

CRR-822-2015

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

CRR-822-2015

Judgment Reserved on : 13.05.2015

Date of Decision: 28.05.2015

Gurmail Singh

.... Petitioner

Versus

State of Punjab and another

.... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 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 ?

Argued by : Mr. A.S.Gill, Advocate,
for the petitioner.

Mr. S.S.Chandumajra, DAG, Punjab.

Mr. P.S.Hundal, Sr. Advocate with
Mr. Dinesh Trehan, Advocate,
for respondent No.2.

Paramjeet Singh, J.

Instant revision has been preferred by petitioner-complainant (Gurmail Singh) challenging the judgment dated 10.12.2014 passed by the Additional Sessions Judge, Jalandhar whereby his appeal seeking enhancement of sentence of accused has been dismissed and appeal filed by respondent No.2-Rajiv Verma has been allowed and judgment of conviction and order of sentence dated 19.03.2014 passed by the trial Court have been set aside and he has been

CRR-822-2015

acquitted of the charges framed against him.

Brief facts of the case are to the effect that one Kulwinder Singh son of Parsoon Singh, general attorney (vide registered attorney No.9092/4 dated 11.2.1999) of Jagdish Kaur, sold 2 kanals 8 marlas of land to Gurmail Singh son of Kartar Singh pertaining to khasra numbers 37/2 (2-0), 20(6-9), 21(3-2), 18/2(2-15), 19/2(2-2), 22/1(0-18), 314(8-0), 315(8-0), 316(8-0), 330(8-0), 331(8-0), 332(8-0), 668(8-0), 669(8-0), 672(8-00), 673(8-0), 676(7-8), 968/1(4-9), 965/1(4-9), 964/2(1-10), from the total land measuring 115 kanals 2 marlas vide registered sale deed dated 18.2.1999 and the mutation No.1381 was sanctioned in favour of Gurmail Singh on 24.2.1999. Gurmail Singh got physical possession on the same day (i.e. the date of registration of sale deed) in the presence of Sagar Singh son of Piara Singh. Thereafter, another sale deed was executed by Jagdish Kaur wife of Sagar Singh in favour of Hussan Lal son of Pritam Dass, resident of village Kot Khurd, Tehsil and District Jalandhar on 31.3.1999 and that sale deed was executed for 10 marlas of land, out of khasra number 18/2(2-15) and 19/2(2-2) shown in jamabandi for the year 1993-94. Thereafter, Hussan Lal in connivance and in criminal conspiracy with Parduman Singh Patwari of village Kot Khurd and Satwinderjit Pal, concerned Kanungo and other accomplices, made additions of some more khasra numbers in addition to khasra number 18/2 and 19/2 in the original sale deed in his possession for the purpose of entering the mutation in the revenue record, whereas in the copy of sale deed, which was in the custody of Registrar, Registration, Jalandhar,

CRR-822-2015

only two khasra numbers i.e. 18/2 and 19/2 were written. Thereafter, the sale deed was put up before the Patwari Pardhuman Singh for sanctioning of mutation and he made entries in the revenue record for sanctioning of mutation in favour of Hussan Lal mentioning additional khasra numbers of the joint land as stated above. Accordingly, mutation no.1386 was sanctioned in favour of Hussan Lal on 27.04.1999. Thereafter, when this discrepancy was pointed out by the complainant, the accused in order to save their skin and to justify their actions connived to amend the sale deed by adding above said additional khasra numbers in the sale deed vide amended sale deed i.e. Tatima registry dated 13.07.1999. The complainant Gurmail Singh after getting a certified copy of sale deed dated 31.03.1999 moved application before the Deputy Commissioner, upon which an inquiry was got conducted through Smt. Sarojini Gautam Sharda, Deputy Excise and Taxation Commissioner, Jalandhar, who recommended action against Jagdish Kaur, Hussan Lal, Patwari Pardhuman Singh, Girdawar Kanungo Satinderjit Pal and Circle Revenue Office Rajiv Verma for conniving with each other for sanctioning the mutation with added khasra numbers. On the basis of said report, FIR was registered.

Vide order dated 02.04.2003, Chief Judicial Magistrate framed charges under Sections 420/467/468/471/466 of the Indian Penal Code ('in short, 'IPC'). After the summoning of additional accused, charge was re-framed/amended, vide order dated 24.02.2014, under Sections 420/466/467/468/471/120-B IPC.

CRR-822-2015

In order to prove its case, the prosecution examined complainant-Gurmail Singh as PW 1, Inspector Jaswant Singh as PW 2, ASI Surinder Singh as PW 3, Dheera Singh, Patwari as PW 4, Gagandeep Singh, Senior Assistant Director of Land Records, Punjab as PW 5, Smt. Sarojini Gautam Sharda, Deputy Excise and Taxation Commissioner, Jalandhar as PW 6, Parveen Kumar Clerk of HRC, Branch, DC Office, Jalandhar as PW 7.

Statements of accused under Section 313 of the Code of Criminal Procedure (in short, 'the Code') were recorded. All the incriminating evidence appearing against the accused was put to them. They denied the same and pleaded false implication. However, the accused did not lead any evidence in their defence.

The trial Court, vide judgment of conviction and order of sentence dated 19.03.2014, convicted accused namely Hussan Lal, Rajiv Verma Tehsildar and Pardhuman Singh Patwari whereas acquitted accused-Ajay Kumar. Feeling aggrieved, accused namely Hussan Lal, Rajiv Verma and Pardhuman Singh filed separate appeals. The State of Punjab through complainant-Gurmail Singh also filed appeal challenging the acquittal of accused-Ajay Kumar and for enhancement of sentence of Hussan Lal, Rajiv Verma and Pardhuman Singh. Vide impugned judgment dated 10.12.2014, learned Additional Sessions Judge decided all the four appeals whereby appeals filed by Pardhuman Singh and Hussan Lal have been dismissed; appeal filed by Rajiv Verma has been allowed and he has been acquitted of the charges framed against him and

CRR-822-2015

appeal filed by the State through complainant has also been dismissed. Hence, this revision by complainant against the judgment of the appellate court acquitting respondent No.2.

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

Learned counsel for the petitioner has strenuously contended that without finding out the truthfulness of the contents, respondent No.2 sanctioned the mutation in connivance with Pardhuman Singh Patwari, Kanungo and Hussan Lal beneficiary. Respondent No.2 has conspired with Hussan Lal for making a false document. The trial Court was justified in framing the charges against respondent No.2 along with other accused and convicting and sentencing respondent No.2. The lower Appellate Court has erred in law while allowing the appeal of respondent No.2 and setting aside his conviction.

Per contra, learned senior counsel for respondent No.2 contended that the trial Court has wrongly recorded his conviction, but the Appellate Court has rightly recorded finding of acquittal. Learned senior counsel for respondent No.2 vehemently contended that revisional jurisdiction when invoked by a private complainant against an order of acquittal cannot be exercised lightly and it can only be exercised in exceptional cases. In support of his contentions, learned senior counsel relied upon *Sheetala Prasad and others Sri Kant and another* 2010 (2) SCC 190. Learned senior counsel further contended that respondent No.2 at the time of sanction of mutation was performing the duties of

CRR-822-2015

Tehsildar/Assistant Collector, as such acted as a Judge and is entitled to protection under the provisions of the Judges (Protection) Act, 1985. In support of his contentions, learned senior counsel relied upon **Balram Har Prasad Choubey vs. Aswani Kumar Yadav** 2002(1) R.C.R.(Criminal) 31. Learned senior counsel further contended that respondent No.2 is a public servant who can be removed only by the State Government. In view of this, sanction for prosecution under Section 197 of the Code was necessary. In such a case, no court can take cognizance without sanction of the competent authority. In the present case, no sanction has been obtained by the competent authority to prosecute respondent No.2. In support of his contentions, learned senior counsel relied upon **Lal Chand vs. Sukhwinder Singh Dhillion Tehsildar** 2008 (1) R.C.R.(Criminal) 258 and **State of Punjab vs. Labh Singh** 2015 (1) R.C.R.(Criminal) 287. Learned senior counsel further contended that mutation is not a document which creates any title. The sanction of mutation based on wrong information or incorrect document cannot make out an offence under Section 467 or 471 IPC. In support of his contentions, learned senior counsel relied upon **Behari Lal vs. Baldev Singh and others** 1983 (1) R.C.R.(Criminal) 291.

I have considered the rival contentions of learned counsel for the parties.

Before I examine the contentions raised by learned counsel for the parties, it would be appropriate to examine the limitations of this Court while deciding criminal revision. This court has a very limited

CRR-822-2015

jurisdiction while interfering with the finding of the learned courts below. In ***Dulli Chand Vs. Delhi Administration*** AIR 1975 SC 1960, the scope of invoking jurisdiction of the High Court in criminal revision was examined and it was held that the High Court should not re-appreciate the evidence in absence of perversity of finding. In ***State of Kerela Vs. Puttamana Illath Jathavedan Namboodiri***, (1999) 2 SCC 452, it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the revisional power cannot be equated with the power of an appellate court nor it be treated even as a second appellate jurisdiction.

Before recording conviction qua charges framed against offender, it is the bounden duty of the courts to see whether the ingredients of the offence exist or not? The Court cannot possibly be swayed by extraneous facts. Both Courts below being courts of facts are required to evaluate the evidence and documents on record with a view to find out if the evidence brought before the court discloses the existence of all the ingredients constituting the alleged offences. It is not the case of the prosecution that respondent No. 2 altered any part of the sale deed; nor it is the case of the prosecution that he has made, sealed, executed, transmitted or affixed any part of the document. The original sale deed was in the custody of Hussan Lal, vendee and the contents of it were forged by adding more khasra numbers and so false document was made before presenting the same for sanction of mutation. Therefore, the essential ingredients of Section 471 IPC are clearly not proved

CRR-822-2015

against respondent No.2. Admittedly, as per Chapter 7 of the Punjab Land Records Manual, procedure as regards registered deeds of transfer is prescribed under para 7.32 (ii), registration memoranda (*Parcha Yadasath*) is sent to the Kanungo and Patwari by the Sub Registrar and on that basis, entry is required to be made in the revenue record including mutation. Respondent No.2 was aware of the fact that when the sale deed is executed, its registration memoranda is also sent to the Patwari and Kanungo. He should have verified the relevant facts of transfer of agriculture land vide sale deed from the registration memoranda, even if the original sale deed was not available. Such a negligence on the part of respondent No.2 is certainly a dereliction of duty as there is no evidence with regard to the connivance of respondent No.2 with co-accused, Kanungo and beneficiary. As per the evidence adduced in the present case by the prosecution, the prosecution has been able to prove against respondent No.2 dereliction of duty, but mere dereliction of duty would not bring the case within the four corners of offences under Sections 468 and 471 IPC. Moreover, there seems to be no prima facie evidence even to show that there was a conspiracy between Hussan Lal, others and respondent No.2 for the purpose of committing offence under Sections 468 and 471 IPC. The courts cannot make a subjective assessment of the evidence produced by the prosecution. The courts are expected to objectively assess the evidence and to examine whether the commission of offence actually exists or not? The objective assessment would require that the judicial officers are

CRR-822-2015

not swayed by emotions.

The next contention of learned senior counsel for respondent No.2 was that respondent No.2 being Tehsildar, is a public servant and is removable from the post by the Government only. The Tehsildar while sanctioning the mutation exercises the powers of Assistant Collector and as such performing the functions of a quasi judicial nature which can be termed as performance of duty as a Judge. Admittedly, cognizance against respondent No.2 being a public servant, would not have been taken by the court without sanction under Section 197 of the Code. Sanction 197 of the Code is required when offence is committed in the course of discharge of official duty. The function of sanctioning a mutation by Tehsildar-cum-Assistant Collector is in discharge of his official duty. The proposition is squarely covered by the law laid down in ***Lal Chand's case (supra)*** and ***Labh Singh's case (supra)***. So the cognizance against respondent No.2 was bad in law.

Respondent No.2 while sanctioning mutation acted in discharge of duties which are quasi judicial in nature. In catena of judgments, it has been held that Tehsildar-cum-Assistant Collector performs the duties of a Judge. The proposition is covered by the law laid down in ***Balram Har Prasad Choubey 's case (supra, Lal Chand's case (supra)*** and ***K. Kalimuthu vs. State by PSP, 2005(2) RCR(Crl.) 463 (SC)***. In view of the above, respondent No.2 is entitled to the benefit of protection also under the provisions of Judges (Protection) Act, 1985.

CRR-822-2015

Besides the above, ordinarily also, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion, unless any glaring illegality is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

In the light of above pronouncements and discussions there seems no manifest error of law in the conclusions or in analyzing the evidence by the appellate court. Thus, I find no reason to interfere with the impugned judgment of the appellate court.

Dismissed.

28.05.2015
parveen kumar

(Paramjeet Singh)
Judge