In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.1882 of 2016 (O&M)

.....

Date of decision:13.7.2016

Upinder Kumar

...Petitioner

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Bhanu Pratap Singh, Advocate for the petitioner.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned judgment dated 22.3.2016 passed by learned Additional Sessions Judge, Hoshiarpur, whereby the appeal filed by the petitioner against the judgment of conviction and the order of sentence dated 21.2.2015 passed by the learned Sub Divisional Judicial Magistrate, Mukerian, convicting and sentencing the petitioner for the offences under Section 420 and 120-B IPC for three years with fine of ₹1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 15 days for each of the offences under Sections 420 and 120-B IPC, has been dismissed subject to modification in quantum of sentence, which was reduced from three years to two years for each of the offences under Sections 420 and 120-B IPC.

I have heard learned counsel for the petitioner and have gone through the record.

The brief facts of the case as noted down by Sub Divisional Judicial Magistrate, Mukerian are as under:-

> "Briefly stated facts of the case as asserted by the prosecution are that an application was moved by Yashpal Sharma, Tehsildar Mukerian to Deputy Supdt. of Police, Mukerian, relevant extract of which could be reproduced as follows:-
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>> "............. You are hereby informed that one mortgage deed was executed by one Upinder Kumar son of Sadhu Ram son of Nathu Ram resident of village Nikku Chakk, Tehsil Mukerian, Distt. Hoshiarpur, in favour of State Bank of Patiala, Branch Mukerian, with respect to land measuring 20 kanals 17 marlas situated at village Bhavnal, Hadbast number 344, Tehsil Mukerian. The mortgage deed was registered in this office at document No.195 dated 23-4-2007. 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 Upinder Kumar in order to obtain loan to the tune of Rs.7,00,000/- from Bank. Mortgagor Upinder Kumar was identified by Avtar Singh, Lambardar of village Bareowal, Amar Singh son of Sant Ram and Madan

Mohan Bakshi son of Brij Lal resident of Village Umarpur Muradpur Jattan.

It has come to my notice from the report furnished by 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. Photocopy of report furnished by Patwari has also been appended herewith. 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 aforementioned have been forged. 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 witness namely Avtar Singh Lambardar, Amar Singh son of Sant Ram and Madan Mohan Bakshi. 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 applicant is true owner of property being mortgaged in favour of bank and applicant 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 patwari halqa. 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. It is also pertinent to mention here that Branch Manager of State Bank of Patiala (now retired) has recommended the loan of 5 such cases.

Thus it is hereby requested that a case be registered against Branch Manager, Upinder Kumar, Avtar Singh Lambardar, Deewan Chand Lambardar, Madan Mohan under appropriate sections of Indian Penal Code.......”

On the basis of application aforementioned FIR was registered

> against accused persons. Accused Madan Mohan son of Brij Lal died during the course of investigation. Statements of witnesses were recorded. Relevant documents were taken into custody by the investigation officer. After going through further technicalities of investigation, challan was presented in the Court."

During the course of investigation accused Madan Mohan died. The learned Sub Divisional Judicial Magistrate, Mukerian, vide judgment dated 21.2.2015 convicted and sentenced the accused for the offences under Sections 420 and 120-B IPC and acquitted under the other offences under Sections 465, 468, 471 IPC etc. and sentenced petitioner Upinder Kumar as mentioned above. Avtar Singh co-accused was also sentenced under Section 120-B IPC.

Aggrieved against this judgment, the petitioner and his co-accused filed separate appeals, which were dismissed vide judgment dated 22.3.2016 passed by learned Additional Sessions Judge, Hoshiarpur and reduced the sentence for the offences under Sections 420 and 120-B IPC. Now this revision petition has been filed.

First of all this is a revision petition and in the revision petition this Court is not to re-appreciate the evidence like a Court of appeal.

At the time of arguments, learned counsel for the petitioner has not argued that the findings given by the Courts below are illegal, perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread by the Courts below and which material evidence has not been considered by the Courts below. A perusal of the findings given by the Courts below shows that the findings have been given as per evidence on record and also as per law. The learned Sub Divisional Judicial Magistrate, Mukerian while convicting the petitioner held that qua the offence of cheating it has been alleged by the prosecution that the accused persons secured loan from State Bank of Patiala by mortgaging property in favour of the Bank which did not even belong to them. Therefore, the accused have cheated the Bank. The Court held that the perusal of the record revealed that in order to prove the loan documents furnished by accused Upinder Kumar, the prosecution has examined Head Cashier of the bank. Atul Dogra, Clerk from the Court of learned District & Sessions Judge had already appeared along with record pertaining to Civil Suit titled as State Bank of Patiala v. Upinder Kumar consisting of all the original documents of loan filed by accused Upinder Kumar. PW-7 Kuldip Singh-Head Cashier, State Bank of Patiala, Mukerian Branch was shown all these original documents which proved all the loan documents as per law. The Court held that the perusal of the document Ex.PW.2/F (mortgage deed) and Ex.PW.2/K (affidavit of Upinder Kumar) clearly reveal that these two documents have turned out to be sufficient to prove the fact that accused Upinder Kumar had cheated the State Bank of Patiala. It is mentioned in the affidavit Ex.PW.2/K that Upinder Kumar is owner of the property. The Jamabandi has also been placed on record which is Ex.PW.6/A which shows that the name of accused Upinder Kumar does not find mention in the entire Jamabandi. It is also mentioned in the judgment that accused Upinder

Kumar during the course of defence evidence has not only admitted the case against himself but also proved the offence of criminal conspiracy against accused Avtar Singh and the Court relied upon the compromise dated 1.1.2008 Ex.D.2 on the record. This compromise has been duly proved by DW-2.

The findings given by the Courts below are as per law and evidence. No illegality has been committed by the Courts below while passing the judgments nor, in any way, these can be held as perverse against the evidence or law. As no illegality has been pointed out in the findings given by the Courts below, therefore, the judgments of both the Courts below are correct and as per law, which do not require any interference from this Court and the same are upheld.

Therefore, finding no merit in the criminal revision petition, the same is dismissed.

July 13, 2016.

(Inderjit Singh)
Judge

hsp

NOTE: Whether speaking/reasoned: Yes

Whether reportable: No