IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 1237 of 2015
Date of decision : 06.01.2016

Rekha Jangra ... Petitioner

versus

State of Punjab ... Respondent

1.Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2.To be referred to the Reporters or not? Yes/No
3.Whether the judgment should be reported in the digest? Yes/No

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by:- Mr. Madan Sandhu, Advocate
for the petitioner.

Mr. Deep Singh, AAG Punjab.

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ANITA CHAUDHRY, J.

Instant revision petition has been preferred against the judgment dated 24.03.2015 vide which the appeal filed by the petitioner against the judgment and order of conviction and sentence dated 09.01.2012 and 10.01.2012 respectively, had been dismissed and her conviction and sentence had been maintained.

A narration of the facts as they unfold. Raja Ram was earlier married to Om Pati. Om Pati owned some land. Om Pati died on 16.03.1994. Her sister Rekha Jangra i.e. present petitioner got married to Raja Ram. A complaint was made by Davinder Singh(PW1) alleging that after the death of Om Pati, Rekha Jangra had impersonated the deceased and had sold the land to Gurmail Singh (PW5) and Harpal Singh sons of Rulda vide sale-deed dated 11.09.1996 (Ex.PW4/A). She was identified by

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Jagir Singh and Pritam Singh. On the basis of complaint, FIR No. 213 dated 10.10.2001, under Sections 419, 420, 467, 468 and 471 IPC was registered against Rekha Jangra and Pritam Singh. The case was investigated. The accused were arrested and put to trial.

Charge under Sections 419, 420, 467, 468 and 471 read with Section 34 IPC was framed against the accused, to which they pleaded not guilty.

The prosecution examined 10 witnesses, including the complainant, the purchaser and the revenue officials.

The incriminating circumstances led by the prosecution were put to the accused in their statements under Section 313 Cr.P.C., which they denied and pleaded false implication. They examined two witnesses viz. Dr. Jassy Anand, document expert and DW2 Gulzar Singh from the office of District Treasury Office, Fatehgarh Sahib who proved the factum of purchase of stamp papers and entry No. 1593 dated 06.09.1996 made in the name of Omwati.

On appraisal of the evidence, the trial Court vide judgment dated 09.01.2012 held both the accused guilty under Sections 416(punishable under Section 419 IPC), 468 and 471 read with Section 34 IPC and substantively sentenced them to undergo rigorous imprisonment for two years and pay a fine of Rs. 1000/- under each head. In default of payment of fine, they were sentenced to further undergo rigorous imprisonment for six months under the defaulting clause. The sentences were ordered

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to run concurrently.

Dis-satisfied with the conviction and sentence, appeals were filed by accused Rekha Jangra and Pritam Singh. Vide judgment dated 24.03.2015 appeal filed by Pritam Sigh was allowed and he was acquitted while the appeal of the petitioner was dismissed and her conviction and sentence was maintained.

Dis-satisfied with the same, instant revision petition has been filed.

I have heard learned counsel for the parties and with their able assistance gone through the record carefully.

Learned counsel for the petitioner had urged that there is no evidence to connect her with the offence as no test identification parade was conducted. He had further urged that the photograph was affixed on the sale-deed lateron to implicate the petitioner and Bhawandeep son of Raja Ram and Ompati, who had also signed the sale-deed, Ex.PW4/A was not examined by the prosecution for the reasons best known to it and his non-examination was fatal to the case. He had further urged that the statement of hand-writing expert had been ignored by the Courts below wherein it had come that the thumb impressions appearing on sale-deed did not match the thumb impression appearing on the register of Treasury Office which were affixed by the seller at the time of purchasing the stamp papers.

Learned State counsel had submitted that the Courts below had rightly appraised the evidence on record and recorded the conviction of the petitioner.

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The prosecution case rests not only upon the ocular but on documentary evidence as well. The record relating to death of Smt. Omwati was produced and proved on record by PW3 Sukhwinder Kaur, an official from the office of Civil Surgeon, Fatehgarh Sahib, according to which she had died on 16.03.1994. There is an entry at Sr. No.68 dated 26.03.1994. No evidence contrary to that was produced by the defence to prove that the entry was wrong. Sale-deed, Ex.PW4/A was admittedly executed on 12.09.1996, much after the death of Ompati whereby land belonging to her was sold to Gurmail Singh and Harpal Singh. PW4 Karamjit Singh, Naib Tehsildar had registered the document and he was very categoric that accused Rekha, present in the Court had appeared before him posing as Ompati and her photograph was affixed on the sale-deed. PW5 Gurmail Singh who purchased the land also identified accused Rekha Jangra, who disclosed herself to be Ompati while getting the sale-deed registered. There is overwhelming evidence on record in the shape of testimonies of PW 4 and PW5 to prove that it was petitioner Rekha Jangra who after the death of her sister Ompati sold the land belonging to her sister by impersonation. No ill-will or motive for false implication had been attributed against the prosecution witnesses. There remains no doubt about the identity of the petitioner and it cannot be said that her photograph was pasted lateron. The veracity of the prosecution witnesses could not be doubted only because Bhawandeep, the son of Ompati was not examined.

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DW1 Jassy Anand, Hand Writing Expert vide her report Ex.DW2/A opined that the thumb impressions appearing on the sale-deed of Ompati did not tally with the thumb impression of seller appearing on the register of Treasury Office. It was not the case of the prosecution that the stamp papers for execution of sale-deed were purchased by the petitioner. Moreover, it is settled that the report of the handwriting expert is not conclusive in nature. This witness had admitted that she had not compared the individual ridge characteristics of the disputed and admitted thumb impressions. Thus, the report loses its significance in the light of reliable and convincing ocular evidence coming on record proving that the petitioner had impersonated as Ompati and fraudulently executed the sale-deed and used it as genuine. The inevitable conclusion is that the conviction of petitioner under Sections 419, 468 and 471 IPC respectively was rightly recorded and there is no reason to interfere with the concurrent findings recorded by the Courts below. It is well settled that there is a limited scope of interference while exercising revisional jurisdiction. Re-appraisal of evidence is not permitted save in case of manifest error. The findings recorded by the Courts below are neither illegal nor perverse.

Faced with the situation, it was urged by learned counsel for the petitioner that the matter pertained to the year 2001 and the petitioner had undergone the agony of criminal proceedings for the last more than 14 years. It was urged that the petitioner is 40 years old lady and a first offender and there is

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no other case pending against her and she has remained in custody for about a year. Learned counsel had referred to **Chhanni Vs. State of Uttar Pradesh 2006(3) RCR(Crl.) 753** to urge that the provisions Section 4 of Probation of Offenders Act applies to the case of petitioner and she is entitled to be released on probation.

The benefit of probation can be given considering the gravity of the offence and the antecedents of the convict and cannot be claimed as a matter of right. In the instant case, the petitioner impersonated the deceased sister and fraudulently sold that land. In the considered opinion of this Court, the magnitude of the offence committed by the petitioner does not entitle her to the benefit of probation. However, some leniency can be given on the quantum of sentence.

For the reasons above, the conviction of the petitioner is maintained. Her substantive sentence is reduced to the period of one and a half year under different heads, which shall run concurrently. The sentence of fine is maintained.

With the aforesaid modification, the instant revision petition is disposed of.

January 06, 2016 **(ANITA CHAUDHRY)**
Jiten **JUDGE**

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