

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

(1) CRR No.2521 of 2010 (O&M)

Date of Decision:-02.12.2015

Kanwar Lal and another

...Petitioners

Versus

State of Haryana

...Respondent

(2) CRR No.2744 of 2010

Gurmehar

...Petitioner

Versus

State of Haryana

...Respondent

(3) CRR No.3103 of 2010

Jagan Nath

...Petitioner

Versus

State of Haryana

...Respondent

(4) CRR No.3180 of 2010

Baldev Krishan

...Petitioner

Versus

State of Haryana and others

...Respondents

(5)

CRR No.1105 of 2011

Baldev Krishan

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM :- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. R.S. Sangwan, Advocate
for the petitioners (in CRR No.2521 of 2010).

Mr. Rahul Vats, Advocate
for the petitioner (in CRR No.2744 of 2010).

Mr. Sunil Panwar, Advocate
for the petitioner (in CRR No.3103 of 2010).

Mr. Hitesh Verma, Advocate
for the petitioner (in CRR Nos.3180 of 2010 and 1105 of 2011).

Mr. Manish Bansal, DAG Haryana.

HARI PAL VERMA, J.

This order shall dispose of CRR No.2521 of 2010 (*Kanwar Lal and another Vs. State of Haryana*); CRR No.2744 of 2010 (*Gurmehar vs. State of Haryana*); CRR No.3103 of 2010 (*Jagan Nath vs. State of Haryana*); CRR No. 3180 of 2010 (*Baldev Krishan vs. State of Haryana and others*) and CRR No. 1105 of 2011 (*Baldev Krishan vs. State of Haryana and others*) as same have arisen from a common case bearing FIR No.133 dated

9.6.2007 under Sections 419, 420, 467, 468, 471 and 120-B IPC registered at Police Station, Kanina, District Mahendergarh.

The petitions bearing CRR No.2521 of 2010, CRR No.2744 of 2010 and CRR No.3103 of 2010 have been filed by the petitioners-accused, namely, Kanwar Lal, Vikram, Gurmehar and Jagan Nath against the judgment dated 27.8.2010 passed by learned Additional Sessions Judge (Fast Track Court), Narnaul whereby the appeals against the judgment of conviction dated 5.6.2009 and order of sentence dated 6.6.2009 passed by learned Judicial Magistrate 1st Class, Mahendergarh, were dismissed. By way of these petitions, the petitioners-accused, namely, Kanwar Lal, Vikram, Gurmehar and Jagan Nath have sought their acquittal.

The petition bearing CRR No.3180 of 2010 has been filed by complainant-petitioner Baldev Krishan against the judgment dated 27.8.2010 passed by learned Additional Sessions Judge (Fast Track Court), Narnaul whereby the appeal filed by the State against the judgment dated 5.6.2009 passed by learned Judicial Magistrate 1st Class, Mahendergarh, was dismissed. By way of this petition, the complainant-petitioner Baldev Krishan has sought conviction of respondents-accused Mahender Singh, Umed Singh and Raj Kumar.

The petition bearing CRR No.1105 of 2011 has been filed by complainant-petitioner Baldev Krishan against the judgment dated 27.8.2010 passed by learned Additional Sessions

Judge (Fast Track Court), Narnaul whereby the appeal against the judgment of conviction dated 5.6.2009 and order of sentence dated 6.6.2009 passed by learned Judicial Magistrate 1st Class, Mahendergarh, was dismissed. This petition has been filed by complainant-petitioner Baldev Krishan for seeking enhancement of sentenced awarded to respondents-accused Gurmehar, Kanwar Lal and Vikram.

Learned Magistrate vide judgment dated 5.6.2009 held the petitioner-accused, namely, Jagan Nath guilty for the commission of offence punishable under Sections 120-B, 419/120-B and 467 IPC. The petitioners-accused, namely, Gurmehar and Vikram were held guilty for the offence under Sections 120-B, 419/120-B and 467/120-B IPC while accused Kanwar Lal was held guilty for offence under Sections 120-B, 419/120-B, 467/120-B and 471 IPC. The remaining accused, namely, Mahender Singh, Umed Singh and Raj Kumar were acquitted of all the charges levelled against them. Accused Amarjeet had died during the trial and as such, proceedings against him were dropped.

The learned trial Court vide separate order of sentence dated 6.6.2009 sentenced the accused Kanwar Lal (*petitioner in CRR No. 2521 of 2010*) to undergo rigorous imprisonment for three years and to pay fine of Rs.10,000/- for offence under Section 467/120-B IPC. In regard to offence under Section 419/120-B IPC, he was sentenced to undergo rigorous

imprisonment for two years and to pay fine of Rs.2,000/-. He was also sentenced to undergo rigorous imprisonment of two years and to pay a fine of Rs.2,000/- under Section 471 IPC. For the offence under Section 120-B IPC, he was sentenced to undergo rigorous imprisonment of two years and to pay a fine of Rs.2,000/-.

The accused Jagan Nath (*petitioner in CRR No. 3103 of 2010*) was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 10,000/- under Section 467 IPC. In regard to offence under Section 419/120-B IPC, he was sentenced to undergo rigorous imprisonment of two years and to pay a fine of Rs.2,000/-. He was also sentenced to undergo rigorous imprisonment of two years and to pay a fine of Rs.2,000/- under Section 120-B IPC.

The accused Gurmehar (*petitioner in CRR No. 2744 of 2010*) and Vikram (*petitioner in CRR No. 2521 of 2010*) were sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- each for offence under Section 467/120-B IPC. In regard to offence under Section 419/120-B IPC, they were sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.2,000/- each. They were also sentenced to undergo rigorous imprisonment of two years and to pay a fine of Rs.2,000/- for offence under Section 120-B IPC.

The learned Magistrate also ordered that the sentenced of all offences except under Section 120-B IPC shall

run concurrently, while the sentence under Section 120-B IPC of each convict shall be consecutive to their respective other sentences. In default of payment of fine, the convicts were ordered to undergo rigorous imprisonment for three months for each default of the fine payable.

Briefly stated, the facts of the case are that a complaint dated 09.06.2007 was received at Police Station Kanina, under Section 156(3) Cr.P.C. made by Baldev Krishan through general power of attorney Sarwan Kumar that Dharam Chand, father of the complainant was owner of 131 Kanal 18 Marlas land forming part of Khewat No.405, Khatoni No.473 Kita 20 situated in Village Uchat, Tehsil Kanina, District Mohindergarh. Dharam Chand had died on 4.5.1963 leaving behind the complainant Baldev Krishan and other brothers and sisters, who were residing at Faridabad. It was alleged that accused namely Gurmehar, Kanwar Lal, Vikram, Raj Kumar, Jagan Nath, Umed, Mahender, Ranvir, Bimlesh, Sunita Devi, Jagdish and Amarjit had conspired and had sold the aforesaid land by impersonating Dharam Chand vide sale deed No.1979 dated 13.11.2006 for an amount of Rs.41,51,000/-. As per instructions issued by the FCR Haryana, sale deed should have been executed under identification of Numberdar and witness of the same village, whereas it was executed under the identification of witness of accused Gurmehar Numberdar resident of Kalyana, Tehsil Dadri, District Bhiwani. Accused Mahender Singh Morwal, who was the Sub Registrar at the

relevant time allowed registration of the sale deed executed under the identification of witness of the persons, who were not residents of Village Uchat knowing it well that Dharam Chand had died. Further the accused Kanwar Lal has executed another sale deed No.2928 dated 2.3.2007 and has sold 61 Kanals 7 Marlas land for Rs.95,02,500/- to accused Ranbir, Bimlesh and Sunita citing Jagdish and Amarjeet as witnesses knowing it well that Dharam Chand had died in the year 1963. All the accused were aware of the fact that Dharam Chand had died on 4.5.1963, have forged the sale deed.

The police investigated the matter and accordingly submitted the challan. Copies were supplied to the accused free of costs and the accused were charge-sheeted for offence punishable under Sections 120-B, 419/120-B, 467/120-B, 471/120 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

The learned trial Court vide judgment dated 5.6.2009 held the accused guilty and sentenced them vide order of sentence dated 06.06.2009 as aforesaid. Against the judgment of conviction dated 05.06.2009 and order of sentence dated 06.06.2009 passed by Judicial Magistrate 1st Class, Mahendergarh, accused preferred appeals before the Learned Additional Sessions Judge (Fast Track Court), Narnaul. State also filed an appeal against acquittal of accused Mahender Singh, Umed Singh and Raj Kumar, however said appeals were

dismissed by the learned Additional District Sessions Judge (Fast Track Court) Narnaul vide judgment dated 27.08.2010. It is in the aforesaid circumstances that the aforesaid revision petitions have been filed by the petitioners challenging the judgment dated 27.8.2010 passed by learned Additional Sessions Judge (Fast Track Court), Narnaul.

Learned counsel for the petitioners in CRR No.2521, 2744 and 3103 of 2010 have submitted that the petitioners have not actually impersonated deceased Dharam Chand and have purchased the land in good faith and sold it further. There is no evidence of conspiracy against the petitioners and it is merely on the basis of disclosure statement, the Court convicted the petitioners, which is highly unreliable. The sentence awarded to the petitioners is highly disproportionate despite the fact that there being a gross in-discrepancy in the statements of the prosecution witnesses. They further submitted that complainant Baldev Krishan has already entered into compromise dated 19.4.2011 with Bimlesh, Sunita, Latesh Devi and Kamlesh in a suit pending before the Civil Judge (Junior Division), Mahendergarh and filed a photocopy of compromise which is taken on record.

However, in view of the limited scope of interference in the revisional jurisdiction, learned counsel for the petitioners in CRR No.2521, 2744 and 3103 of 2010 have not addressed the arguments on merits and confined prayer qua the quantum of

sentence only. They have prayed that the sentence awarded to accused-petitioners may be ordered to run concurrently with that of Section 120-B IPC.

On the other hand, learned counsel for the complainant has vehemently contested the aforesaid contentions and argued that there is no illegality in the judgment of conviction and sentence awarded by the Courts below. Dharam Chand had died in the year 1963 whereas accused Kanwar Lal was a tenant. While executing the sale deed dated 13.11.2006, accused Jagan Nath had impersonated Dharam Chand and has sold the land to Kanwar Lal, who was a tenant.

I have heard learned counsel for the petitioner and have gone through the case files.

The scope of revisional jurisdiction is vested with limited powers. Hon'ble Apex Court in ***Johar and others Versus M/s Mangal Prasad and another, 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, has observed as under:-

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although

is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

The judgment of conviction dated 5.6.2009 passed by learned Magistrate and affirmed by learned Additional Sessions Judge (Fast Track Court), Narnaul vide judgment dated 27.8.2010 does not warrant any interference so far as the conviction is concerned. However, this Court finds merits in the prayer of learned counsel for the petitioners that the sentence awarded to the accused/petitioners be ordered to run concurrently with the sentence awarded under section 120-B IPC.

Section 427 of the Code regulates the mode of execution of sentence in those cases where the offender is already undergoing a sentence for another offence. It reads as under:-

“427. Sentence on offender already sentenced for another offence:- (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing

such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.”

Considering the provisions of Section 427 Cr.P.C., Hon'ble Apex Court in ***Jang Singh vs. State of Punjab, 2008(1) RCR (Criminal) 323*** has held that where the accused was convicted and sentenced in two different offences, Court has discretion to convert consecutive sentences into concurrent running of sentences.

Therefore, this court to meet the ends of justice and having recourse to the provisions of section 427 Cr.P.C., modifies the order of sentence awarded by the learned Magistrate, whereby sentence awarded for offence under Section 120-B IPC was ordered to be run consecutively, to the extent that the sentences awarded to the petitioners in CRR No.2521 of 2010 (*Kanwar Lal and another Vs. State of Haryana*); CRR No.2744 of 2010 (*Gurmehar vs. State of Haryana*); CRR No.3103 of 2010 (*Jagan Nath vs. State of Haryana*) for all the offences including Section 120-B IPC shall run concurrently.

Admittedly, complainant Baldev Krishan has entered into compromise dated 19.4.2011 with Bimlesh, Sunita, Latesh Devi and Kamlesh in a suit pending before the Civil Judge

(Junior Division), Mahendergarh. Therefore, taking into consideration the aforesaid development, both the petitions filed by the complainant i.e. CRR No. 3180 of 2010 (*Baldev Krishan vs. State of Haryana and others*) and CRR No. 1105 of 2011 (*Baldev Krishan vs. State of Haryana and others*) are dismissed.

CRR No.2521 of 2010 (*Kanwar Lal and another Vs. State of Haryana*); CRR No.2744 of 2010 (*Gurmehar vs. State of Haryana*) and CRR No.3103 of 2010 (*Jagan Nath vs. State of Haryana*) filed by the accused-petitioners are also dismissed with the modification in the order of sentence, which shall now run concurrently qua section 120-B IPC also, qua all the accused-petitioners. However, the total amount of fine qua accused Kanwar Lal and Vikram petitioners in CRR No. 2521 of 2010 is enhanced to Rs.50,000/- which shall be paid by both the petitioners in equal share within two months from today failing which the petition qua these petitioners shall be deemed to be dismissed in toto. Accordingly, sentence qua these petitioners shall run concurrently subject to the payment of the enhanced amount of fine.

December 2, 2015
VIJAY ASIJA

(HARI PAL VERMA)
JUDGE