

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

**CRM-M-44447 of 2014 (O&M)**  
Date of decision: 16.11.2015

**Yogesh Bansal**

**-----Petitioner (s)**

V/s

**Paramjit Singh Gill & another**

**-----Respondent(s)**

**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. Aman Bansal, Advocate  
for the petitioner(s).

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**HARI PAL VERMA, J. (Oral)**

Petitioner has filed the present petition for quashing of order dated 31.1.2013 passed by Sub Divisional Judicial Magistrate, Dhuri, whereby the complaint filed by the petitioner under Sections 406, 420, 467, 468, 471/120-B IPC, Police Station Sadar Dhuri was dismissed, as well as order dated 13.10.2014 passed by learned Additional Sessions Judge, Sangrur, whereby the revision petition against order dated 31.1.2013 was also dismissed.

Briefly stated, the facts of the case are that the petitioner filed a criminal complaint against the respondents-accused with the allegations that his father was owner in possession of land measuring 46 Bighas and 9 Biswas situated in

the revenue estate of Village Bardwal, Tehsil Dhuri, District Sangrur. It has been averred that though this fact was in the knowledge of the accused, but they with a *mala fide* intention and in order to cause wrongful loss to the people of Shamlat Patti Barra Baas and also to have wrongful gains, got the above land mutated in the name of Desh Bhagat College Trust Regd. (hereinafter called as "the Trust"), Village Bardwal without any basis. This land was never gifted or donated by the residents of Shamlat Patti Barra Baas/Gram Panchayat, Bardwal to the 'Trust'. Respondent-accused No.1 is the Vice Chairman and respondent-accused No.2 is the Secretary of the Trust. They kept mum and allowed the revenue authorities to change the ownership of the land from Shamlat Patti Barra Baas to the name of the Trust. When the entries were made in favour of the Trust, respondent no.1 got resolution dated 9.8.1992 passed for the sale of the land and he is one of the signatories of the resolution. Similarly, respondent no.2 got resolution dated 31.10.1992 passed for the sale of land and through these resolutions, Mohinder Singh, Ajit Singh Pardeshi and Mewa Singh executed sale deeds. Accordingly, on the basis of resolutions, various sale deeds, as detailed in the plaint, were executed. The resolutions and sale deeds were kept secret. The complainant-petitioner came to know about these sale deeds from his uncle Shri B.B. Bansal, who had got this information under Right to Information Act, 2005 on 7.5.2009. Thus, the execution of sale deeds came to the

knowledge of the complainant on 7.5.2009. The price of the sold land was Rs.10,000/- per Bigha whereas the sale consideration was shown less than the actual amount received by the respondents-accused. They did not deposit the actual amount received by them in the bank account of the Trust and rather misappropriated the same for their personal benefits.

In his preliminary evidence, the complainant examined Malwinder Singh, Patwari as CW-1, who deposed that as per the jambandi for the year 1978-79, land measuring 46 Bighas 9 Biswas comprised in Khasra Nos.198/42-16, 571/2-18 and 572/0-15 situated in the revenue estate of Village Bhardwal, comprised in Khewat No.335/680, was in the ownership of Shamlat Patti Barra Baas and as per the record, neither any resolution was passed by Shamlat Patti Barra Baas nor this land was sold by auction to Desh Bhagat College, Bardwal and the mutation has been entered wrongly. It has further been averred that the Trust College after getting the mutation sanctioned in their name, had wrongfully sold the land vide mutations No.5866, 5869, 5806, 5825 and 5826. As per the jamabandi for the year 1973-74, in the column of ownership, the Shamlat Patti is recorded as owner, whereas in the column of possession, the Department of Canals is recorded. Similarly, Hazura Singh, Principal, Desh Bhagat College, Bardwal was examined as CW-2. He deposed that there is a private Trust and that the account books, audit reports and bank accounts are with the Chairman of the Trust namely S.K.

Tuteja and Secretary Shri Balwant Singh Meemsa, whereas the Vice Chairman has already resigned. The complainant-petitioner himself appeared as CW-3 and reiterated the contents of the complaint.

Learned Magistrate sought report from the police as required under Section 202 CrPC, in response to which, the police submitted the report to the effect that in case the complainant feels that mutation has been wrongly sanctioned, then the same can be challenged in Civil Court and all the sale proceeds were duly deposited in the bank account of the Trust and that no vendee had paid anything extra than the amount recorded in the sale deeds. The property has been sold to the vendees whose property abutted the property of the Trust, as this property was not cultivable and no one was ready to take it on lease. The property has been sold for completion of building of Guru Teg Bahadur Public School and not for any personal reasons of a particular person.

On the basis of the aforesaid depositions, learned Magistrate found that the person who was most affected by any transfer of property being Shamlat land was Gram Panchayat and the Gram Panchayat has not challenged the mutation or even the sale deeds. Even the complainant has not challenged the mutation or sale deeds. The mutation *qua* the property in question measuring 46 Bighas, 9 Biswas was sanctioned in the year 1983 and the first sale deed was executed thereafter in the year 1992.

Thus, a person with dishonest intention would never execute the sale deed after waiting for a period of nine years. Had there been any dishonest intention, the sale deed would have been executed on the very next day pursuant to the sanction of mutation. In this manner, mutation could have been challenged from the year 1983 i.e. when it was sanctioned till 1992 i.e. the date when the sale deed was executed. But it was never challenged before the revenue authorities or the Civil Court. Thus, the Magistrate has found that the accused have not been shown to have gained anything out of the mutations or the sale deeds sanctioned in the name of Desh Bhagat College, Bardwal. Similarly, the complainant has also failed to prove that the vendees paid an amount in excess of the amount recorded in the sale deeds to the accused. Accordingly, the complaint filed by the petitioner was dismissed by Sub Divisional Judicial Magistrate, Dhuri vide order dated 31.1.2013.

The petitioner challenged order dated 31.1.2013 by filing a revision petition. However, learned Additional Sessions Judge dismissed the same by observing as under:-

*“11. After going through the evidence of both the witnesses, I find that there was no prima facie case for summoning any of the two accused for offences for which complaint was preferred. The complainant himself had no knowledge about the facts on the basis of which he preferred the complaint. The information was given to him by Shri B.B. Bansal, who is his uncle. Shri B.B. Bansal has not appeared in the*

witness box. The trial Court is required to see whether there was any ground to proceed against any of the accused. It was not required to frame points of determination as argued by the learned counsel for the petitioner. The points of determination are required to be framed at the time of final disposal of the complaint and not at the stage of summoning of the accused. The Court is to see a prima facie case for the purpose of summoning. The impugned order has been passed by taking into consideration the enquiry report obtained from the SHO, P.S. Dhuri, under Section 202 Cr.P.C. This report is in the judicial record. It reveals that the relevant record was produced by the College during the enquiry and the same was perused and inquiry report was submitted by the SHO, P.S. Dhuri. It was found that the amount of sale proceeds of the land of the Trust was deposited in the bank account of the Trust. No amount was misappropriated. The land of the Trust was sold as it was not fertile and no one was ready to take the land on lease. The building of the Guru Teg Bahadur Public School, one of the Institutions being run by the Trust was incomplete and the land was sold to complete the construction. The persons, who have purchased this land also made statements before the Inquiry Officer in favour of the accused. Four Education Institutions were being run by the Trust, which are providing exemplary services to the educationally backward area. The evidence of Malwinder Singh Patwari is not sufficient to prove that the sanctioning of mutation in favour of the Trust is illegal. It was for the revenue authorities to ascertain the validity of the gift made in favour of the Trust

*before sanctioning the mutation. Moreover, the mutation does not confer any title and is sanctioned just to up date the revenue record. The Civil Court is empowered to see the validity of the sanctioning of mutation. The complainant could have challenged the gift or the mutation in the civil proceedings. The preliminary evidence does not prove misappropriation of any amount of sale proceeds. The complainant has chosen only two office bearers of the Trust for suing in the present complaint. The other trustees or office bearers have not been arrayed as accused. The statement of complainant cannot be relied upon as he has no personal knowledge to prove the allegations made in the complaint.”*

I have heard learned counsel for the petitioner and perused the impugned judgments.

Learned counsel for the petitioner contends that the learned Magistrate has dismissed his complaint without examining the legal aspects of the case, including the fact as to whether the mutation was rightly sanctioned in favour of the college and the accused made false representation to the revenue officer. He further submitted that the sale proceed was misappropriated but the same has not been considered by the Courts below.

A perusal of the record shows that learned Magistrate as well as the revisionary Court have rightly observed that at the most, it was the Gram Panchayat who was affected by transfer of property being Shamlat land, but the Gram Panchayat has not come forward to challenge the mutation or the sale deeds.

Surprisingly, even the complainant has also not challenged the mutations or the sale deeds. The mutation *qua* the property in question for land measuring 46 Bighas, 9 Biswas was sanctioned in the year 1983 and the first sale deed was, thereafter, executed in the year 1992. Thus, the person with dishonest intention would never wait for execution of the sale deed for a period of about nine years. Had there been any dishonest intention, the sale deed would have been executed on the very next day or immediately thereafter. Moreover, the complainant has failed to establish any unlawful gain by the accused out of the mutation/sale deeds, as the mutation was sanctioned in the name of Desh Bhagat College and sale proceeds were deposited in the account of Desh Bhagat College. The complainant has even failed to prove that the vendees paid any excess amount regarding the sale deeds.

Thus, considering the fact that neither mutation nor sale deeds have been challenged for a sufficiently long period, not only by the Gram Panchayat but also the complainant-petitioner as well, I find no ground to interfere in the judgments passed by the Courts below.

Accordingly, the petition is dismissed.

**November 16, 2015**  
**ak**

**( HARI PAL VERMA )**  
**JUDGE**