

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-3569 of 2015

Date of decision: 11.08.2015

Ravinderpal Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers 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?*

Present: Ms. Vikram Chaudhri, Senior Advocate
with Mr. Manish Verma, Advocate
for the petitioner.

R.P. NAGRATH, J. (Oral)

The petitioner has invoked jurisdiction of this Court under Section 482 Cr.P.C. seeking to set aside order dated 11.12.2014 (Annexure P-9) passed by the learned trial Court whereby application to lead secondary evidence in terms of Section 65 of the Evidence Act was allowed. The petitioner is facing trial in a case arising out of FIR No. 258 dated 16.08.2005 under Sections 420, 467, 468 and 471 of Indian Penal Code (IPC), Police Station City Batala. The challan was presented on 01.09.2006.

2. On the complaint made to the police, enquiry was conducted. It was found during investigation that Gurbachan Singh @ Bachan Singh, his wife Bachan Kaur in connivance with his nephews Sawinder Singh and Ravinderpal Singh (petitioner herein) alongwith area *patwari* Sawinder Singh sold the land to one Jagdish Singh for which mutation was also sanctioned as per

record of financial year 2010-11. Jagdish Singh further transferred the land to the complainant. Bachan Singh and his wife Bachan Kaur in connivance with area *Patwari* sold the same land by preparing forged documents to the petitioner, Harjinder Singh and Charanjit Singh, who are living in United States of America.

3. Learned trial court framed charges against the petitioner and co-accused finding *prima facie* case against them for offences under Sections 420, 467, 468, 471 read with Section 120-B IPC on 11.10.2013.

4. Chief examination of the complainant was recorded by the trial Court on 20.10.2014 and he stated that original documents were taken into possession by ASI Kewal Singh from Gurbachan Singh and Bachan Kaur accused for sending those documents for verification of thumb impressions, to the Finger Prints Bureau, Phillaur. Copy of the part of statement in chief examination of the complainant is Annexure P-5. PW-1 further stated that Kewal Singh ASI assured that the original documents would be returned after comparison. The report from Finger Prints Bureau was received that the thumb impressions are sufficiently ink-smudged and not comparable. The complainant recorded FIR No.150 dated 27.09.2008 under Sections 465, 217, 201, 471 and 120-B IPC, Police Station City Batala against Bachan Singh and ASI Kewal Singh. Challan was filed against them in the said FIR on 25.02.2009. Copy of challan report is Annexure P-6.

5. In the challan report (Annexure P-6) it was stated that

the investigating officer procured thumb impressions of the wife of Bachan Singh before the *Tehsildar* and also procured forged agreement to sell and transfer deed from the Court of SDM which were sent for report of the Finger Prints Bureau. The ASI then proceeded for course. The challan report says that during enquiry it has been found that ASI Kewal Singh in connivance with accused in FIR of the instant case obtained original documents of the agreement to sell and transfer deed from the Court of SDM pertaining to Jagdish Singh son of Bachan Singh and the transfer deed in favour of Jagjit Singh and Bachan Singh procured from the court of SDM and got the thumb impressions ink-smudged and then got it laminated in order to help the accused persons in the said FIR.

6. In the application filed by the prosecution for leading secondary evidence which has culminated in the impugned order, it was stated that original of the sale deeds are not in possession of the complainant and during investigation he handed over certified copy of sale deed dated 20.05.2005 executed by Bachan Kaur in favour of Harjinder Singh and Charanjit Singh through the petitioner alongwith, copy of forged *jamabandi* and affidavit of Bachan Kaur dated 20.05.2005, to the investigating officer. Certified copies of other relevant documents were also given. Original of the documents were in possession of vendees and original forged *jamabandi* and affidavit were lying in the office of Sub-Registrar, which could be produced by examining Clerk of the office of Sub-Registrar.

7. The crucial document for which main point of

argument raised by senior counsel for the petitioner is that agreement to sell dated 23.05.2003, executed by Bachan Kaur and her husband Bachan Singh, personally as attorney of Kartar Singh, in favour of Nirmal Singh, which was received by ASI Kewal Singh, Police Station Batala from the office of SDM, Batala on 05.04.2006 alongwith original agreement of exchange dated 25.09.2001 executed by Jagdish Singh and Gurbachan Singh, for comparison but the investigating officer got submerged the LTI of original agreement.

8. I have heard learned senior counsel for the petitioner and carefully perused the record.

9. Learned senior counsel for the petitioner submitted that FIR against ASI Kewal Singh was registered on 27.09.2008 and challan against him alongwith Bachan Singh son of Gurbachan Singh in that FIR was also prepared on 25.02.2009 but no effort was made by the prosecution to file application for secondary evidence for more than 5 years.

10. After given my thoughtful consideration to the aforesaid contention, I find that there is no force in the same because the complainant at his level could at best lodge an FIR against the ASI who was statedly at fault against whom challan has also been presented. If the prosecution did not move an application immediately after presentation of challan in the present case for leading secondary evidence, the victim cannot suffer. There is moreover not much of the delay in moving application because charges were framed against the accused persons on 11.10.2013. Learned senior counsel submitted that

since there was a contest with regard to framing of charge on behalf of the petitioner and other accused persons that the order of framing charge was passed on 11.10.2013. The complainant in this case was examined partly on 20.10.2014 when this fact seems to have come to the notice that there was no application for proving the relevant documents by way of secondary evidence.

11. Learned trial Court elaborately dealt with contentions raised on behalf of the petitioner and it was observed as under:-

“8. But this argument of learned counsel for accused is not tenable because perusal of report submitted by prosecution under Section 173 Cr.P.C. and documents annexed herewith clearly shows that alleged documents are main controversy in this case and upon which the accused are facing trial under Section 420 etc. of Indian Penal Code. Moreover, the photocopies of documents were also produced by the prosecution at the time of presenting the challan. Therefore, it cannot be said that these documents desired to be proved by the prosecution by leading secondary evidence is in surprise of the accused who are facing trial since long. Accused have been very well aware about the documents relied upon by the prosecution while presentation of challan. Further perusal of zimni orders shows that from the presentation of challan in the court on 01.09.2006 till 18.09.2013 prosecution could not lead evidence against the accused as time and again case was adjourned at the request of defence counsel

on the various applications moved by the accused in this case. Therefore, prosecution alone cannot be blamed in delay of the case.”

12. It was further observed that document sought to be proved are the basis of registration of present case against the accused persons.

13. Learned senior counsel for the petitioner, however, submitted that a civil suit for specific performance of agreement to sell dated 23.05.2003 has been filed by Nirmal Singh and the same is also going on between the parties. Even in the said civil suit application of plaintiff to prove this agreement by way of secondary evidence was allowed by the learned Civil Court and Bachan Singh challenged that order in CR No. 3014 of 2013 in which the order passed by learned lower court was stayed on 20.05.2013 by this Court. Copy of order dated 20.05.2013 of this Court is Annexure P-14. It is submitted that the said civil revision is still pending. I am of the view that pendency of civil revision cannot be a ground to stay operation of the impugned order in a trial for criminal case.

14. The other contention of learned senior counsel was that secondary evidence of a document can be led only on proof of existence, condition and contents of a document in the circumstances spelt out in Section 65 of the Indian Evidence Act. That of course is obvious as learned trial Court has to decide ultimately as to whether ingredients of Section 65 of the Indian Evidence Act are made out.

15. This Court in **Surinder Kaur vs. Mehal Singh and**

others, 2014 (1) RCR (Civil) 467 this Court laid down certain principles with regard to production of copies of the documents by way of secondary evidence. It was held as under:-

- a) *Photostat copy of a document can be allowed to be produced only in absence of original document.*
- b) *When a party seeks to produce Photostat copy it has to lay the foundational facts by proving that original document existed and is lost or is in possession of opposite party who failed to produce it. Mere assertion of the party is not sufficient to prove these foundational facts.*
- c) to f) xx xx xx xx xx
- g) *The accuracy of photostat copy shall be established on oath to the satisfaction of court by the person who prepared such copy or who can speak of its accuracy.*

16. Learned trial Court having exercised its discretion in the right perspective, I find no merit in the instant petition.

Dismissed.

August 11, 2015
jk

(R.P. NAGRATH)
JUDGE