

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

CRR No.2281 of 2015

Date of Decision: February 24 , 2016

Dhani Ram

.... Petitioner

vs.

State of Haryana

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. H.S. Gill, Senior Advocate with
Mr. Nitin Rampal, Advocate for the petitioner.

Mr. M.S. Sidhu, Addl. A.G., Haryana.

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

Kuldip Singh J.

Impugned in the present revision petition is the judgment dated 30.05.2015 passed by learned Addl. Sessions Judge, Faridabad, affirming the judgment of conviction dated 19.03.2013 and order of sentence dated 21.03.2013 passed by learned Addl. Chief Judicial Magistrate, Faridabad, vide which the present petitioner was convicted for the commission of offence punishable under Section 471 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹1,000/-, in default thereof to further undergo simple imprisonment for a period of two weeks.

The State machinery was put in to motion on the complaint dated nil (Ex.PW5/A) filed by Sushma Kapoor wife of Sh. Ram Lal Kapoor and Rani Chopra wife of Sh. S.K. Chopra, in which they had stated that they had purchased certain land, situated in Mewla Maharajpur, vide registered sale deed dated 25.05.1981. The same was duly entered in the jamabandi. Now, they have come to know that a forged power of attorney No.127, dated 07.04.1998 is purported to be executed in favour of Dhani Ram son of Khem Chand. Dhani Ram, resident of Village Nawada, Tehsil and District Faridabad. Dhani Ram as General Power of Attorney (in short 'GPA') sold the said land to Gulshan Kaur wife of Jagjot Singh, resident of Faridabd vide sale deed dated 773, dated 27.04.1998. Gulshan Kaur further sold the same regarding which mutation Nos.6332 and 6366 have been wrongly sanctioned.

On the basis of the said complaint dated nil, present FIR No.295, dated 04.06.2003, under Sections 419, 420, 467, 468 and 471 read with Section 120-B IPC was registered at Police Station Central, Faridabad.

During the course of investigation, it came out that the forged power of attorney was handed over by subsequent purchaser Nidhi Choudhary to the police, who deposed that she had purchased some marlas of land situated in Maharajpur from Gulshan Kaur through GPA Dhani Ram. The specimen signatures and handwriting of one Advocate Chetan Swaroop Sharma were obtained. Specimen thumb impressions of both the complainant were also obtained and

the opinion of handwriting expert was sought. The Finger Prints Bureau, Haryana, vide report Ex.P2 reported that the disputed thumb impressions Q1 to Q6 are comparable and different from the right and left thumb impressions of Sushma Kapoor and Rani Chopra. Regarding the signatures of Chetan Swaroop Sharma, it was reported that pattern of signatures marked as S1, S2 is different to the pattern of signatures marked as Q9 to Q11 and are technically not comparable. Therefore, it is not possible to express any opinion on Q9 to Q11 in comparison with S1 and S2.

After the completion of the investigation, Dhani Ram, alleged GPA was challaned by the police. He was charge-sheeted under Sections 419, 467, 468 and 471 IPC.

In support of its case, the prosecution examined Rani Chopra as PW1, Sushma Kapoor as PW2, ASI Jay Kishan as PW3, EHC Randhir Singh as PW4, Retd. SI Nrayan Singh as PW5, Nidhi Choudhary as PW6, Dalbir Singh as PW7 and Pratap Singh, Branch Manager, Union Bank of India as PW8. Remaining prosecution evidence was closed by orders.

When examined under Section 313 Cr.P.C. ,the accused denied all the allegations levelled against him.

The accused did not lead any evidence in defence.

After hearing learned counsel for the parties and going through the evidence, learned Addl. Chief Judicial Magistrate, Faridabad, acquitted the accused for the commission of offence punishable under Sections 419, 467 and 468 IPC and convicted and

sentenced the accused for the commission of offence punishable under Section 471 IPC as aforesaid.

The appeal filed by the petitioner was dismissed by learned Addl. Sessions Judge, Faridabad.

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

A perusal of the original file shows that the case was poorly investigated and badly prosecuted. Before the trial court, Sushma Kapoor and Rani Chopra, complainant were produced, who stated that power of attorney on their behalf was forged by Dhani Ram. The original power of attorney was sent for comparison and received with the report but never formally proved in accordance with law. However, photocopy thereof was marked by the prosecution as Mark 'A' but not formally exhibited and proved in accordance with law, assuming that the original power of attorney has been produced and taken to be proved in accordance with law.

A perusal of the original power of attorney shows that it does not bear the signatures of accused Dhani Ram. Though it bears his photograph. Dhani Ram never appeared at the time of registration of the said power of attorney. It bears the signatures of Sushma Kapoor and Rani Chopra, which were found to be forged. It bears the signatures of Shri Chetan Swaroop Sharma, Advocate at Faridabad along with Rajender son of Piyare Lal, two attesting witnesses to the deed. It was drafted by Shir C.S. Sharma, Advocate. He has signed along with the seal. It also bears the photograph of

said C.S. Sharma, Advocate on the back portion of first page. Though, the signatures of C.S. Sharma, Advocate were got compared but it was not tried to be ascertained as to whether the seal is of C.S. Sharma, Advocate is genuine or forged. There is no mention as to whether Rajender, the attesting witness of the power of attorney was joined in the investigation or not and what happened thereafter. Anybody can use the photograph of Dhani Ram. Dhani Ram never signed the forged power of attorney nor he appeared at the time of its registration. Therefore, from the mere fact that his photograph appears on the power of attorney, he cannot be held guilty and convicted under Section 471 IPC.

It also comes out that the forged power of attorney was not recovered from accused Dhani Ram, it was rather handed over to the police by Nidhi Choudhary. Nidhi Choudhary is stated to be subsequent purchaser.

In addition to this, there are many lacunae in the prosecution case, which are over looked by the trial court as well as the first appellate court. Dhani Ram is stated to have sold the land to Gulshan Kaur through sale deed. The sale deed in favour of Gulshan Kaur was never produced in the court nor Gulshan Kaur was examined in the Court to state that it was Dhani Ram, who had appeared as GPA and sold the land to her. Though, the photocopy of the sale deed executed by Gulshan Kaur in favour of Nidhi Choudhary was produced. Nidhi Choudhary does not know whether Dhani Ram had sold the land as GPA of the complainants to Gulshan

Kaur. Therefore, the pertinent link of evidence in the form of statement of Gulshan Kaur is missing. Further, it comes out that the Investigating Officer in this case, who had taken into possession the forged power of attorney and had conducted the investigation was not examined.

SI Narayan Singh, PW5 had merely obtained the specimen signatures and the remaining investigation was done by somebody else. In this way, in the absence of the evidence to the effect that Dhani Ram was in possession of the forged power of attorney or the fact that Dhani Ram was the party to the forgery of said power of attorney, both the courts below erred in holding that offence under Section 471 IPC against Dhani Ram is proved.

In fact, several links are missing, as discussed above. Dhani Ram is not connected with the said forgery. Shri Chetan Swaroop Sharam, Advocate was not challaned by the police at all, apparently on account of his status and influence as an advocate. The investigation is defective. The prosecution also failed to produce the entire evidence before the lower court and prosecution evidence was ultimately closed by orders.

In these circumstances, I am of the view that the charges framed against accused Dhani Ram are not proved beyond all reasonable doubts. Accordingly, the judgment passed by learned Addl. Sessions Judge, Faridabad as well as the judgment and order of sentence passed by learned Addl. Chief Judicial Magistrate, Faridabad are set aside. The accused stands acquitted of the

charges framed against him. He be released forthwith, if not required in any other case.

The present petition stands allowed.

February 24, 2016
sarita

(KULDIP SINGH)
JUDGE