

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

(1) CRA-S-1582-SB of 2008
Date of decision:- 14.3.2016
Dharambir Yadav and another ...Appellants

Versus

State of Haryana ...Respondent

(2) CRA-S-1636-SB of 2008
Hanuman ...Appellant

Versus

State of Haryana ...Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Argued by: Mr. R.S. Rai, Senior Advocate with
Mr. Dilpreet Singh, Advocate
for the appellants in CRA-S-1582-SB of 2008

Mr. S.S. Narula, Advocate
for the appellant in CRA-S-1636-SB of 2008.

Mr.Naveen Sheoran, D.A.G., Haryana.

GURMIT RAM, J.

The above noted both the appeals have been taken up together for disposal since these emanate from one and the same judgment of conviction in order to avoid repetition and conflict of judgments.

2. The above noted CRA-S-1582-SB of 2008 has been preferred by appellants Dharambir Yadav and Jagdish, Lamberdar whereas above

noted CRA-S-1636-SB of 2008 has been preferred by appellant Hanuman-Deedwriter, whereby assailing the judgment and order of sentence dated 9.8.2008 passed by the Court of learned Special Judge, Gurgaon in criminal case bearing FIR No.29 dated 7.11.2001, u/Ss 406, 420, 468, 471 read with Section 120-B of Indian Penal Code, 1860 (for short – '*IPC*') and Section 13 of Prevention of Corruption Act, 1988 (for short – '*PC Act*'), Police Station SVB (H) Gurgaon vide which they were held guilty for the offences punishable u/Ss 420, 467 and 471 read with Section 120-B, IPC and sentenced thereunder, whereas they were acquitted of the remaining charges vide the impugned judgment.

3. The case of prosecution in brief as put forth before the learned trial Court was that K.J. Somaiya (Delhi) Trust (hereinafter referred to as '*the trust*') presented an application before the then Chief Minister, Haryana for ordering suitable Administrative Vigilance inquiry against Dr.Dharambir Yadav, Ex. Minister for cheating 'the trust'. On the basis of this application, the inquiry bearing No.28 dated 4.9.2000 was conducted by Sh.K.K. Sandhu, the then Superintendent of Police, State Vigilance Intelligence Bureau, Gurgaon Division, Gurgaon. The allegation in the inquiry was that said Dharambir Yadav had entered into an agreement with 'the trust' for purchasing land for 'the trust'. For this purpose, he received Rs.1,09,35,000/-, out of which he used only Rs.29,85,325/- for purchasing 11 acres of land in the name of 'the trust'. During inquiry, it was revealed that "the trust" had given the power of attorney to said Dharambir Yadav, Ex. Minister of Haryana after an agreement dated 26.6.1995 for the purpose above mentioned. Similarly,

another agreement and power of attorney dated 19.6.1996 was executed in his favour by 'the trust' after some changing, when he (Dharambir Yadav) was holding post of MLA/Minister in the Haryana Government. He received the above-said sum of Rs.1,09,35000/- from 'the trust' on different dates through cash/cheques/drafts between the period w.e.f. 30.4.1995 to 31.3.1997. The remaining unutilized amount of Rs.79,49,675/- was grabbed by Dharambir Yadav by cheating 'the trust'. Then 'the trust' cancelled the power of attorney on 15.3.2000 since Dharambir Yadav did not give any response to the request of 'the trust' either to utilize the remaining amount or to return the same to it. Then during inquiry, it was also learnt that Dharambir Yadav had also executed an agreement to sell with one Siria son of Ami Chand, resident of village Ghata for purchasing land measuring 48 kanals 7 marlas situated in village Rithoj @ Rs.3.60 lacs per acre in August, 1995. After one week of this agreement, the said Siria was taken to a deed writer in Tehsil Gurgaon, where his thumb impressions were taken on some blank papers. His photograph was also got snapped. Besides this, he was given three demand drafts of Rs.21.60 lacs as the sale consideration of the above-said land. Thereafter, Siria did not put his thumb impressions on any paper nor did he visit the office of Sub-Registrar, Tehsil Sohna to get the sale deed executed of his land located in village Rithoj. Then during inquiry, it was also found that a sale deed bearing No.3559 dated 31.3.1997 was executed in favour of 'the trust' qua land measuring 8 kanals of Siria situated in village Rithoj for a sale consideration of Rs.3.60 lacs on which stamp duty of Rs.49,000/- was affixed. Then during the inquiry, thumb

impressions of Siria on the alleged sale deed No.3559 dated 31.3.1997 were got compared with his admitted thumb impressions from Finger Print Expert Bureau, Madhuban and it was found that this sale deed was not bearing any thumb impressions of Siria. Stamp papers for preparing this sale deed were purchased by one Chandgi Ram, resident of village Laghuwas on 21.3.1996 and his signature was obtained on the sale deed as an attesting witness and then after making some cutting, signatures of Jagdish, Lambardar, resident of village Daula were obtained. Since Chandgi Ram, Lamberdar had died on 23.3.1997, so it was evident that this sale deed was scribed before 31.3.1997. This sale deed was signed by Dr.Dharambir Yadav, Jagdish Lamberdar and Hanuman son of Laxman Singh. The same was registered in the Tehsil office, Sohna by Hanuman Singh, the then Naib Tehsildar, Sohna. Dharambir Yadav had acted as an commission agent by misusing his position while holding the post of MLA/Minister. He cheated 'the trust' by grabbing its amount to the extent of Rs.79,49,675/- and forged sale deed bearing No.3559 prepared with regard to the land of said Siria. On the basis of inquiry, report (Ex.PS) was submitted for registration of the case u/Ss 406, 420, 467, 468, 471, 120-B of the IPC and Section 13 (1) (c) & (d) of the PC Act against Dharambir Yadav Ex-Minister, Hanuman Singh, the then Naib Tehsildar, Jagdish Lamberdar and Hanuman son of Laxman Singh (deed writer). Accordingly the instant case was registered against them. They were apprehended in this case. Statements of witnesses were recorded. All the concerned records were taken into police possession. On the completion of investigation, challan against the accused was presented in the Court of

learned Special Judge, Gurgaon.

Compliance of the provisions of Section 207, Cr.P.C. was duly made.

4. Finding a prima-facie case punishable under Sections 420, 467, 468, 471 read with Section 120-B, IPC against all the accused, they were charge-sheeted accordingly. Further a prima-facie case punishable u/S 406, IPC and u/S 13(1) (C) read with Section 13(2) of PC Act was found to have been made out against accused Dharambir Yadav, whereas a prima-facie case for the offence punishable u/S 13(1) (d) read with Section 13(2) of the PC Act was found to have been made out against accused Hanuman, Naib Tehsildar and as such both of them were charge-sheeted for these offences also respectively. All the accused pleaded not guilty to said charges and claimed trial.

Then it is also found mentioned in the impugned judgment that proceedings against accused Hanuman, Sub-Registrar in this case were quashed by the Hon'ble High Court vide order dated 10.3.2006 whereby leaving only three present appellants (accused) to face trial in this case.

5. During trial of the case, to prove its version against the accused, the prosecution examined as many as seventeen witnesses in total.

6. Then the accused were duly examined as required under the provisions of Section 313 of Cr.P.C. Entire incriminating evidence as brought on the file during trial of the case against them was put to them, which they denied. Further they pleaded their false implication in this

case.

7. In their defence, accused also examined Sanjeev Hooda, Clerk from Haryana Vidhan Sabha Secretariat, Chandigarh as DW1.

8. The learned trial Court after hearing the learned counsel for both the parties and going through the record as well held the present appellants (accused) guilty for the offences punishable u/Ss 420, 467 and 471 read with Section 120-B, IPC vide the impugned judgment and acquitted them of the remaining charges and awarded them sentences as detailed below:-

Serial No.	under Section	Sentence
1	420 read with Section 120-B, IPC.	To undergo rigorous imprisonment for a period of one and a half years.
2	467 read with Section 120-B, IPC.	To undergo rigorous imprisonment for a period of one and a half years.
3	471 read with Section 120-B, IPC.	To undergo rigorous imprisonment for a period of one year.

All the sentences were ordered to be run concurrently.

9. The appellants (accused) being not satisfied with the impugned judgment of conviction and order of sentence have come up in the instant appeals before this Court, notices of which were given to the respondent - State. Record of the learned trial Court was also requisitioned.

10. Learned counsel for both the parties have been heard and record has also been examined with their able assistance.

11. Learned counsel for the appellants have contended that the impugned judgment of conviction is not sustainable at all in the eyes of

law as there was not even an iota of substantive evidence on the record to sustain the conviction of the appellants. It was further their contention that the learned trial Court while holding the appellants guilty in this case for the offences above mentioned has mainly relied upon the report (Ex.PK) of Finger Print Expert Bureau, Madhuban and the inquiry report (Ex.PS) submitted by the inquiry Officer after holding inquiry on the basis of application of 'the trust'. Herein they have also submitted that during trial of the case it was the plea of prosecution that one sale deed Ex.PH was got executed by appellant Dharambir Yadav qua the land measuring 8 Kanals belonging to one Siria (PW10) situated in village Rithoj by producing somebodyelse on his behalf at the time of registration of this sale deed before the office of Sub-Registrar concerned. Then it is also their contention that during the Vigilance inquiry, thumb impressions of said Siria were obtained and the same were got compared from the office of Finger Print Expert Bureau, Madhuban with the disputed thumb impressions of Siria on sale deed Ex.PH and after the comparison, the said Bureau submitted its report Ex.PK that the disputed thumb impressions of Siria on sale deed Ex.PH are not of Siria. On the basis of this expert report Ex.PK of Finger Print Expert Bureau and inquiry report Ex.PS of the inquiry Officer, the appellants have been held guilty for the above-said offences under Sections 420, 467, 471 read with Section 120-B, IPC. Besides this, while holding them guilty for the above-said offences, the learned trial Court also considered the fact that during investigation of the case, statement of Siria (PW10) was recorded by the police in which he had narrated that he never appeared before the Sub-Registrar at the time

of registration of sale deed Ex.PH nor did he put his thumb impressions on it at any stage.

12. But on the other hand, learned State counsel has contended that learned trial Court has been fully justified in holding the appellants guilty for the offences u/Ss 420, 467, 471 read with Section 120-B, IPC vide the impugned judgment by giving valid reasoning. Then it is also his contention that during the Vigilance inquiry conducted on the application Ex.PS of 'the trust' it was established that the sale deed in question was got executed by appellant Dharamvir Yadav in connivance with his co-appellants by way of fraud and forgery. He also kept substantial amount of 'the trust' in his custody for a sufficient long time and as such his intention from the very beginning was to cheat 'the trust' qua the amount which he was holding on its behalf as its trustee. But so far this contention of learned counsel for the State qua misappropriation is concerned, he cannot be permitted to raise the same for the reason that appellants (accused) are acquitted of the charges u/Ss 406, 468 read with Section 120-B, IPC and u/S 13(1) (c) read with Section 13(2) of the PC Act as also u/S 13(1)(d) read with Section 13(2) of the PC Act, vide the impugned judgment and the State has not come forward with any appeal qua their acquittal of these charges.

13. I have gone through the entire evidence on record and have come to the conclusion that only incriminating evidence against the appellants for holding them guilty as considered by learned trial Court was the report Ex.PK of the Finger Print Expert Bureau, Madhuban. So far as above said Siria is concerned, he appeared during trial of the case

as PW10, therefore, it is worthwhile to discuss his statement in some brief. He stated that he purchased land measuring 48 kanals 7 marlas in village Rithoj, Tehsil Sohna. He decided to sell the same, since he could not purchase more land. For this purpose, he contacted Maha Singh, Ram Singh and Dharambir and the sale price was settled @ 3.60 lacs per acre. The said Dharambir, Maha Singh and Ram Singh took him to Gurgaon, Tehsil where his signatures were obtained, besides taking of his photograph. He was also given cheque/drafts of Rs.21.60 lacs which he deposited in Union Bank of India. He put his thumb impressions on written paper/sale deeds and not on any blank papers. He did not sell any land to Dharambir, Maha Singh and Ram Singh. Then this witness was declared hostile and was allowed to be cross-examined by the Public Prosecutor. During his cross-examination made by prosecution, he stated that he did not make any statement before the police. When his alleged statement Ex.PT was put to him for the purpose of confrontation in small portions, then he denied to have made any such statement before the police. Then in the cross-examination made by learned defence counsel, he stated that no cheating or forgery was committed with him. Sale deed Ex.PH (wrongly written as Ex.PA) bears his thumb impressions and he appeared before the Sub-Registrar, Sohna at the time of registration of this sale deed.

Then there is statement of PW6 Raj Singh, Clerk, Union Bank of India, Gurgaon to the effect that as per the record brought by him, account No.9624 of Siria son of Ami Lal is mentioned at page No.547. As per entry dated 21.8.1995, Rs.21,60,000/- were credited in the

account of Siria, photocopy of which was Ex.PL and Ex.PL/1.

Since Siria (PW10) has not supported the case of prosecution during trial of the case, so there remains only the report (Ex.PK) of Finger Print Expert Bureau on the record qua the charge of forgery. Statement made by this witness during investigation of the case under Section 161, Cr.P.C., cannot be taken into consideration at all for the purpose of deciding of this case/appeal. The approach of the learned trial Court in relying upon such a statement made before the police during investigation of the case under Section 161, Cr.P.C., is held to be wholly incorrect being not tenable in the eyes of law.

14. Now the legal evidentiary value of this report Ex.PK is to be seen. This report was proved by Jai Narain, Inspector, Finger Print Expert, Finger Print Bureau, Madhaban (PW4). It is settled law that such like report is merely corroborating piece of evidence and not the substantive evidence. It is not safe to base conviction of the accused on such like expert report, when there is no other substantive evidence to support the conviction of the accused. Such like report can be taken into consideration for convicting the accused only when there is some other substantive evidence on record justifying the conviction. Herein the principles as laid down by the Hon'ble Apex Court in **Musheer Khan @ Badshah Khan and another Versus State of Madhya Pradesh, 2010(1) R.C.R.(Criminal) 817** are followed. In para No.39 of this detailed judgment, it has been observed as under:

“It will be noticed that under the Indian Evidence Act, the word 'admissibility' has very rarely been used. The emphasis

is on relevant facts. In a way relevancy and admissibility have been virtually equated under the Indian Evidence Act. But one thing is clear that evidence of finger print expert is not substantive evidence. Such evidence can only be used to corroborate some items of substantive evidence which are otherwise on record.”

Then some material link evidence qua this report is missing on the record for the reason of which the very genesis of this report is not out of the arena of suspicion. As per record, it was the case of prosecution that when the thumb impressions of above said Siria were obtained on the sheet Ex.PJ for sending the same to the Finger Print Expert Bureau for comparison thereof with the disputed thumb impressions of Siria on sale deed Ex.PH, this Siria was identified by one HC Ram Kishan and the same were further attested by Executive Magistrate, Gurgaon. Neither this HC Ram Kishan nor Executive Magistrate, Gurgaon were examined as witness by the prosecution during trial of the case in order to establish the fact beyond any doubt that the alleged thumb impressions of Siria on sheet Ex.PJ were that of Siria only and not of anybody else. Even they were not cited as witnesses as per the list of witnesses annexed with the challan report submitted under Section 173, Cr.P.C. So as such prosecution has also miserably failed to establish on record that the alleged thumb impressions of Siria on the sheet Ex.PJ are of nonelse, but that of Siria only. So on this score also, this report Ex.PK loses its credibility in the eyes of law.

15. Then statements of three witnesses of 'the trust' as PW8, PW9 and PW16 are available on the record. In the examination-in-chief PW8

G.L. Rajpal stated about some documents i.e. agreement (Ex.PN), special power of attorney (Ex.PO), another agreement (Ex.PP) and power of attorney (Ex.PQ) allegedly executed between 'the trust' and accused Dharambir Yadav for purchasing the land by said Dharambir Yadav on behalf of 'the trust'. In his cross-examination, he admitted that he had given his sworn affidavit on 7.2.2002 to the effect that no commission was ever paid to accused Dharambir Yadav since 1995 till date. Then it was also his admission that a sum of Rs.7,50,000/- in cash was given for purchase of stamp papers and to incur miscellaneous expenses. Then he also categorically stated that purchase of lands and registration were carried out by way of sale deeds, which are to their satisfaction.

PW9 R.B. Pathak was working as Adviser of 'the trust' at the relevant time. His statement was to the effect that since accused Dharambir Yadav did not respond for the unutilized amount handed over to him by 'the trust' for purchasing the land on its behalf, so the complaint Ex.PS was made to Chief Minister, Haryana against him.

PW16 G.H. Keswani as per his statement was working for 'the trust' since last 28 years. He proved the agreement Ex.PN, another agreement Ex.PP, power of attorney Ex.PQ and receipts Ex.PR/1 to Ex.PR/9. Then it is also found recorded in his cross-examination that accused Dharambir Yadav though made some delay qua the time promised, but he did not commit any forgery or cheating.

PW3 Rajpal, Inspector deposed to the effect that on receipt of ruqqa Ex.PF from SVB(H) Gurgaon, he recorded formal FIR Ex.PG.

PW14 Maharaj Singh, Addl. S.P., Faridabad deposed that he

was posted as DSP, State Vigilance Bureau, Gurgaon in the year 2001-02. He conducted the part investigation of this case. During investigation, he arrested accused Jagdish and took into possession certain record i.e. Ex.PA to Ex.PR, sale deeds Ex.P1 to Ex.P11, cash receipts Ex.PR/1 to Ex.PR/9, details of mode of payment Ex.PS/1 to Ex.PS/3 along with bank detail Ex.PU.

Then part investigation was conducted by PW15 Dhan Singh, DSP. He arrested accused Dharambir Yadav, Hanuman Singh, Naib Tehsildar, Hanuman Singh, Petition writer and on completion of investigation, he presented the challan.

PW17 Ramesh Chand, ASI proved the inquiry report Ex.PS.

16. So far as the statements of remaining prosecution witnesses are concerned, there is no need to discuss the same, as the same has nothing to do qua the charges of which the present appellants have been held guilty and sentenced.

17. Then in para No.8 of the impugned judgment, the learned trial Court after discussing all the sale deeds and their sale considerations came to the conclusion that accused Dharambir Yadav spent Rs.1,12,14,982/- against the amount of Rs.1,09,35,000/- received by him from 'the trust'. Then in para No.11 of the impugned judgment, it was held that the alleged misappropriation of the remaining amount of Rs.79,25,673/- on the part of accused Dharambir Yadav is not proved on the record against him. Then as above said, the State Government has not filed any appeal against the appellants (accused) qua their acquittal for the offences u/Ss 406, 468 read with Section 120-B, IPC and u/S 13(1) (c)

read with Section 13(2) of the PC Act, as also u/S 13(1)(d) read with Section 13(2) of the PC Act vide the impugned judgment.

18. In the light of above discussion there is no evidence worthwhile and legally permissible on the record for sustaining the conviction of the appellants in this case. The evidence on the basis of which the learned trial Court has held the present appellants (accused) guilty in this case is not found to be justifiable either to sustain their conviction or to uphold the impugned judgment. Hence these appeals stand accepted. The impugned judgment of conviction and order of sentence under appeals as a result thereof are set aside. The appellants (accused) are acquitted of the charges of which they have been held guilty and convicted vide the impugned judgment. The appellants are on bail and as such they and their sureties also stand discharged from their liability of bail bonds and surety bonds respectively. Fine, if paid, be refunded to the appellants against proper receipt and identification.

Copy of this order be sent to the quarter concerned for strict compliance.

(GURMIT RAM)
JUDGE

14.3.2016
Brij

1. Whether to be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes