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

**CRR No. 1778 of 2016 (O&M)
DECIDED ON: May 11, 2016**

AVTAR SINGH .....PETITIONER

VERSUS

STATE OF PUNJAB ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers 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? (√)

Present: Mr. Rajeev K. Kapila, Advocate for the petitioner.

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JASPAL SINGH, J.

By virtue of instant petition, Avtar Singh has sought quashing of judgment dated 22.04.2016 whereby an appeal preferred against the judgment dated 21.02.2015 passed by Sub Divisional Judicial Magistrate, Mukerian, District Hoshiarpur vide which the petitioner has been convicted and sentenced under Sections 420 and 471 IPC, in case bearing FIR No. 6, under Sections 420, 467 and 468 IPC, has been dismissed.

2. Briefly stated, the facts of the case are that on 18.01.2008, an application was received from Naib Tehsildar, Sh. Varinder Kumar. The contents of the application are reproduced as under:-

"that one mortgage deed was executed by one Avtar Singh,

Lambardar son of Joginder Singh son of Jail Singh resident of Bariowal, Tehsil Mukerian, District Hoshiarpur, in favour of State Bank of Patiala, Branch Mukerian, with respect to land measuring 33 kanals and 19 marlas situated at village Bariowal, Hadbast No. 343, Tehsil Mukerian.. The mortgae deed was registered in this office at document No. 1435/1 dated 31.08.2006. Photocopy of mortgage deed, jamabandi, non encumbrance certificate, documents regarding leasing out of land have been appended along with mortgage deed. The mortgage deed was registered by Avtar Singh in order to obtain loan to the tune of ₹8,00,000/- from Bank. Mortgagor Avtar Singh was identified by Deewan Chand Lamberdar of village Badhupur and Madan Mohan Bakshi son of Brij Lal. It has come to his notice from the report furnished by the Halqa Patwari that aforementioned mortgage deed was registered on the basis of false and forged documents. Patwari Halqa was summoned in this office along with record. As per the report of Patwari Halqa, jamabandi appended along with mortgage deed was not issued by him and it does not bear his signatures and his signatures on the jamabandi have been forged. Jamabandi of village Motla thereby showing leasing out of land in favour of Avtar Singh by Hazar Singh is genuine. The non-encumbrance certificate appended with the mortgage deed has also been procured from this office by forging signatures of Patwari on report furnished in this regard. Aforementioned facts make it aptly clear that mortgage deed has been registered on the basis of false and forged documents in connivance of attesting witnesses. It would be pertinent to mention over here that whenever loan is sanctioned by a bank, it is assured by bank through its field staff that loan has been sanctioned in favour of a *genuine applicant and application is true owner of property being mortgaged in favour of bank and application is entitled to mortgage the property. In order to confirm all these aspects it is mandatory for the field staff of the bank that they should approach the halqa patwari and inspect the original record and inspect the property proposed to be mortgaged in favour of the bank, and obtain report from the halqa patwari. Besides the safeguards aforementioned, legal opinion of counsel of bank is also to be obtained. Thereupon the mortgage deed is presented before Sub-registrar by bank manager himself after appending his signatures thereupon. Bank is supposed to certify as to who identified the applicant, at the time of opening of loan account but in the case in hand bank has not adopted the appropriate procedure. Thus, it is apparently clear that mortgage deed has been registered in connivance with the bank also.*

Thus it is hereby requested that a case be registered against the Branch Manager ML Vidharthi, Avtar Singh Lamberdar, Deewan Chand Lamberdar, Madan Mohan."

3. On the basis of allegation, present FIR was registered. Accused Madan Mohan died during the course of investigation. Investigation was conducted against remaining accused persons. Statements of witnesses were recorded. After completion of all formalities, challan was presented in the Court.

4. Finding a prima facie case, charge under Sections 420, 467, 468, 471, 120-B IPC was framed against accused to which they pleaded not guilty and claimed trial.

5. In order to prove guilt of accused, prosecution examined Ram Murti as PW-1, Varinder Bhatia as PW-2, Varinder Kumar as PW-3, SI Baldev Singh as PW-4, Pankaj Taneja as PW-5, Kuldeep Singh as PW-6 and thereafter closed its evidence.

6. When the incriminating circumstances, appearing in prosecution evidence were put to the accused for eliciting his explanation as required under Section 313 Cr.P.C., he denied all of them and pleaded innocence. He opted to adduce evidence but subsequently closed his evidence without examining any witness.

7. After considering rival submissions made by learned counsel for the parties and appraisal of the evidence, the petitioner-accused was convicted and sentenced under Sections 420 and 471-B IPC.

8. Disheartened from the judgment dated February 21, 2015, petitioner preferred the appeal before the lower appellate court but it was also dismissed vide impugned judgment April 22, 2016.

9. Now, the petitioner has approached this Court by way of instant revision petition.

10. While assailing the impugned judgment(s) of conviction and order(s) of sentence, it has been ebulliently argued by learned counsel for the petitioner that the same are absolutely against the evidence available on file and settled canons of law. In fact, mis-appreciation of evidence as well as legal proposition of law applicable to the facts and circumstances of the instant case has resulted into miscarriage of justice. Both the courts below have erred in law while ignoring the fact that the petitioner has been falsely

implicated in the instant case. In fact, he is the victim of fraud played upon him by the Bank Manager-co-accused and other persons, who came in contact with the petitioner in the Bank only for the first time. The matter of the fact is that the petitioner approached the State Bank of Patiala, Branch Mukerian for raising a loan of Rs.80,000/- and at that time, it was clearly disclosed by him to the Bank Manager that he has no land for mortgaging with the Bank as a security or otherwise his land is already lying mortgaged, upon which the Bank Manager-co-accused assured him that he would take care of this. At that time, there were 4 other persons namely Manjit Singh son of Charan Singh, resident of Village Dharampur, Raju, Shiv Kumar son of Babu Ram and Rohit son of Shiv Kumar, resident of Mukerian, whom he did not knew earlier, and they alongwith Manager M.L. Vidyarthi, assured the petitioner that they will arrange all the documents themselves and he has just to sign some papers in the Tehsil Complex. Moreover, it was clearly mentioned while sanctioning financial assistance that an amount of ₹30,000/- is for the purpose of sowing the crops, purchasing of oil, seeds, manures etc. whereas a sum of ₹50,000/- is for agricultural equipment i.e. totalling ₹80,000/- and the amount was to be repaid in half yearly installments of ₹8000/-along with interest. Even at the time of obtaining the financial assistance, the petitioner did not deposit any documents and all the documents were prepared by the above referred persons in connivance with Bank Manager, who is also a co-accused in this case. The petitioner only came to know about the fraud played upon him on 05.05.2007, after one year of the sanctioning of loan, when he received notice from the bank authorities asking him to pay ₹3,00,000/- along with interest after selling his crop. Subsequent thereto, on 08.05.2007 he received another notice asking him to pay ₹95,000/- and then on 25.09.2007 to pay a sum of ₹1,88,000/-.

11. It has further been argued by learned counsel for the petitioner that after the retirement of the Bank Manager, the petitioner received notices from the Bank which proves that the Bank Manager firstly fabricated figure of an amount of ₹8,00,000/- from ₹80,000/- by adding digit zero and withdrew all the money except ₹80,000/- given to the petitioner in connivance with his co-accused.

12. While concluding his arguments, it has been submitted by learned counsel for the petitioner that petitioner did not play any fraud or cheating with the Bank while obtaining the loan. Neither, he forged and fabricated any document nor presented the same before the Bank. Rather, all the document(s) were forged and fabricated by the Bank Manager in connivance with other persons, who have already been convicted and sentenced along with the petitioner. Thus, the impugned judgments and orders are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant petition.

18. This Court has given an anxious thought to the submissions made by learned counsel for the petitioner but find the same to be without any legal and factual substance.

19. On scrutinizing the judgments rendered by both the courts below, it becomes crystal clear that petitioner approached the Bank for obtaining financial assistance and sanction to grant loan was accorded by

concerned Bank Manager. At the time of obtaining the loan, forged and fabricated documents i.e. Jamabandis were furnished by the petitioner, which were accepted by the Bank Manager as well as the other officers of the Bank. Ultimately, a mortgage deed was executed by the petitioner in favour of the Bank. The documents so furnished by the petitioner were subsequently found to be fake, forged and fabricated. The mere fact that some other persons also obtained the loan from the Bank by furnishing fake and forged documents does not *ipso facto* mean that the present petitioner stood absolved from his liability. Both the courts below have taken into consideration the testimony of PW-6 Kuldeep Singh, Head Cashier, State Bank of Patiala, Branch Mukerian, who clearly deposed that he has handed over various loan documents pertaining to loan account of Avtar Singh to the investigating officer, which were taken into possession by him. Crucial document is exhibited as Ex.PW6/B i.e. the mortgage deed executed by Avtar Singh in favour of the Bank. At the time of obtaining the loan affidavit Ex. PW6/F was furnished by Avtar Singh-petitioner, vide which, he claimed that the property, which is a subject matter of the mortgage deed belongs to him. Not only this, he also furnished the non-encumbrance certificate Ex.PW6/G pertaining to the property mortgaged by him in the Bank as security against the loan advanced to him. There is also nothing on the record that a sum of ₹80,000/- was taken as loan by the petitioner from the Bank. Rather, there is a reference of various documents in the judgment delivered by the lower appellate court, according to which, he withdrew different amounts on different dates vide different vouchers. There is a cogent and convincing evidence against the accused that he forged and fabricated the documents and produced the same before the Bank authorities while obtaining loan. The judgments passed by both the courts below are absolutely inconsonance with the evidence available on file and do not call for any interference by this Court.

20. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same is dismissed.

May 11, 2016 **(JASPAL SINGH)**
sonika **JUDGE**