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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No. 134

CRM No.M-38283 of 2016

Date of decision: October 27, 2016

Raj Rani

.... Petitioner

Versus

State of Haryana & Ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sanjay Vashisth, Advocate,
for the petitioner.

JASPAL SINGH, J.

The instant petition has been preferred by petitioner-Raj Rani under Section 482 Cr.P.C. for quashing order dated September 08, 2016 (Annexure P-7) passed by the Additional Sessions Judge, Bhiwani in Criminal Revision No.98, dated 31.10.2013/11.07.2016 and Criminal Revision No.608, dated 31.10.2013/11.07.2016 and Criminal Revision No.97, dated 10.01.2014/11.07.2016, arising against the order dated October 07, 2013 passed by Sub-Divisional Judicial Magistrate, Charkhi Dadri, Bhiwani in Criminal Case No.235-1 RBT in FIR No.245, dated November 08, 2006, under Sections 420, 467, 468, 471, 218, 120-B IPC, registered at Police Station City Charkhi Dadri, District Bhiwani.

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2. The facts of the case are that a complaint was moved by Ajay Bagla against Vijay Kumar, Vinod Kumar, Raj Rani, Sunita, Kusum, Kavita, Maya Kaur, Kuldeep Singh, Sudeep Kumar, Sumer Singh, Raj Pal Patwari Halqua, Om Parkash Girdawar and Bhale Ram with the allegations that Ajay Bagla is decedent of Vidhi Chand @ Birdhi Chand Bagla. His ancestors had constructed a Thakur Dawara Bagla known as Birdhi Chand @ Vidhi Chand Wala and donated land measuring 61 kanals 13 marlas as depicted in jamabandi pertaining to the year 1999-2000. Accused Nos.1 to 4 namely Vijay Kumar, Vinod Kumar, Raj Rani and Sunita were Pujari of the Thakur Dawara. This property being religious was exempted from land revenue by Maharaja Jind. In the month of June, 2006, accused Raj Pal Patwari, Halqua Charkhi Dadri, Om Parkash Girdawar, Halqua Charkhi Dadri and Sumer Singh, Deed Writer along with others changed the entries in jamabandi pertaining to the year 1999-2000 to the effect that the property belongs to Thakur Dass Bagla. In this way, the word "Dawara" was over written as "Dass". Thereafter, Raj Pal, Patwari entered Mutation No.4324 dated July 02, 2006 showing Smt. Banarsi as owner of land. Mutation No.4325 was also entered showing succession of Jai Bhagwan in favour of Daya Wati, Abil, Sunil and Meenakshi. Accused Nos.1 to 4 executed a sale deed in respect of 1/4th share of the property in question in favour of Kusum, Kavita, Sunita and Maya Kaur showing sale consideration as ₹5,77,500/- and thus committed an offence under Sections 420, 467, 468, 471, 218, 405, 406, 120-B IPC and Sections 81 & 82 of the Registration Act, 1908 in connivance with all the accused mentioned in the complaint. This

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complaint was made on the basis of lodging FIR No.245, dated November 08, 2006. After investigation, accused Nos.1 to 4 were sent to face trial, whereas accused Nos.5 to 14 were put in column no.2 while presentation of challan.

3. During trial, two applications under Section 319 Cr.P.C. were moved by petitioner and one Raj Pal for summoning respondent Nos.2 to 8 as an additional accused. The aforesaid applications were allowed by the trial court vide order dated October 07, 2013 and respondent Nos.2 to 8 were ordered to be summoned as an additional accused to face trial under Sections 420, 467, 468, 471, 218, 405, 406 IPC and under Sections 81 & 82 of the Indian Registration Act, 1908 read with Section 120-B of IPC. Aggrieved by the aforesaid orders, respondent Nos.2 to 8 approached the court of Sessions by way of filing of criminal revisions which were allowed vide impugned order dated March 12, 2015, which was challenged by petitioner-Raj Rani by way of filing Criminal Miscellaneous No.13956 of 2015. Vide judgment dated May 03, 2016, this court set aside order dated March 12, 2015 passed by the Additional Sessions Judge, Bhiwani and the matter remitted back to the court of Additional Sessions Judge, Bhiwani with a direction to implead petitioner as one of the respondent and then to decide the revision afresh, that too, after affording an ample opportunity of being heard to the petitioner.

4. Vide impugned order dated September 08, 2016, the Additional Sessions Judge, Bhiwani allowed the revisions afresh after impleading Raj Rani (petitioner), Ajay Bagla (complainant) and Raj Pal, Patwari. While holding that Sumer Singh, Deed Writer is only scribe, whereas Kuldeep

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Singh, Lambardar (respondent No.8), Sudeep Kumar (respondent No.6) are the attesting witnesses to the sale deed Exhibit PW6/A and mere scribing and attestation of the sale deed itself is not sufficient to constitute any offence unless conspiracy of such witnesses is proved prima facie. No evidence is available as to how, when and where, Sumer Singh, Kuldeep Singh and Sudeep Kumar entered into a criminal conspiracy with other accused. Therefore, in the absence of any such evidence, the revisional court has rightly concluded that Sumer Singh, Kuldeep Singh and Sudeep Kumar also should not have been summoned as additional accused. As regards, accused namely Kusum, Kavita, Sunita and Maya Kaur, the revisional court observed as under:-

“16. Now coming to involvement of other accused namely Kusum, Kavita, Sunita and Maya Kaur is concerned, this Court is of the considered opinion that to summon these four accused as additional accused what evidence was required. In this complaint, the complainant had merely mentioned that accused persons had greedy eye over the property and to gain something sale deed was executed. In order to ascertain the aforesaid facts, the complainant had produced revenue record and sale deed. As per jamabandi (Ex.PW1/A) it is clear that owner of disputed land 61 kanals 13 marlas was shown as Thakur Dawara Bagla @ Birdhi Chand @ Vidhi Chand and Ramavtar, Smt. Prem Lata, Jai Bhagwan, Smt. Sunita Devi, Mange Ram, Vijay Kumar, Vinod Kumar and Smt.Banarsi were shown in possession of the disputed land. Thereafter, jamabandi produced by the complainant pertaining to the year 1999-2000 (Ex.PW1/B) also found owner showing ownership of Thakur Dawara or Bhagla @ Birdi Chand and possession was shown to be that of Ramotar and others. The aforesaid two jamabandi goes to reflect that name of Ramotar and others was mentioned in the column of ownership but they were in

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possession only. As far as their status as Pujari, Dholidar, Mafidar etc. etc. is concerned, it is no where mentioned in the revenue record. In column of cultivation, the property was shown to be cultivated by self. Thereafter, complainant had produced mutation No.4324 which is relevant for the purpose of this complaint. As far as mutation No.4324 is concerned, it goes to prove that Banarsi , who was entered as in possession died on 26.05.2001 and was succeeded by Vijay Kumar, Vinod Kumar, Smt.Raj Rani and Smt.Sunita. Likewise mutation Ex.PW1/D shows that Jai Bhagwan who was having 1/4th share to his credit as in possession, died and was succeeded by Smt.Daya Wati, Anil, Sunil and Smt.Meenakshi to the extent of 1/4th share. Sale deed dated 03.07.2006 Ex.PW6/A was executed by Vijay, Vinod Rajrani and Sunita accused No.1 to 4 in favour of Kusum, Kavita, Sunita and Maya Kaur accused No. 5 to 8 and in favour of one Smt. Shakuntla Devi daughter of Aadram. The aforesaid sale deed is purported to have conveyed 1/4th share of 61 K 13 M land measuring 15 K 8 M.

17. Now a question arises if the aforesaid vendors -accused Vinod Kumar, Vijay Kumar, Raj Rani and Sunita were having right to alienate the aforesaid property or not. In this regard, at this stage, an inference can be drawn from revenue record and sale deed and the manner in which sale deed was executed. It is clear from the jamabandi Ex.PW1/A pertaining to the year 1994-95 that Vijay and Vinod son of Banrasi Devi wife of Jagdish Rai were recorded as in possession in column of ownership. This entry continued upto 1999-2000. However Smt. Banarsi Devi died on 20.05.2001 and was succeeded by Vijay, Vinod, Raj Rani and Sunita to the extent of 1/12 share and by virtue of jamabandi and mutation Ex.PW1/C Vijay, Vinod, Rajrani and Sunita succeeded to the extent of 1/4 share. Therefore, contention of learned counsel for the complainant that Vijay Kumar and Vinod Kumar entered into a conspiracy to grab the property by entering mutation No.4324 on 03.07.2006 does not appeal to reason. Therefore, on basis of aforesaid jamabandi and mutation, the complainant cannot take any benefit that the mutation was sanctioned in favour of Vinod Kumar and Vijay Kumar in hush

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hush manner. It is clear from Ex.PW1/A jamabandi pertaining to the year 1994-95 and jamabandi pertaining to the year 1999-2000 that Vijay Kumar and Vinod Kumar accused were already recorded to the extent of 1/6th share in disputed land measuring 61 K 13 M. This court is also of the considered opinion that it is not quite easy to ascertain in this case as to how the land was recorded in the name of Thakur Dawar Bagla and how Ramotar and others including accused No. 1 to 4 were shown in possession in the column of ownership. Two inference can be drawn from the revenue record that the land in dispute might have been gifted to Deity Thakur Dawara and it was further specified by name Bagla. Therefore, the person shown in possession of the aforesaid entries can be considered as Mafidar or Dholidar. This Court is of the considered opinion that in criminal side, the case of fraud may be decided on basis of some inference drawn from the record. As discussed earlier, when mutation was sanctioned in favour of accused No.1 to 4 namely Vijay Kumar, Vinod Kumar, Raj Rani and Sunita, it suggest that they were having right to alienate the suit property. Consequently, in view of aforesaid circumstances when accused No.5 to 8 who are purchasers might have been cheated by accused no.1 to 4. Accused No.5 to 8 had to part with money amounting to Rs.5,77,500/- and in case sale deed Ex.PW6/A is set aside, they had to suffer.

18. At this stage, it is to be ascertained if action on part of accused No.5 to 8 was bonafide or malafide. In order to ascertain it, we have to revert back to the revenue entries, It might be considered that Ramotar and others may be considered as Dholidar and they may be having right to alienate land or not. However, when mutation was sanctioned no fault lies with accused No.5 to 8 who are purchasers. Malafide intention or mensera on part of accused No. 5 to 8 namely Kusum, Kavita, Sunita and Mayakaur did not spell out from evidence on file. Consequently, when no material was available with learned trial Court regarding inference of mensera on part of accused, they would not have been summoned by invoking power under Section 319 Cr.P.C.

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19. Few facts are also quite glaring in this case. Like mutation No.4324 Ex.PW1/C, another mutation was also sanctioned as Ex.PW1/D from Smt. Dayawati in favour of Anil, Sunil and Meena to the extent of 1/4th share of the disputed land on basis of similar facts, in similar circumstances within two days i.e. on 02.07.2006 and 03.07.2006 However, complainant in this case did not array them as accused. It is also glaring in this case that Smt. Shakuntal who had purchased some share vide sale deed Ex.PW6/A has not been arrayed as accused in this case. This pick and choose policy belies contention of complainant regarding criminal conspiracy to usurp the land by accused No.5 to 8.

20. Thus, selective arraignment of accused by the complainant smells foul. Therefore, finding of learned trial court in this regard could not succeed. As far as legal position is concerned, this Court is of the considered opinion that the evidence available on the file can be considered while deciding application under Section 319 Cr.P.C. Entire evidence available on file has been discussed in former part of this judgment but nothing can be inferred by aforesaid evidence against any of the revisionists.”

5. Heard learned counsel for the petitioner and perused the record available on file.

6. The present case was registered on the complaint of Ajay Bagla-respondent No.9. During investigation, respondent Nos.2 to 8 were found innocent by the police and their names were put in column no.2 of challan. However, accused namely Raj Pal, Patwari, Vijay Kumar, Vinod Kumar, Raj Rani and Sunita were challaned and charge-sheeted vide order dated July 27, 2008. As many as, 10 witnesses were examined by the prosecution when applications under Section 319 Cr.P.C. were moved by the prosecution and allowed by the trial court vide order dated October 07,

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2013. However, this order was set aside by the revisional court vide impugned order dated September 08, 2016.

7. Section 319 Cr.P.C. is a special provision to meet an extraordinary situation and is required to be exercised very sparingly. Before an order summoning an accused is passed, the trial court must form an opinion, on the basis of evidence that a case is made out that such person could be tried with the other accused. But, in the case in hand, there was no sufficient evidence brought on record by the complainant to arrive at a conclusion that there are reasonable chances of conviction of respondent Nos.2 to 8. They have been summoned by the trial court despite the fact that no new evidence was brought on file by the complainant/prosecution. The statement of the complainant was taken into consideration by the Investigating Officer during the investigation and respondent Nos.2 to 8 were found innocent. Power under Section 319 Cr.P.C. can be exercised only on the basis of fresh evidence brought on record. Mere existence of a prima facie case may not serve the purpose. Different standards are required to be applied at different stage. The test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, but the court must be satisfied that there must exist a strong suspicion. While framing charge, the court must consider the entire material on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. Order dated October 07, 2013, passed by the trial court does not fulfill the requirement of exercise of extraordinary powers conferred on the court, which are required to be used very sparingly under Section 319 Cr.P.C. Mere existence of prima facie case against respondent

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Nos.2 to 8 does not fulfill the requirement of higher standard set up for the purpose of invoking the jurisdiction under Section 319 Cr.P.C. The material, which is brought before the court, must be of such a nature as would satisfy the court that it would reasonably lead to conviction of the person sought to be summoned. No satisfaction in this regard was recorded by the trial court, which would justify the exercise of powers under Section 319 Cr.P.C. and the order dated October 07, 2013 was rightly set aside by the revisional court vide impugned order dated September 08, 2016.

8. In the light of what has been discussed above, this court does not find any illegality or infirmity in the impugned order dated September 08, 2016, which is hereby upheld.

9. Accordingly, the petition stands dismissed.

October 27, 2016

Avin/Ankur

**(JASPAL SINGH)
JUDGE**

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No