

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14251-2014

Date of decision: July 04, 2017.

Amarjit Singh

... **Petitioner**

v.

State of Punjab and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Jag Nahar Singh, Advocate for the petitioner.

Ms. Samina Dhir, Deputy Advocate General, Punjab.

Shri S.K. Gupta, Advocate for the complainant.

A.B. Chaudhari, J. (Oral):

Rule. Heard forthwith with the consent of learned counsel for the rival parties.

In the present petition, the petitioner has put to challenge the orders dated 30.11.2011 (Annexure P-6) and 9.12.2013 (Annexure P-7) by which the courts below dismissed the claim of the petitioner for framing the charge registered under Sections 420, 468, 471 IPC which arose out of FIR No.230 dated 15.11.2005 at Police Station Phillaur, District Jalandhar.

Late S. Sadhu Singh was having four sons and four daughters. Respondent No.3 Satwinder Singh also his son sold the property claimed to be ancestral property of Sadhu Singh to the exclusion of the co-parceners in the family in favour of respondent No.2 Harbhajan Singh by way of a sale deed. Sadhu Singh therefore filed an FIR with the Police Station Phillaur,

District Jalandhar bearing No.230 dated 15.11.2005 and the challan was filed against respondents No.2 to 5. Respondents No.4 and 5 are the witnesses on the sale deed. During the pendency of the prosecution, Sadhu Singh died and the petitioner Amarjit Singh was brought on record who has filed the present petition for challenging the impugned orders. Under the impugned orders, the trial court framed charge against the accused persons only under Sections 447 and 511 IPC, that too only against Harbhajan Singh and it declined to frame charge against respondent No.3 Satwinder Singh.

Learned counsel for the petitioner Amarjit Singh has vehemently argued that the courts below ought to have framed charge against Harbhajan Singh as well as witnesses to the sale deed namely respondents No.4 and 5 for the offences under Sections 420,447,511,468 and 471 IPC. Having gone through the record at the outset, the submission made by Learned counsel for the petitioner must be rejected outright. The reason is Harbhajan Singh purchased the suit property from Satwinder Singh while respondents No.4 and 5 had merely acted as attesting witnesses. The purchaser in his role as a purchaser by itself or the witnesses themselves cannot be said to have even remotely committed any offence by act of purchase of property or acting as a witness. Impugned order refusing to frame charge against respondents No.2, 4 and 5 are therefore upheld.

The next question is about framing of charge under Sections 420,447,511 IPC against Satwinder Singh son of Sadhu Singh. Opposing the present petition, learned counsel for respondent No.3 Satwinder Singh contended that in the civil suit that was filed by Sadhu Singh, it has been held that Sadhu Singh failed to prove that it was ancestral property and

therefore necessarily Satwinder Singh has been held to be owner by the civil court. According to him, the said finding recorded by the civil court would come in the way of the petitioner in asking for framing the charge against Satwinder Singh even for the offence under Sections 420, 468, 471 IPC. To a pointed question as to whether the civil court held that the property was self acquired property of Satwinder Singh who could sell the same to Harbhajan Singh, counsel for respondent No.3 is unable to point out any such finding. He, however, insisted that the civil court finding that Sadhu Singh had failed to prove that the property was ancestral property, does not impress me. The reason is that the property stood in the name of the family from the beginning and there is a presumption about the ancestral property and the right of the co-parceners in the property under the Hindu law. Respondent No.3 was entitled to rebut that presumption by adducing material/evidence that he was exclusive owner to the exclusion of all others. That is neither a finding by the civil court nor material has been shown accordingly. Therefore, it is clear that respondent No.3 was alone not entitled to sell the suit property to Harbhajan Singh. Thus, judgment made by the civil court, as pointed out by learned counsel for respondent No.3, therefore, does not come to the help of respondent No.3. Prima-facie, he has committed cheating with his family members including his father Sadhu Singh. However, it is necessary to allow the trial court to delve on all these aspects since this Court is satisfied as regards the charge to be framed against him. In that view of the matter, following order is inevitable:-

ORDER

(i) CRM-M-14251-2014 is partly allowed;

- (ii) impugned orders are quashed and set aside;
- (iii) the impugned orders qua respondents No.2, 4 and 5, refusing to frame charge against them, are upheld;
- (iv) the impugned orders made by the courts below refusing to frame charge against respondent No.3 are quashed and set aside and the case is remitted to the trial court for framing of charge against respondent No.3 for whatever offences prima facie are found upon going through the case and after hearing the parties;
- (v) the parties shall be heard and accordingly the decision about framing of charge against respondent No.3 shall be taken within a period of two months from today since the criminal case is pretty old. The trial court is directed to decide the same as expeditiously as possible and in any case within one year from today;
- (vi) the trial court will take decision on merits regarding framing of charge against respondent No.3 without being influenced by any of the observations made hereinabove.

July 04, 2017.

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[A.B. Chaudhari]
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No