

116/243

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

**CRM-M-25819-2013 (O&M)
Date of decision: - 27.9.2017**

Dilbagh Singh

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. G.S. Kaura, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Gursimran Singh, Advocate
for respondent-complainant

ARVIND SINGH SANGWAN, J (ORAL)

CRM-30998-2017

For the reasons mentioned in the application, CRM is allowed and Annexure P-14 i.e., the report under Section 173 Cr. P.C. along with statements of witnesses are taken on record.

CRM-M-25819-2013

Prayer in the present petition is for quashing of the FIR No. 162 dated 15.11.2012, under Sections 420, 467, 468, 471 and 120-B IPC, registered at Police Station Sidhwa Bet, Ludhiana and all subsequent proceedings arising therefrom.

Brief facts of the case are that complainant- Rakesh Kumar son of Subhash Chander got the aforesaid FIR registered with the allegation that one Iqbal Singh son of Sunder Singh was owner of certain properties in village

Sidhwan Bet, Tehsil Jagron, District Ludhiana. Complainant-Rakesh Kumar and his mother Nirmala Kumari were residing with Iqbal Singh as they used to take care of Iqbal Singh and on that account, Iqbal Singh executed a Will dated 22.10.2007 of his property in favour of Rakesh Kumar and his mother Nirmala Kumari. It was further alleged in the FIR that co-accused Karam Singh son of Sher Singh, obtained certain blank papers from Iqbal Singh and has got prepared certain fake and forged documents to usurp his property and therefore, it was prayed that legal action be taken against Karam Singh.

During the investigation, the SHO, Sidwan Bet verified from Balkar Singh son of Gurbaksh Singh about the Will in favour of Rakesh Kumar and Nirmala Kumari. Further, as per the statements of petitioner- Dilbagh Singh (ex-Sarpanch); Jagdev Singh and Balraj Singh, it has come on record aforesaid Iqbal Singh had given 16 acres of land on lease to them. It was also verified that at the time of giving the land on lease, Iqbal Singh has admitted that Rakesh Kumar was his legal heir and that he has got the Will executed in his favour. The counter Will dated 20.11.2011, set up by Karam Singh-co accused was held to be not a genuine Will of Iqbal Singh as per the verification done by the Investigating Officer.

Thereafter, police submitted the report under Section 173 Cr. P.C, Annexure P-14 and it was found that Karam Singh-co accused in connivance with Kulwinder Singh and Sohan Singh has wrongly prepared a Will regarding the land of Iqbal Singh on 20.10.2011.

Learned counsel for the petitioner submits that in fact a perusal of the FIR as well as report submitted under Section 173 Cr. P.C would show that there are no direct allegation against the petitioner about the property of Iqbal Singh which is claimed by Rakesh Kumar and his mother Nirmala Kumari on

one side, on the basis of the Will dated 22.10.2007 and Karam Singh on the other side on the basis of the Will dated 22.10.2011. It is further submitted that the petitioner is only an attesting witness to the lease deed executed by Iqbal Singh in favour of co-accused Jagdev Singh w.e.f. 1.5.2011 to 30.4.2013 vide agreement dated 13.10.2010 which was never challenged by Iqbal Singh or complainant during his life time.

Learned counsel for the petitioner further submits that the only allegations against the petitioner is that he was one of the attesting witness of this agreement of lease dated 13.10.2010 vide which Iqbal Singh during his life time, has given his land measuring 16 acres to Jagdev Singh on lease for a period of 2 years and thus he has not committed any offence as he is neither an attesting witness of either of the two Wills set up by both the parties or a beneficiary of any of the documents and he has not identified any wrong persons and therefore the FIR qua him is liable to be quashed.

The reply by way of affidavit of DSP, Dhaka, District Ludhiana has been filed in which it is stated that SHO, P.S. Sidhwan Bet conducted an enquiry on the application of the complainant- Rakesh Kumar and as per the enquiry, the accused persons have prepared a forged document regarding the property of Iqbal Singh i.e. the Will dated 22.10.2011 in favour of Karam Singh which was stated to be a forged document and therefore, the challan was submitted. In the reply, it is also stated that a civil litigation is pending between Karam Singh on one side and Rakesh Kumar and Nirmala Kumari on the other side.

After hearing, learned counsel for the parties, I find that a bare perusal of the FIR and report submitted under Section 173 Cr. P.C. along with statement of the witnesses recorded under Section 161 Cr. P.C. and the documents appended thereto with report under Section 173 Cr. P.C., following

undisputed facts emerges in the present case: -

- a) The complainant- Rakesh Kumar has submitted a complaint to SSP Ludhiana against co-accused Karam Singh with the allegations that there is a Will dated 22.10.2007 in favour of Rakesh Kumar and his mother Nirmala Kumari executed by Iqbal Singh and Karam Singh has obtained certain blank papers signed from Iqbal Singh to usurp the property;
- b) In the statement recorded under Section 161 Cr. P.C., the complainant has not stated as to what offence has been committed by the petitioner-Dilbag Singh, who is an ex-sarpanch, and similar is the statement of the other witnesses Subhash Chander who is a witness to the Will dated 22.11.2007 in favour of the complainant-party. One Arjan Singh, Namberdar is also a witness to the Will;
- c) A careful perusal of the report under Section 173 Cr. P.C. also reveal that it has come in the investigation of the police that petitioner was neither a witness to the Will set up by co-accused Karam Singh dated 20.11.2011 nor to the Will dated 22.11.2007 set up by the complainant-Rakesh Kumar;
- d) It has also come on record that Iqbal Singh had executed one lease deed dated 13.10.2010 for two years in favour of Jagdev Singh and petitioner was an attesting witness to the said lease deed. Iqbal Singh during his life time never challenged this document to be either a forged or a fabricated document and it is not a case set up by complainant that petitioner who is an ex-sarpanch has identified any person other than Iqbal Singh in the agreement of lease executed by Iqbal Singh in favour of Jagdev Singh;
- e) A perusal of the agreement of lease dated 13.10.2010 (Annexure P-5), further shows that both Iqbal Singh and Rakesh Kumar-

complainant had signed it as a first party and Jagdev Singh in whose favour this lease agreement was executed has signed as a second party; and one Rajinder Singh Namberdar and the petitioner were attesting witnesses. Therefore, complainant himself being a signatory of this agreement to lease has admitted the same to be a correct document and never challenged the same to be a forged document either in the FIR or in any subsequent proceedings;

f) A perusal of the civil suit filed by Karam Singh against Rakesh Kumar and Nirmala Kumari also show that there are no allegations against the petitioner with regard to any allegation of forgery and in the written statement filed by the complainant also, there are no allegations against the present petitioner;

g) In the written statement by way of affidavit filed by DSP, the factual position submitted by the petitioner that he is only a witness to agreement of lease and has no role in the execution of the Will is not denied in the corresponding paragraphs;

h) Though the complainant-Rakesh had appeared through his counsel Sh. Gursimran Singh on 11.8.2015, however, no reply was filed by him to deny the averments made by the petitioner as notice above and;

i) A perusal of the FIR further shows that petitioner is not a beneficiary in any manner regarding the estate left by Iqbal Singh for which admittedly the civil suits are pending inter se between the complainant-Rakesh Kumar and co-accused Karam Singh.

In the case of **State of Haryana vs. Bhajan Lal, 1992 Supp(1)**

Supreme Court Cases 335, the Apex Court has held as under:-

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. Can be exercised by the High Court

either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

- (1) Where the allegations made in the first information report or the complainant/respondent No.2, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific

provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

After hearing learned counsel for the parties, I find merit in the arguments raised by learned counsel for the petitioner.

Admittedly, FIR has been registered on the basis of a complaint filed by complainant Rakesh Kumar against the co-accused Karam Singh that he has got certain signatures of Iqbal Singh for the purpose of usurping the property of complainant in whose favour there is a Will executed by Iqbal Singh. Both parties are in litigation before the civil Court with regard to proving the two Wills set up by them purportedly executed by Iqbal Singh i.e. one in favour of the complainant and one in favour of co-accused Karam Singh. The petitioner is not an attesting witness of either of the two Wills and there is no allegation that he has taken any active part in execution of the Will. Petitioner is only an attesting witness to an agreement of lease dated 13.10.2010, which has been admittedly signed by Iqbal Singh and Rakesh Kumar-complainant on one hand and Jagdev Singh on the other hand. Vide this lease, during his life time, Iqbal

Singh has given his land on lease to Jagdev Singh for 2 years. Admittedly, during the life time of Iqbal Singh who died on 26.12.2011, this agreement of lease was never challenged either by Iqbal Singh or by Rakesh Kumar and even in the FIR there is no allegation that this agreement to lease is an outcome of fraud or forgery. Similarly, a bare perusal of the FIR further shows that petitioner, is in no manner a beneficiary of either of the two Wills or the agreement to lease and he acted as an attesting witness only in the capacity of an ex-sarpanch of the village and it is not a case set up in the FIR that petitioner has identified any wrong person in the agreement to lease and therefore, no offence under Section 420, 467, 468, 471 and 120-B IPC is made out against the petitioner- Dilbag Singh.

It is also held by the Hon'ble Supreme Court of India in **Vesa Holdings Pvt. Ltd. Vs. State of Kerela 2015(2) RCR (Criminal) 442** that for the purpose of constituting an offence of cheating, the complainant is required to show that accused had fraudulent or dishonest intention at time of making promise or representation. In the instant case, there are no such allegations against the petitioner in the FIR.

For the reasons stated above, present petition is allowed and the FIR No. 162 dated 15.11.2012, under Sections 420, 467, 468, 471 and 120-B IPC, registered at Police Station Sidhwa Bet, Ludhiana and all subsequent proceedings arising therefrom are hereby quashed qua petitioner.

(ARVIND SINGH SANGWAN)
JUDGE

27.9.2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No