

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

**CRM No.M-15450 of 2014 (O&M)
Decided on: 24.08.2017**

Sucha Singh and another

....Petitioners

Versus

Mohinder Singh and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. G.S. Nagra, Advocate
for the petitioners.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of the order dated 02.12.2010 (Annexure P2) passed by the trial Court dismissing the complaint filed under Sections 420, 465, 467, 468 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') as well as the order dated 16.12.2013 (Annexure P4) passed by the Appellate Court vide which the appeal filed by the petitioners against the order dated 02.12.2010 was dismissed.

Brief facts of the case as noticed from the judgment dated 16.12.2013 are as under:-

“Succinctly stated, the facts of the case are that the petitioners/complainants filed a complaint under Sections 420, 465, 467, 468 read with Section 34 IPC on the allegations that the land measuring 59 bighas 7 biswas situated in village Chalheri Tehsil Rajpura was allotted to complainant Sucha Singh, Harbans Singh, Swaran Singh, Gurnam Singh and Amar Singh, etc. They came into possession of the land in question. Accused Mohinder Singh was not in actual position of the land in question, however he made an application to Tehsildar Rajpura to

get the report regarding the land in question. On the said application Halqa Patwari reported about the complainant and other persons mentioned above being the owners in possession of the land in question as allottees. Later on with an intention to create false evidence, accused No.1 in connivance with accused No.2 prepared a certificate purporting to have been issued by the gram panchayat of the village regarding his possession of the land in question. The said certificate purports to bear the signature of the Sarpanch of the village and signatures of a lady panch. He had prepared the said document to get his possession over the land in question recorded in the revenue record. The signatures of the Sarpanch, member panchayat and seal of the gram panchayat on the said document are forged and fabricated. Accused No.2 made a report regarding the dispute pertaining to Khasra Girdawari entries in respect of the land in question with an intent to cause wrongful loss to the complainants and other co-owners. The accused were well aware that the said certificate is forged and fabricated document but still they used the same as genuine. On coming to know about the said forgery, the complainants had moved an application to the Sarpanch of the village, who ha confirmed in writing that he never signed any such certificate nor he has affixed his rubber stamp thereon. The complainants made application to Sub-Divisional Magistrate, Rajpura and Vigilance Bureau. In the inquiry conducted by the Vigilance Bureau it has been found that the said documents has been forged by accused No.1 in connivance with accused No.2. The Vigilance Bureau sent a report to Deputy Commissioner Patiala in this regard but no action has been taken. On these allegations, the complainants made a prayer for summoning of the accused to face trial under Sections 420, 465, 467, 468

read with Section 34 IPC and for awarding them punishment for the commissioner of the said offences.”

After recording the preliminary evidence, the trial Court summoned the petitioners vide order dated 14.07.2003 and in pre-charge evidence, the petitioners/complainants examined 06 witnesses. The petitioner – Sucha Singh appeared as CW1 and reiterated the version given in the complaint. Thereafter, he examined Ajmer Singh as CW2 and Surinder Singh, Patwari as CW3 who deposed as per the complaint and submitted that the accused persons with an intent to create false evidence and with a view to forge the documents have prepared a certificate of the *Panchayat* to show their possession on the land with an intention to grab the property belonging to the complainant. The complainants also produced documents Ex.C1 to C6 on record.

The trial Court vide order dated 02.12.2010, discharged the respondents/accused by holding that no sufficient evidence has come on record to charge them under Sections 420, 465, 467, 468 read with Section 34 IPC.

The petitioners, thereafter, preferred an appeal before the Appellate Court and the Appellate Court has also dismissed the said appeal vide its order dated 16.12.2013. Thereafter, the present petition is filed challenging the aforesaid judgments.

It is submitted on behalf of the petitioners that the respondents/accused – Balwinder Singh, *Halqa Patwari* had entered a report in the *roznamcha* on the basis of an application dated 12.10.1994 allegedly marked by the *Tehsildar*, Rajpura and this application was

submitted by his co-accused – Mohinder Singh. On this application, the recommendation of Amar Singh, *Sarpanch* and one Devki Devi, Member Panchayat, was made and the allegations that the signatures of these two persons i.e. the *Sarpanch* and Lady *Panch* are forged by the accused persons is proved. It is further submitted that on the basis of the said entry, the *Khasra Girdawari* pertaining to the land which was allotted to the complainant was declared as contested with effect from the crop *Sawani* 1994. It is further submitted that since the signatures of *Sarpanch* and Lady *Panch* were found to be forged, the accused in order to cause wrongful loss to the complainant has committed the offence punishable under Sections 420, 465, 467, 468 read with Section 34 IPC. However, the *Khasra Girdawari* was corrected in favour of the complainant by the Collector, Sub-Division Rajpura vide order dated 20.05.1993 and this order was upheld in appeal by the Additional Commissioner Appeal, Patiala vide order dated 31.08.2000 and a *roznamcha* Ex.C9 was entered by the *Patwari*.

After hearing learned counsel for the petitioners, I find no substance in the present petition. Both the Courts below have discharged the respondents/accused by holding that the application dated 12.10.1994, which is the sole basis of filing the present complaint has never been produced on record before the trial Court. The complainant, though, has tried to prove that the application was sent by the *Tehsildar* to *Patwari* as per the statement of CW3. However, from the summoned record of the *Tehsildar*, Rajpura, the application was not found and, therefore, the same was not produced before the trial Court.

The submission of counsel for the petitioner that there is a report of the

Vigilance Department Ex.PW5/B with regard to the said application, the same can be considered even in the absence of the application is also without any merit as on the basis of the report, the Court cannot conclude that the documents were forged. The petitioners has failed to produce any evidence with regard to the forgery of the said application and in the absence of the same, the respondents/accused have a right to contest the validity of the prosecution evidence on record. Since, neither the original application nor the copy was produced on record, the respondents/accused cannot be deprived of their right to prove the genuineness of the same. Therefore, mere report of the Vigilance Department is not sufficient to hold the respondents/accused guilty of the offences. There is another aspect of the case. There is a serious disputed regarding the possession of the land between the complainant and the accused persons. A perusal of the allotment letter Mark A relied upon by the complainant, would show that the land was allotted to them. This Court in CWP No.5783 of 1990 vide order dated 08.02.1991 has directed the parties to maintain *status quo* regarding possession of the land in dispute. Therefore, even if the Revenue Officers at the time of inspection has referred the matter to the Circle Officer by declaring that there is a dispute regarding the *Khasra Girdawari* entries between the parties, it is well within the power given in para 9.9 of Punjab Land Revenue Manual to the concerned revenue officers and, therefore, it cannot be held that respondent No.2 – Balwinder Singh, *Halqa Patwari* had acted beyond his jurisdiction. It is also apparent on record that neither Amar Singh, *Sarpanch* nor Devki Devi, Lady *Panch* who allegedly signed on the certificate dated 12.10.1994, on the application

submitted by respondent No.1/accused appeared in the Court to either admit or deny their signatures. Therefore, the Courts below have rightly concluded that there is no evidence on record on the basis of which, the charge against the accused for committing the offence under Sections 420, 465, 467, 468 read with Section 34 IPC is made out.

For the foregoing reasons, the petition fails and is accordingly dismissed.

24.08.2017
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No