by the State. Certificate shows his custody during trial period only. The CJM concerned shall obtain a report in this regard and submit the same to this Court within two months of receipt of a copy of this order. A copy of this order be sent to the CJM, Rewari for compliance.

September 29, 2015
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(ANITA CHAUDHRY)
JUDGE