IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.26471 of 2011
Date of Decision: February 08, 2016

Smt. Satwant Kaur .... Petitioner

vs.

UT Chandigarh and another .... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.S. Cheema, Sr. Advocate with
Mr. Sumanjit Kaur, Advocate for the petitioner.

Mr. G.S. Chahal, Addl. P.P. for U.T., Chandigarh
for respondent No.1.

Mr. J.S. Gill, Advocate for respondent No.2.

1.Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

<u>Kuldip Singh J.</u>

Petitioner, Smt. Satwant Kaur W/o Sh. Paramjit Singh seeks quashing of FIR No.19, dated 10.01.2011 (Annexue P-1), under Sections 419, 420, 468 and 471 IPC, registered at Police Station Sector 34, Chandigarh, at the instance of respondent No.2, namely, Sh. Kulwant Singh Gill, President of The Chandigarh Sector 16 Cooperative House Building First Society Ltd. (in short 'the Society').

The petitioner claims that respondent No.2 is a property dealer by profession and also the President of the said Society. The petitioner became the Member of the Society in the year 1981. She had also paid ₹16.50 lacs to the said Society. She claims that on 13.10.1981, she had deposited the requisite Member fee of ₹55/-. The photocopy of the receipt is Annexure P-2.

On 13.03.1991, all the Members including the present petitioner were given cyclostat proforma of affidavit along with other documents by respondent No.2 for appending the signature, assuring that the particulars of the Members shall be filled up by themselves. Accordingly, the petitioner appended her signatures only at the last page of the affidavit dated 13.03.1991 and respondent No.2 filled up the particulars on the first page of the affidavit himself. The copy of the said affidavit is Annexure P-3.

On 19.10.1991, Chandigarh Administration had set up a Screening Committee in order to verify the validity and credentials of the Members of the Society. The Screening Committee in its report dated 19.10.1991 after making due inquiry regarding her place of residence, antecedents etc., cleared the name of the present petitioner. At that time, the petitioner was residing at House No.16, Sector 16, Chandigarh. The report of the Screening Committee is Annexure P-4.

On 15.11.1991, respondent No.2 issued a letter to the petitioner declaring her eligible and name of the petitioner was mentioned at serial No.259 in the list of membership of the Society released by Chandigarh Housing Board, vide letter Annexure P-5.

On 28.01.1992, the petitioner was required to submit an application of allotment of dwelling unit to Chandigarh Housing

Board, Chandigarh, which she duly submitted. Copy of the said application is Annexure P-6.

On 09.09.1995, the Society under the signatures of respondent No.2 vide letter Annexure P-7 asked the petitioner to deposit a sum of ₹500/- to raise funds and to meet day to day expenses of the Society, which she duly paid.

On 19.04.2000, respondent No.2 issued a letter to the petitioner informing that Chandigarh Housing Board allotted a land to the Society for construction of flats for its Members. She was asked to deposit ₹61,502/- for category 'B' flat with the Society. The copy of the said letter dated 19.04.2000 along with receipt dated 30.05.2000 are Annexure P-8 and P-9 respectively.

Again vide letter dated 05.03.2001 (Annexure P-10), petitioner was informed by respondent No.2 that demarcation of the land in favour of the Society has been completed by the Chandigarh Administration and the allotment letter and possession of the land is likely to be given to the Society shortly.

The petitioner further claims that she had availed housing loan from HDFC Bank after executing a tripartite agreement between the Bank, Society and herself. Copy of the same is available with the Bank. She availed the loan of ₹9 lacs and still paying the installments of ₹11,386/- per month.

On 19.06.2001, the Society under the signatures of respondent No.2 asked the petitioner to make the payment of ₹12,600/- by way of bank draft for getting the land allotted to the

Society converted from leasehold to freehold basis. Copy of the letter is Annexure P-11.

On 25.01.2002, a reminder was issued to the petitioner to deposit the said amount. The petitioner deposited ₹12,600/- by way of bank draft on 20.02.2002. The copies of the letter and receipt are Annexures P-12 and P-13.

On 10.07.2002, respondent No.2 informed the petitioner that the physical possession of the land has been given by the Chandigarh Housing Board on 04.07.2002. Another sum of ₹60,000/- was demanded as part payment towards the construction costs in favour of the Society, stating that total cost of construction for category 'B' flat is ₹10.24 lacs. The petitioner made payment of ₹60,000/- as per Annexue P-14. On 28.08.2002, the petitioner was issued a share certificate (Annexure P-15), which proved that the petitioner was duly eligible Member of the Society.

On 14.12.2002, the petitioner was again asked by respondent No.2 to deposit another sum of ₹25,000/-, which was done by her. Copies of the letter and receipt are Annexures P-16 and P-17 respectively.

On 15.07.2003, respondent No.2 acting as president of the Society issued a letter to HDFC Bank from where the petitioner had obtained housing loan of ₹6 lacs under loan account No.523429, certifying that the petitioner was a Member of the Society and the Society had not objected for giving loan to the petitioner by mortgaging the said flat by way of security of said loan in favour of the Bank. Copy of the letter is Annexue P-18.

Respondent No.2 being President of the Society issued a passbook to the petitioner, which consisted of photograph of petitioner certified by respondent No.2 himself along with the details of the petitioner and receipt of various payments made by the petitioner to the Society from time to time. Copy of the same is Annexure P-19.

On 02.02.2005, vide letter (Annexure P-20), the petitioner was informed by respondent No.2 that the construction of category 'B' flat, which was earlier stipulated to be ₹8 lacs has now been increased to ₹8.77 lacs. She was also to deposit 3 installments towards the costs of land amounting to ₹1,18,875/-. It was to be paid annually in the years 2003, 2004 and 2005.

On 22.08.2005, the Society through respondent No.2 again issued a letter to the petitioner asking her to deposit an amount of ₹1,21,055/-, which was deposited by her. Copies of the letter and receipt are Annexue P-21 and P-22.

On 20.06.2006, respondent No.3-Society informed the petitioner that the draw of lots for allotment of the flat was held on 08.06.2006. The copy of the letter is Annexure P-23.

On 27.07.2006, the petitioner was again asked to deposit ₹1.48 lacs for completion of work undertaken by the Society towards the construction of the dwelling unit allotted to the petitioner through draw of lots held on 08.06.2006. The petitioner, immediately, deposited ₹1.49 lacs. The copies of the letter and receipt are

Annexures P-24 and P-25.

The detailed chart of payments made by the petitioner to the Society is Annexure P-26.

The petitioner has so far paid ₹16,48,000/- to the Society, out of which ₹9 lac approximately (earlier loan awarded was of ₹6 lac, which was later on enhanced to ₹9 lac) were obtained as loan from HDFC Bank. Everything was going smoothly. However, the difficulty arose in the month of December 2007, when respondent No.2 demanded illegal gratification of ₹3,00,000/-, which she did not pay. The petitioner was allotted flat No.2002 and she was threatened that the said flat will be sold and her membership will be cancelled, if illegal gratification is not given. It is further claimed that one such Member, who was extremely harassed complained it to the C.B.I., who caught respondent No.2 red handed, while accepting illegal gratification of ₹1,00,000/-.

In order to get justice, the petitioner filed petition No.11 of 2010 before the Joint Registrar, Cooperative Societies, UT Chandigarh under Section 55 of the Punjab Cooperative Societies Act, 1961 for issuance of directions to respondent-Society to allot and hand over the possession of the flat to the petitioner. The said petition came up for hearing on 01.06.2010, on which date status quo was ordered to be maintained till further orders. The matter was pending for 07.09.2011. The copy of the said order is Annexure P-28.

In retaliation, respondent No.2 lodged the present FIR on the basis of false facts, alleging that the petitioner is not the actual

Satwant Kaur as the signatures of the petitioner as appended by her in the year 1991 on one of the affidavits does not tally with present signatures. Therefore, she has impersonated some other Satwant Kaur, which admittedly never came to the Society alleging impersonation or claiming the flat.

In reply, it was stated that one Satwant Kaur submitted an application for allotment of a dwelling unit along with duly attested affidavit. Thereafter, present petitioner by posing herself as an original Satwant Kaur started correspondence with the Society. Receipt No.326, dated 13.10.1981, which is entirely different from the original receipt. The original application form is missing from the records as reported by Chandigarh Housing Board. In the affidavit dated 13.03.1991, Satwant Kaur had given her date of birth as 16.07.1960, whereas as per passport and voter identity card, the date of birth of present petitioner is 06.10.1959. The ration card was not found to have been issued by the District Food Supplies Officer, U.T., Chandigarh. It was further stated that opinion was taken from handwriting expert of Forensic Sciences Laboratory regarding the signature of original Satwant Kaur and that the documents are forged and that Satwant Kaur impersonated herself.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Admittedly, in this case at the time of filing of the present petition, charges were not framed, but now the charges have been framed by the trial court. The thrust of the FIR is that the present

Satwant Kaur, petitioner is an imposter and that some other Satwant Kaur had applied for the membership of the Society and later on, present Satwant Kaur W/o Paramjit Singh started the correspondence with Society and started making the payments.

The prosecution mainly relied upon the following three facts:

1. The report regarding non-issuance of ration card by the District Food Supplies Officer, U.T., Chandigarh.
2. The date of birth of the petitioner in the affidavit is 16.07.1960, whereas as per passport and voter identity card, the date of birth of present petitioner is 06.10.1959.
3. The report regarding difference of signatures in the application and the affidavit.

I am of the view that during the investigation, the prosecution did not claim that they have traced out real Satwant Kaur, who was allegedly impersonated by the petitioner. The petitioner claims that respondent No.2 had obtained her signatures on the original affidavit and it was filled up by him. Therefore, some error in the date of birth occurred. However, in order to establish whether present Satwant Kaur is the same lady, who had applied for the membership of the Society and was allotted the said flat, there are several other documents, which were over looked during investigation. The comparison of signatures on the affidavit dated 13.03.1991 (Annexue P-3) with the signatures on the application for handing over the possession dated 03.07.2008 (i.e. 17 years old signatures) is not a ground to hold that the signatures are forged. Science handwriting is not perfect science. Moreover, with the lapse of time, some change/variation in the signatures occurs. Therefore, comparing the signatures of the year 1991 with the signatures of the year 2008 i.e. signatures taken after 17 years cannot be made a ground to hold that some dissimilarity in the signatures is there and signatures are forged.

It is to be noted that affidavit dated 13.03.1991 bears the photograph of the lady and it is not claimed that the photograph is of some other lady. The petitioner has placed on file the copy of the application (Annexure P-35), vide which the petitioner applied for information under RTI on 04.05.2010 for verification regarding ration card issued to Paramjit Singh, husband of the petitioner, resident of House No.16, Sector 16, Chandigarh and it was informed that the record of ration card branch up to the period from 31.12.1997 has been weeded out by the office of DFSO, Chandigarh as per office order dated 03.06.2003.

The main question is whether the petitioner is an imposter and impersonating some other lady Satwant kaur? First of all the photograph of the petitioner on the affidavit dated 13.03.1991 could be compared with the photographs on other several documents to show that she is the same lady, who became the Member of the Society. The mere fact that according to the police, receipt No.326 issued in 1991 do not tally with the other receipt is not a ground to hold that the petitioner is imposter.

Learned counsel for the petitioner has placed on file the copy of the statement of S.I. Navin Sharma, PW2, who during trial of this case before lower court had stated that he had made all attempts to search the lady, who was impersonated, if any, as was claimed by respondent No.2 Kulwant Singh Gill but he could not find any such lady. When the record produced by the petitioner is examined, it comes out that the petitioner is holding a pass book copy (Annexure P-19), which bears her photograph, where her name along with her membership No. 326 of the Society, her husband's name and address House No.16, Sector 16, Chandigarh are also mentioned. However, in that pass book phone Nos. 01881-227448 and 01881-311051 are also mentioned. These phone numbers pertain to Ropar. The petitioner has also mentioned that now she is living at House No.480, Giani Zail Singh Nagar, Ropar. The said pass book not only bears the photograph of the petitioner but also the seal of the Society along with the signature of respondent No.2/complainant across the photograph of the petitioner. The entries in the said pass book are made from 30.07.2003 onward regarding the payments made on various dates. Further, the petitioner had produced the copies of several letters starting from letter dated 05.03.2001, which were addressed to the petitioner on the address of Kothi No.16, Sector 16, Chandigarh regarding various actions of the Society and asking the petitioner to deposit some amount. The amounts were, accordingly, deposited and copies of the receipts are on the file and are not alleged to be forged. The copy of payment of receipt dated

30.10.2002 bears signatures of respondent No.2. The copy of the share certificate dated 28.08.2002 (Annexure P-15) is also on file, which is signed by respondent No.2 with his seal. Though, there is another receipt dated 26.02.2003 (Annexure P-17) regarding the payment of ₹25,000/- and several payments made by the petitioner to the Society. The petitioner has placed on file the record of HDFC Bank, which shows that the petitioner was paying installments of the loan obtained from the HDFC Bank and according to the petitioner there was tripartite agreement amongst the Society, Bank and the petitioner and the petitioner was to mortgage flat No.2002 allotted to her. All these documents are not stated to be forged.

The prosecution case is that the original allotment was made to one Satwant Kaur and the petitioner is not the real Satwant Kaur. The regular payments were being made from the year 2000 and surprisingly, it was in the year 2011, when the dispute was sought to be raised that the petitioner is an imposter. During these 11 years, the petitioner had come in contact of the office bearer of the Society and respondent No.2, who was President of the Society. This interaction continued for more than 11 years. It is not the case of the state that at any time, it was found that petitioner is an imposter. In the letters, the name of the husband of the petitioner is mentioned along with the entire address i.e. House No.16, Sector 16, Chandigarh, showing that the letters were delivered on the said address. Therefore, even if, the ration card was not found, it cannot be said that the petitioner is an imposter. Therefore, from the enormous of documents produced on file as discussed above, it comes out that petitioner is the same Satwant Kaur, who had applied for the membership of the Society and was allotted flat No.2002 by the Society. It appears that due to some dispute between the petitioner and respondent No.2, the present FIR was lodged. The police did not make indepth inquiry and merely relied upon the comparison of the signatures with 17 years old signatures by ignoring the photograph of the petitioner appended on the other documents, other letters, factum of loan advanced from HDFC Bank and also the fact that the payment of ₹16.50 lac had been made by the petitioner to the Society. The original record is with the Society and the police could have easily verified the factum of issuance of said letters and receipts.

In these circumstances, I am of the view that the present FIR is nothing but the misuse of process of Court. As such, the FIR in question along with all the consequential proceedings arising there from is quashed.

Accordingly, the present petition stands allowed.

(KULDIP SINGH)
JUDGE

February 08, 2016
sarita