

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

CRR-240-2005

Date of decision: 18.1.2016

Hari Singh

...Petitioner

Versus

Harcharan Singh @ Chand Singh and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.JS Lalli, Advocate for the petitioner

Mr.Deepak Gupta, Advocate for respondent No.1.

Ms.Lavanaya Paul, AAG, Punjab
for respondent No.2.

SNEH PRASHAR, J.

The present revision petition has been filed by the petitioner assailing the judgment dated 7.1.2005 passed by learned Additional Sessions Judge, Bathinda vide which judgment of conviction and order of sentence dated 9.8.2003 passed by learned trial Court was modified to the following extent:-

Under Sections	Sentence/fine	In default of payment of fine further sentence	Modification by First appellate Court
419 IPC	One year rigorous imprisonment/Rs.500/-	One month further	Nil
420 IPC	Two years rigorous imprisonment /Rs.1000	Two months further	Acquitted
467 IPC	Two and half years rigorous imprisonment/Rs.1500	Two months	One and half year/Fine intact

Under Sections	Sentence/fine	In default of payment of fine further sentence	Modification by First appellate Court
471 IPC	Two years/Rs.1000/-	Two months	One and half year/Fine intact
120 IPC	Two years/Rs.500/-	One month	One and half year/Fine intact
All the sentences were ordered to run concurrently.			

The facts extracted from the record are as under:-

Complainant Harcharan Singh alias Chand Singh filed a criminal complaint against petitioner-accused Hari Singh and others with the allegations that his father Waryam Singh was owner of agriculture land situated in revenue limits of village Khokhar and Kera Khera to the extent of 1/5th share in the land measuring 176 kanals 16 marlas. Waryam Singh died in the year 1953 and his share was inherited by him (complainant) and his brother Sukhdev Singh being the sons. The mutation of inheritance qua the land located in the limits of village Khokhar could not be sanctioned as neither he nor his brother visited Village Khokhar for several years due to the fear of psychosis terrorism. They also never sold any parcel of the land situated at Village Khokhar.

The complainant alleged that in the month of January, 1995 when he accompanied by his brother Sukhdev Singh went to Village Khokhar, they came to know that land measuring 19 kanals owned by them had been sold to Hari Singh by impersonating him (complainant) in connivance with Karnail Singh Namberdar, Jagir Singh and Vidya Sagar Deed Writer. A false sale deed had been executed in favour of Hari

Singh and Pirthi Singh consequent to the conspiracy between Hari Singh and Karnail Singh etc. with an intention to deceive him (complainant) and his brother in the year 1957. They had also illegally got sanctioned the mutation of inheritance of Waryam Singh as well as a mutation on the basis of the fictitious sale deed by impersonation.

The allegation of the complainant was that he never appeared before any revenue officer for execution of any sale deed or for the purpose of getting sanctioned the mutation of inheritance of his father. The verification by him revealed that the legal representatives of deceased Pirthi Singh, one of the alleged vendees, had hatched conspiracy and got changed the *Khasra Girdawri* in their names by forging certain documents in the year 1994.

On the strength of preliminary evidence led by complainant Harcharan Singh @ Chand Singh, all the accused named in the complaint were summoned for *prima facie* commission of offence under Sections 419, 420, 467, 471 and 120-B of the Indian Penal Code vide order dated 9.10.1998. Four accused named Hakam Singh, Karnail Singh Namberdar, Jagir Singh and Vidya Sagar expired during the pendency of the complaint before the trial Court and the proceedings against them abated vide order dated 28.8.2002.

In the pre-charge evidence, the complainant, besides himself appearing as CW1 and reiterating the allegations made in the complaint, examined Gulzar Singh CW2 and Balbir Singh CW3, who corroborated

his version. The relevant jamabandies Ex.C1 to C7 and copies of mutations Ex.C8 to C10 were tendered in evidence by him. The certified copies of the sale deeds Mark 'A', Mark 'B' and Mark 'C' were also placed on record.

Petitioner -Hari Singh, Roop Singh, Jagroop Singh, Harbhajan Singh, Inder Singh, Gurjant Singh, Surjit Singh and Beant Singh were charge-sheeted, whereas the other accused Tej Kaur, Joginder Kaur, Surjit Kaur, Harpal Singh, Lal Singh and Hakam Singh were discharged vide order dated 31.3.2003.

After closure of evidence of the complainant on charge, separate statements of the accused as envisaged under Section 313 Cr.P.C. were recorded. They denied the allegations and pleaded innocence. Here it is important to note that the defence taken by petitioner Hari Singh, in his statement recorded under Section 313 Cr.P.C. was that complainant Harcharan Singh @ Chand Singh had himself executed the sale deed in his favour as well as in favour of Pirthi Singh in the year 1958 and that he had filed the complaint just to put pressure on them to grab the property. In their defence, the petitioner and other accused adduced the required evidence to prove that the date of birth of Jagroop Singh was 14.5.1974 and that of petitioner Hari Singh was 11.7.1943.

Considering the submissions made by learned counsel representing the complainant and the petitioner etc. and evaluating the evidence brought on record, learned trial Court convicted and sentenced

petitioner Hari Singh as indicated above, whereas all other accused were given the benefit of doubt.

Feeling dissatisfied, the petitioner preferred an appeal, which was disposed of by learned Additional Sessions Judge, Bathinda vide judgment dated 7.1.2005 with modification as noted above. Being aggrieved, the petitioner filed the present criminal revision.

The submissions made by learned counsel for the parties have been heard and record perused.

To begin with, learned counsel for the petitioner argued that the date of execution of the sale deed, which the complainant alleged to be false and forged was 17.10.1958. DW2 Darshan Singh, a Teacher in Senior Secondary School, Mandi Kalan proved the relevant extract of admission and withdrawal Register Ex.DW2/A, maintained by the school, according to which, the date of birth of the appellant was 11.7.1943, which means that in the year 1958, when the alleged sale deed was executed, the petitioner was less than 16 years of age and was a minor boy. The sale deed was not executed in his presence and he had no involvement in the commission of alleged offence. The complainant attributed no specific role to him in the entire matter.

Further elaborating his argument that except for ocular evidence consisting of deposition of the complainant and his two witnesses, no substantive and reliable evidence could be produced by the complainant to prove that the sale deed dated 17.10.1958 was a false and

forged document, learned counsel pointed out that the original sale deed which was the star document was not produced or proved on record. The second original document retained in record by the Sub Registrar was not summoned and the complainant did not opt to examine the handwriting and finger print expert to prove that the alleged sale deed does not bear his thumb impressions. In absence of the concrete evidence necessary for proving that the thumb impressions on the sale deed were not of the complainant, it could not be held on mere oral statement of the complainant that the sale deed dated 17.10.1958 was false and forged document. A criminal liability cannot be fastened on an imaginative ground. The petitioner, on the other hand, had specifically stated in his statement recorded under Section 313 Cr.PC that complainant Harcharan Singh @ Chand Singh had himself duly executed the sale deed in his favour as well as in favour of Pirthi Singh. The document not being part of the evidence, it could not be assumed that it was result of forgery and impersonation.

The argument of learned counsel for the petitioner may appear to be attractive but are devoid of merit. There are no two thoughts over the proposition that the prosecution has to stand on its own legs and it cannot derive any strength from the weakness, if any, in the defence version. Any infirmity or lacuna in the prosecution case cannot be cured or supplemented by a false plea taken in defence, which is not acceptable to the Court. However, the facts in hands are of peculiar nature. The

allegation of the complainant was that the sale deed dated 17.10.1958 on the basis of which, the petitioner claimed title over the land owned by him and his brother Sukhdev Singh, inherited by them from their father Waryam Singh, had not been executed by him or his brother. He alleged the sale deed to be a forged document. He appeared in the witness box and reiterated all his allegations on oath and his testimony was corroborated by the witnesses examined by him. Needless to say that the original sale deed was in possession of the petitioner. It was the plea of the petitioner that the sale deed in his favour had been executed by the complainant. In the said set of facts, it was necessary for the petitioner to produce the original sale deed on record. Only if he had produced the original sale deed that some inference could be drawn on account of non examination of the handwriting and finger print expert by the complainant. Otherwise, the adverse inference has to be drawn against him (petitioner), who intentionally withheld the original sale deed.

The argument of learned counsel for the petitioner is that since the sale deed was a registered document, a copy of the same must be available in the office of Sub Registrar and the complainant could have summoned the record from the said office for getting the thumb impressions on the sale deed compared with his own specimen thumb impressions from the handwriting and finger print expert to support his allegation that he did not execute the said sale deed.

The findings of learned First Appellate Court which repelled

the above argument are as under:-

“.. The sale deed was got registered by the present appellant in the year 1958, when the copy of the sale deed was to be reproduced in a Register maintained in the Office of Sub Registrar and the signatures/ thumb impressions of the parties to the sale deed or the witnesses were not used to be obtained in the Register. The practice of retaining the Duplicate copy of the sale deed in the Office of Registrar at the time of its registration bearing the signatures of the parties to the sale deed and the witnesses etc. started approximately in the year 1975. So, in such circumstances, the complainant was not in a position to get his thumb impression compared appearing on the alleged sale deed dated 17.10.1958. The non production of the original sale deed dated 17.10.1958 by the present appellant- accused is suggestive of the fact that the same has been intentionally withheld by him and an adverse inference is to be drawn against him to the effect that had the said sale deed dated 17.10.1958, allegedly executed by the complainant Harcharan Singh@ Chand Singh, been produced on record, the contents thereof would have gone against him. It

would be pertinent to mention here that the science of Finger Prints is a perfect science and it would have been easily concluded by the examination of the thumb impressions appearing on the same by a Handwriting Expert that the same bears the thumb impressions of the present complainant Harcharan Singh @ Chand Singh.”

Learned counsel for the petitioner failed to demonstrate any infirmity or adversity in the above findings of learned First Appellate Court so as to disagree with the same. When the sole original copy of the sale deed was in possession of the petitioner, which he had admittedly produced before the revenue authorities for getting the mutation sanctioned in his favour on the basis of same in the year 1962, the non production of the original document goes against the petitioner and not against the complainant.

Another emphatic argument raised by learned counsel for the petitioner is that the mutation of inheritance of Waryam Singh qua the land which was subject matter of the sale deed dated 17.10.1958, was sanctioned in favour of the complainant and his brother Sukhdev Singh in the year 1962. The mutation on the basis of the sale deed in favour of the petitioner was also sanctioned in the year 1962. It is obvious that at the time of the sanction of mutation, the complainant had come to know about the sale deed in favour of the petitioner but for more than 30 years,

he remained quiet and did not raise any objection. It is in the year 1995 that he filed the present complaint. By then, the sale deed in favour of the petitioner had become more than 30 years old and as per law was presumed to be a legal and valid document. No objection could be raised against the same.

Here again there appears to be no force in the argument of learned counsel for the petitioner. A false and forged document howsoever old it may be, cannot even by efflux of time become a legal and valid document. It was observed by learned First Appellate Court that the contents of mutation Ex.C8 indicate that the complainant and his brother Sukhdev Singh were not present when the said mutation of inheritance was sanctioned because the document does not bear their signatures or thumb impressions.

The complainant deposed that in the month of January 1995, he alongwith his brother Sukhdev Singh went to Village Khokhra and came to know about the sale deed in favour of petitioner Hari Singh qua the land measuring 19 kanals owned by them, which had been got executed by the petitioner by impersonation in connivance with Karnail Singh Namberdar, Jagir Singh and Vidya Sagar Deed Writer. He then filed the complaint on 24.3.1995. There is nothing on record to indicate that for any reason the complainant was hostile against the petitioner or any other person, whom he named had conspired with the petitioner and got the forged sale deed executed. In absence of any kind of hostility,

there was no reason for the complainant to file a false complaint against the petitioner and depose against him.

As already discussed above, the deposition of the complainant and his witnesses CW2 Gulzar Singh and CW3 Balbir Singh coupled with the fact that the petitioner intentionally withheld the original sale deed in question, the conclusion inevitable is that the alleged sale deed was a false and forged document.

No doubt as per Ex.DW2/A and DW2/B proved by the petitioner, the date of birth of petitioner Hari Singh is 11.7.1943, from which it follows that on 17.10.1958, when the alleged sale deed was executed, he was less than 16 years old. However, the fact that he was minor at the time of execution of the forged sale deed is of no advantage to him. He may or may not be present at the time of the execution of the sale deed but in the year 1962, he presented the forged sale deed before the revenue authority and on the basis of the same got the mutation sanctioned in his favour. A scrutiny of the copies of the jamabandies and mutations Ex.C1 to Ex.C10 shows that on the date of execution of the alleged sale deed i.e. 17.10.1958 as well as in the year 1962, the mutation of inheritance of Waryam Singh had not been sanctioned and incorporated in the revenue record although, he had died in the year 1953. Knowing well that the land was owned by Waryam Singh and after him by his sons/ legal heirs, complainant Harcharan Singh @ Chand Singh and Sukhdev Singh and that the sale deed dated 17.10.1958 was a

false and forged document got executed by impersonation, the petitioner got the mutation sanctioned in his favour on the basis of the said sale deed.

Accordingly, the conviction of the petitioner under Sections 419, 467, 471 and 120-B IPC consistently recorded by learned trial court and First Appellate Court calls for no intervention by this Court.

Coming to the quantum of sentence, the submission of learned counsel for the petitioner is that the petitioner is more than 72 years of age by now, he is facing a protracted trial since 1995 and has lost the best period of his life in this legal battle therefore, the sentence may be reduced.

Considering the age of the petitioner and other relevant facts, the sentence of imprisonment awarded to the petitioner under Sections 467, 471 and 120 IPC is reduced to one year under each of the Section with no change in the fine clause. The sentence awarded under the other sections shall remain the same. However, all the sentences shall run concurrently.

With the above modification in sentence, the present criminal revision is dismissed.

The petitioner is on bail. His bail shall stand cancelled and the bonds submitted by him forfeited to the State. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the

applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

18.1.2016
gsv

(SNEH PRASHAR)
JUDGE

Note: Whether to be referred to the Reporter? Yes/No