

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

Date of decision: 06.05.2015

CRR No.743 of 2006

Balihar Singh & ors.

.... Petitioners

versus

State of Haryana

.... Respondent

CRR No.828 of 2006

Satish Kumar

.... Petitioner

versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER

Present: Mr. P.S.Hundal, Sr. Advocate with
Mr. Dinesh Trehan, Advocate
for the petitioners (except Balihar Singh)
in CRR No.743 of 2006.
Mr. V.K.Jindal, Sr. Advocate with
Mr. Amardeep Sheoran, Advocate
for the petitioner – Balihar Singh.
Mr. R.K.Dhiman, Advocate
for the petitioner in CRR No.828 of 2006.

Mr. Pawan Girdhar, Addl. AG, Haryana with
Mr. Himmat Singh, AAG, Haryana.

MAHESH GROVER, J.

This order will dispose of aforesaid two revision petitions bearing CRR Nos.743 and 828 of 2006 as both the petitions are directed against the judgment of conviction and order of sentence dated 16/17.04.2003 passed by Judicial Magistrate Ist Class, Kaithal in a case FIR No.71 dated 08.06.1993 registered under Sections 420, 467, 468, 471 and 218 IPC at Police Station Pundri, Kaithal.

All the petitioners have been convicted in the said FIR and were sentenced as below:

<i>Name of convict</i>	<i>Offence under Section</i>	<i>Punishment</i>	<i>Fine</i>	<i>In default</i>
Balihar Singh	420 IPC	R.I. for a period of two years	Rs.700/- each	Further undergo R.I. for one month each
Satish Kumar	467 IPC	R.I. for a period of two years	Rs.700/- each	Further undergo R.I. for one month each
Khushwant Singh	468 I.P.C.	R.I. for a period of two years	Rs.700/- each	Further undergo R.I. for one month each
Bhagel Singh	471 I.P.C.	R.I. for a period of two years	Rs.700/- each	Further undergo R.I. for one month each
Satish Kumar	218 I.P.C	R.I. for a period of one year	Rs.500/-	Further undergo R.I. for 15 days

All the substantive sentences were directed to run concurrently.

The FIR was registered on a letter communicated by the Deputy Commissioner that Sh. Satish Kumar, Patwari of village Dussain had made wrong entries in Khasra Girdawari intentionally. It was alleged that the entries of the land in question existed in the name of lessees in whose favour the gram panchayat had auctioned the land in the year 1992-93. With the change of entries in Khasra Girdawari, the names of lessees were substituted with the name of few persons, who were alleged to be owners and proprietors of the land to the extent of their shares as per the Consolidation Scheme where this land was construed to be Bachat land.

Both the Courts on the basis of evidence adduced by the prosecution concluded that the change in Khasra Girdawari had been effected in favour of the proprietors of the village with an ulterior purpose and thus, the petitioners were held guilty, convicted and sentenced as per the details mentioned above.

Learned counsel for the petitioners contend that undisputedly the change was effected in the Khasra Girdawari and not in the Jamabandies and thus, such a change even if accepted cannot create any title in favour of such persons and therefore, no valuable security could have been said to have come into existence. Besides this, it has been contended that the change was effected on account of the notification issued by State of Haryana, which was subject matter of a successful challenge in ***Jai Singh vs. State of Haryana, 2003 (2) RCR (Civil) 578*** by the proprietors of the village. It is on account of pendency of that litigation in this Court that necessitated the change and also led to an interim order by this Court protecting their rights.

The petitioners, thus, plead false implication and pray for their acquittal.

On the other hand, learned counsel for the State states that the change was effected with ulterior purpose, which has been duly established by the Courts below and thus, the conviction and sentence awarded to the petitioners was perfectly just.

I have heard learned counsel for the parties and perused the impugned orders and also the record.

In the considered view of the Court, the change was effected in the Khasra Girdawari which could have been rectified in accordance with the procedure prescribed in law for the same. It is

also settled proposition of law that mutation per se would not confer any title upon persons in whose favour it is sanctioned. There is nothing on record to suggest that any loss was caused or these mutations were used for ulterior purpose. The possibility of the mutations being changed on account of the existing confusion resulting from the notification issued by the State could possibly have been one of the reasons for change of the names.

Apart from this, the Hon'ble full Bench of this Court had adequately taken care to pronounce upon the rights of the proprietors would be seen from the perusal of the relevant extract of the judgment as under:

"48. The lands which, however, might have been contributed by the proprietors on prorata basis, but have not been reserved or earmarked for common purposes in a scheme, known as Bachat land, it is equally true, would not vest either with the State or the Gram Panchayat and instead continue to be owned by the proprietors of the village in the same proportion in which they contributed the land owned by them. The Bachat land, which is not used for common purposes under the Scheme, in view of provisions contained in Section 22 of the Act of 1948, is recorded as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat but the significant difference is that in the column of ownership proprietors are shown in possession in contrast to the land which vests with the Gram Panchayat which is shown as being used for some or the other common purposes as per the scheme.

49. We might have gone into this issue in all its details but inasmuch as the point in issue is not res-integra and in fact stands clinched by string of judicial pronouncements of this Court as well as Hon'ble Supreme Court, there is no necessity at all to interpret the

provisions of the Act and the rules any further on this issue."

Besides the aforesaid what needs to be considered as to whether the conviction could be sustained under Sections 420, 467, 468 and 471 IPC. The aforesaid provision of law are extracted herebelow:

Section 420 Cheating and dishonestly inducing delivery of property – *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

Section 467 Forgery of valuable security, will etc. – *Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [imprisonment for life] or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

Section 468 Forgery for purpose of cheating – *Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years,*

and shall also be liable to fine.

Section 471 Using as genuine a forged [document or electronic record] – *Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record] shall be punished in the same manner as if he had forged such [document or electronic record].”*

A mutation wrongly entered in Khasra Girdawari can hardly be construed to be satisfying the ingredients of Section 420 IPC and similarly no case under abovesaid Sections i.e. 467, 468 & 471 is made out against the petitioners. A revenue record of mutation regarding Khasra Girdawari is not a valuable security and create no title and similarly none of the ingredients of Sections 467, 468 and 471 stand proved.

In so far as Section 218 IPC is concerned, it could have been used against a public servant alone. In the peculiar circumstances of the case the same reasoning as mentioned above is also considered qua petitioner – Satish Kumar in CRR No.828 of 2006, who is the Patwari.

As the Court had noticed earlier in view of the notification and subsequent turmoil created in its interpretation the possibility of such entries being made by the good faith in this regard could not be ruled out. Thus, it cannot be said that prosecution has succeeded in proving its case against the petitioners beyond reasonable doubt.

For the aforesaid reasons, the present revision petitions are accepted and the petitioners are granted acquittal.

06.05.2015
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(MAHESH GROVER)
JUDGE