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

**CRM-M No.9307 of 2015 (O&M)
Date of Decision: 17.07.2015**

Inderjit Singh

....Petitioner

Vs.

State of Punjab and another

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Varun Sharma, A.A.G., Punjab.

Mr. Sharad Mehta, Advocate
for respondent No.2.

1. ***Whether Reporters of 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?***

RAJ MOHAN SINGH, J.

[1]. Petitioner seeks quashing of criminal complaint No.230 dated 26.08.2009, titled as Swaran Singh v. Inderjit Singh and others, under Sections 420, 120-B IPC, along with summoning order dated 30.08.2013 passed by Judicial Magistrate Ist Class, Tarn Taran along with entire subsequent proceedings.

[2]. Father of petitioner had four sons namely Inderjit Singh (petitioner), Ramesh Kumar, Hardeep Kumar and Pawan Kumar.

Petitioner sold one plot measuring 13½ malra out of joint land to Harbans Lal vide registered sale deed. Ramesh Kumar challenged the aforesaid sale deed in civil suit No.21 for declaration and permanent injunction.

[3]. Civil Court while deciding the suit gave categoric finding in para No.12 of the judgment while deciding issues No.1 and 2 collectively. Para No.12 of the judgment is reproduced as under:-

“It is needless to produce arguments. The sole point involved in this case is that whether property can be sold by defendant no.1 to defendant no.2 and further from defendant no.2 to defendant no.3 legally. As far as, sale by defendant no.2 to defendant no.3 is concerned, there can be no challenge to it as defendant no.2 has sold as he has purchased from defendant No.1 So, that sale deed is perfectly alright and cannot be declared as void and fabricated document nor the plaintiff has any right to get declared it null and void. Now, the question is whether defendant no.1 can sell the property inherited from his father without getting it partitioned. The answer is yes as it is clear that Rattan Chand died without executing any will. So all his sons have become owner of the property in their respective shares. Now, it is not clear from the plaint itself that what properties were left by Rattan Chand. The sale executed by defendant no.1 in favour of defendant No.2 does not figure in the plaint that in what regards the sale deed was. The cosharer can sell the property which fell into his share. Even he can sell in excess of his share regarding particular property. The only remedy available for the plaintiff to go into for partition If any cosharer has sold particular property in excess of his share then he has to

compensate other cosharer in other parcels of the property. Moreover, this suit is simple for declaration without seeking any relief. It is clear that possession was delivered by defendant no.1 to defendant No.2 and from defendant No.2 to defendant No.3. So it is clear that plaintiff is not in possession of property either exclusive or joint. The same has not been sought, so, suit is clearly barred under provisions of Section 34 of Specific Relief Act. Even otherwise, declaration cannot be sought to declare the sale deed executed between defendants no.1 and 2 on the ground that document is perfectly alright. The only question is regarding competency of defendant no.1 which I find that has to be seen after filing of suit for partition. Accordingly, right course for the plaintiff is to seek partition of the property and not declaration for declaring sale deeds null and void. Defendant no.1 can execute sale deed qua his share. So, he has rightly exercised his powers. Hence, both these issues are decided against the plaintiff and in favour of defendants.”

[4]. Trial Court specifically held that all the sons of Rattan Chand were owners of their respective shares and the sale deed executed by Inderjit Singh (petitioner) in favour of Parveen Kumar did not figure out in the plaint. Co-sharer can sell his share rather he can even sell in excess of his share which is always subject to partition. A simple suit for declaration was not held maintainable under Section 34 of Specific Relief Act. Therefore, the sales effected by petitioner were held genuine and only course available with the complainant was to seek partition of the property and not declaration to annul the sale deeds. The judgment and decree passed by Civil

Judge, Senior Division, Tarn Taran were never assailed by the complainant.

[5]. Rather a criminal complaint has been filed by one Swaran Singh not disclosing in the memorandum that he is holder of power of attorney of Ramesh Kumar, who was residing abroad. The complaint does not carry any recital of Swaran Singh as power of attorney of Ramesh Kumar. Only vague pleadings are given in para No.2 of the complaint that Ramesh Kumar and his power of attorney can pursue all his civil cases regarding the property in Fatehabad. The recital does not show that Swaran Singh was ever appointed as general power of attorney to file the present complaint or he was authorised to file criminal complaint in any manner because the recital only relates to pursue all civil cases regarding the property in village Fatehabad.

[6]. Criminal complaint ultimately tried by the Sub-Divisional Judicial Magistrate, Khadoor Sahib. Special power of attorney was tendered in the statement of complainant Swaran Singh as CW-4/A. Ramesh Kumar did not appear before the trial Court. Trial Court held that the bone of contention between the parties was that petitioner sold the property without getting the partition of joint land effected. Inderjeet Singh being attorney of Hardeep Kumar and Pawan Kumar subjected the property to sale in respect of plot and shop.

[7]. Paras No.18, 19, 20, 21, 22 and 23 of the judgment passed by Sub-Divisional Judicial Magistrate, Khadoor Sahib are relevant to

be quoted in the present context, which are reproduced as follows:-

“18. The main bone of contention is that without partition, accused Inderjit Singh sold the property i.e. plot Khasra no.177/2 (1-0), 177/3 (1-19) and one shop to accused no.2 to 5. The first sale deed in dispute is dated 28.1.2000 Ex.C-1. The said sale deed has been executed by Inderjit Singh being the power of attorney holder of Hardeep Kumar, Pawan Kumar. Hence, the property of Khasra no.177/2 and 177/3 has been sold by three brothers Inderjit Singh, Hardeep Kumar and Pawan Kumar. The second sale deed is dated 28.1.2000 Ex.C-5 which is relating to one shop (33 x 10.5 feet) executed by Inderjit Singh. Here it is pertinent to mention that Rattan Chand owned many properties in his name. Even the complainant Swaran Singh, during his cross examination admitted this fact. He has admitted in his cross examination that Rattan Chand has one residential house having 15 rooms and two floors. Rattan Chand had also one poultry farm in one kanal and had also got 6 to 7 shops and many other properties. It has also come on record that no partition has taken place between the brothers, which means all the properties are joint among the brothers. It is settled law that co sharer can sell the property, which falls in his share. Even he can sell excess of his share regarding particular property and the only remedy available with the other co sharer is to go for the partition. Without any clear partition it can not be said that a particular property, which has fallen into share of one brother has been sold. If the accused has sold some property after the death of his father, being one of the co owners, then that property will be deemed to be sold out of the share of the accused no.1 and will be taken into consideration at the time of partition. If accused no.1 has

sold the property in excess of his share, then, he has to compensate other co shares in other parcels of the properties.

19. *The sale deeds under reference are valid documents i.e. certified copy of registered sale deed dated 28.01.2002 registered on 31.01.2002 executed by Inderjit Singh in favour of Harjinder Singh, certified copy of said sale deeds 28.01.2002 and of dated 22.05.2002 Ex. C-4, Ex. C-5 and Ex.C-6. So far as the sale deed executed between accused no.5 and 6 is concerned, there can be no challenge to it as the accused no.5 has sold the property which has been purchased by him from accused no.1. Complainant can not say that there was any 'ill will' on the part of accused no.6 in purchasing that property from accused no.5. Moreover, there is no evidence qua this fact.*

20. *Ld. counsel for the accused has placed on record one judgment dated 20.12.2011 Ex. R-1. A civil suit was filed by Ramesh Kumar son of Rattan Chand against Inderjit Singh accused no.1, Parveen Kumar and Harbans Lal accused no.5 and 6 in which he sought the relief of declaration regarding cancellation of sale deeds dated 30.1.2000 and 22.5.2000 but the said suit was dismissed by the court of competent jurisdiction and it was held that the sale deeds are perfectly valid sale deeds and one of the co sharer can sell the property and the right course of the plaintiff is to seek partition of the property and not declaration for declaring the sale deed as null and void. In view of the civil suit decided by the court of competent jurisdiction it is also evidently clear that the only remedy with the other co sharer are to file the suit for partition. In the case in hand also, there is no ingredient of 420 IPC*

made out.

21. *Now coming to the point whether accused has committed an offence of cheating punishable u/s 420 of IPC. The word cheating has been defined u/s 415 of IPC. The main ingredients of section 420 are:*

- 1) *That the accused cheated another person.*
- 2) *That he hereby induced:*
 - a) *Delivery of property of any person, which property did not belong to the accused, or*
 - b) *To make, alter or destroy the whole or any part of a valuable security, or*
 - c) *Anything which is signed or sealed and capable of being converted into a valuable security.*
- 3) *That he did not dishonestly.*

22. *In the case in hand, there is no deception on the part of any of the accused. The complainant failed to prove on record that there was any fraudulent and dishonest intention on the part of the accused due to which the sale deeds has been executed. The complainant could not explain that if there was any dishonest intention or deception on the part of the accused. In absence of any such dishonest intention or deception, it can not be safely said that accused committed cheating with the complainant.*

23. *From the perusal of above discussion, I arrived at a conclusion that the complainant has miserly failed to*

prove his case beyond reasonable doubt. Therefore, the accused namely Harjinder Singh, Satwant Kaur, Gurpreet Singh, Parveen Kumar and Harbans Lal stands acquitted of the charges framed against them and they stand discharged of the liability of bail bonds furnished by them and their sureties stands discharged of the liability of the surety bonds furnished by them. The file be consigned to the Record Room after due compliance and shall be taken up as and when the accused Inderjit Singh (P.O.) surrenders himself before the court of the arrested by the police.

Pronounced in the open Court.”

[8]. The grievance of the complainant is that petitioner sold away joint land and shop belonging to himself as well as to his brothers Hardeep Kumar and Pawan Kumar on the basis of their attorney in favour of vendees. Sub-Divisional Judicial Magistrate, Khadoor Sahib acquitted all the other co-accused whereas petitioner was shown as proclaimed offender vide judgment of acquittal dated 19.07.2014.

[9]. Para 4 of the complaint is relevant to be quoted in the present context.

“That one plot measuring 13½ marlas as per Khasra No.177/3(1-0), 177/3(1-19) in village Fatehabad, Tehsil Khadoor Sahib surrounded by East: Plot of Sarwan Singh, West: Plot of Dharamvir Singh, North: Road, and on the Southern side Saroop Singh and one shop measuring (10-1/2x33 ft.) surrounded as on the Eastern side property of Harbans Lal, on the Western side property of Dharamvir Singh, on the Northern side Street, on the southern side

Market, Bazar Abadi situated at Bazar Andar Wala, Village Fatehabad, Tehsil Khadoor Sahib, district Tarn Taran was in the ownership of Rattan Chand son of Shri Jagan Nath. After death of Shri Rattan Chand his four sons namely Ramesh Kumar, Inderjit Singh, Pawan Kumar and Hardeep Kumar are owners as heirs. This property has not been partitioned till date amongst these four brothers and the property is the joint property, but accused Inderjit Singh alone has sold the said plot vide sale deed dated 28.01.2002 to accused no.2 to 4 in this manner, the same has been further sold to accused no.5 vide sale deed dated 28.1.2002 and the accused no.5 has further sold it to accused no.6 vide sale deed dated 22.05.2002.”

[10]. The complaint revolves around factum of sale deeds having been executed by petitioner. The factum of sale deed has been held to be genuine by the findings recorded by civil court as well as in the judgment of acquittal recorded by the criminal court in case of co-accused.

[11]. Since petitioner was declared proclaimed offender, therefore, he surrendered to the jurisdiction of Court and was granted bail by order dated 05.03.2015 passed by Additional Sessions Judge, Tarn Taran. Thereafter petitioner has been attending the Court proceedings regularly.

[12]. Learned counsel for the petitioner has also submitted that Hardeep Kumar and Pawan Kumar are mentally retarded brothers of petitioner and they are living in care and custody of petitioner in Canada. Even mother of petitioner is being attended by the family of

petitioner in Canada.

[13]. The controversy arising out of complaint is revolving around factum of *bona fide* and legality of sale deeds executed by petitioner. According to petitioner these sale deeds were executed by lawful means in respect of property of petitioner himself as well as the properties of Hardeep Kumar and Pawan Kumar on the basis of attorney. The sales effected by petitioner have been found to be genuine by the civil Court. Attorney of Ramesh Kumar/complainant remained unsuccessful in civil suit and the judgment dated 12.12.2011 by civil Court has already attained finality. The entire controversy gives rise to a civil profile only and in the civil suit also, the complainant has failed to pin-point any illegality in the sale deed.

[14]. Petitioner has already joined the proceedings. Co-accused have been acquitted in a full-fledged criminal trial vide judgment of acquittal dated 19.07.2014. Since the only incriminating allegation is in respect of alleged illegality in the sale deed which could not be noticed by the civil court as well as by the criminal court, therefore, continuation of proceedings against petitioner is an abuse of process of law particularly on same set of allegations co-accused have already been acquitted.

[15]. Learned counsel relied upon decision rendered by this Court in **CRM-M No.33466 of 2014** decided on 01.04.2015 titled as **Deepak and another v. State of Punjab** and submitted that continuation of proceedings would be an abuse of process of law

and the proceedings be dropped and cites **Sudo Mandal@ Diwarak Mandal v.State of Punjab, 2011(2) RCR (Crl.) 453.**

[16]. On the other hand learned counsel for the complainant-respondent No.2 relies upon **2014(4) Law Herald 2970, Munfed and another v. State of Haryana** to contend that complaint cannot be quashed in view of **2013(6) SCC 428 Yanab Sheikh @ Gagu v. State of West Bengal**. It is true, the Court has to spring entire evidence and does not extend the threat of falsity to universal acquittal. The Court must examine entire prosecution evidence in its correct perspective before concluding the effect of acquittal.

[17]. In the present case, the incriminating allegation forming subject matter of criminal complaint was that petitioner sold plot and shop out of joint land. The complaint filed by Swaran Kumar has its own questionable background in the context of not reciting him to be power of attorney for the purposes of filing criminal complaint. The only recital in para No.2 was that Ramesh Kumar and his attorney were pursuing civil litigations. The factum of sale deeds were found to be genuine by the civil court and that judgment has already attained finality. In the criminal Court also co-accused have been acquitted.

[18]. After thorough perusal of evidence on record, there is no incriminating evidence over and above the evidence led before the trial Court which entailed in acquittal of co-accused. Therefore, above mentioned precedents do not coincide with the facts emerging

in the present case. Ramesh Kumar complainant is still in Canada. Hardeep Kumar and Pawan Kumar are also in Canada and are being looked after by petitioner's family along with their mother according to the assertion made by petitioner which has not been denied by respondent.

[19]. Taking into consideration the entirety of facts and circumstances, it is culled out that the controversy was of civil consequence and that civil suit has also culminated in dismissal of the claim of the complainant. Therefore, the only incriminating thing against the petitioner was that at one point of time he was declared to be proclaimed offender otherwise he also could have faced trial along with other co-accused who have since been acquitted. So far status of petitioner being proclaimed offender is concerned, he has already surrendered before the Court and has been granted regular bail on 05.03.2016.

[20]. Therefore, in the absence of any other incriminating allegation, the decision of civil court as well as criminal court in case of co-accused would make the continuation of these proceedings to be an abuse of process of law.

[21]. In view of facts and circumstances as detailed above, I am of the view that inherent jurisdiction of this Court can be exercised under Section 482 Cr.P.C., in order to prevent abuse of process of law and to achieve ends of justice in quashing criminal complaint No.230 dated 26.08.2009 titled as Swaran Singh v. Inderjit Singh,

under Sections 420, 120-B IPC, along with entire subsequent proceedings including summoning order dated 30.08.2013.

[22]. Ordered accordingly.

July 17, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE