

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

CRM-M-32030 of 2015 (O&M)
Decided on:-10.11.2017.

Sunil Kumar.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Harsh Neyol, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.P.C. impugning the order dated 19.03.2014 passed by learned Judicial Magistrate 1st Class, Abohar, whereby the criminal complaint under Sections 420, 467, 468, 471 and 120-B IPC filed by him against respondents No.2 and 3, was dismissed.

Challenge has also been laid to the order dated 20.03.2015, whereby learned Additional Sessions Judge, Fazilka, had dismissed the revision petition filed by the petitioner-complainant against the order dated 19.03.2014 passed by learned Magistrate.

Briefly stated, the petitioner has filed a complaint under Sections 420, 467, 468, 471 and 120-B IPC against the respondents No.2 and 3, namely, Mehanga Ram @ Vijay Kumar and Rakesh Kumar to the effect that Satnam Dass father of the petitioner has five brothers, namely, Sunaam Ram, Lachman Dass, Ram Chand, Lal Chand and Nihal Chand. All the six brothers

including father of the petitioner are co-sharers/co-owners qua the land comprised in Khewat No.776/681, 682 min and Khewat No.781/686, Khatauni No.1204, 1205, 1213 and 1214, as shown in the Jamabandi for the year 2010-11 situated at village Diwan Khera, Tehsil Abohar, District Fazilka and shown in the complaint. The father of petitioner is cultivating the land comprised in Rectangle No.115, Killa Nos.2, 9 and 12/2 measuring 22 Kanal 4 Marlas and this land is in their possession.

It has been alleged in the complaint that respondents No.2 and 3 along with their other family members are also co-sharers in the aforesaid land. Both the respondents No.2 and 3 in connivance with each other have applied for subsidy to the Horticulture Department, Abohar as well as Maujgarh so as to set up a new orchard in 10 acres land and for reviving the old orchard in another 10 acres land. They have also included 7 acres land of their neighbour Bhoop Singh son of Sohan Lal in 10 acres land for a new orchard. However, when the Horticulture Department received this information, both the respondents in connivance with Halqa Patwari have made correction in the report and in place of Khasra numbers of their neighbours, they have mentioned the land in Rectangle No.90, Killa Nos.16, 25, 17 and 24, which is under the possession of the petitioner. Thus, both the respondents in connivance with the department have also availed false subsidy qua Rectangle No.115, Killa Nos.2, 9 and 12/2, which are otherwise under the possession of the petitioner.

After considering the preliminary evidence produced by the petitioner and hearing the arguments of the counsel for the petitioner, the

complaint filed by the petitioner was dismissed by learned Judicial Magistrate 1st Class, Abohar vide order dated 19.03.2014.

Against the aforesaid order, the petitioner filed a revision petition before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Fazilka vide order dated 20.03.2015.

It is in these circumstances, the petitioner has approached this Court by way of present petition.

Learned counsel for the petitioner has argued that the respondents No.2 and 3 have deprived the petitioner from his vested legitimate claim of subsidy in the event he approaches the authorities for such claim. The petitioner is in possession of land in Killa Nos.2, 9 and 12/2 of Rectangle No.115 and revenue record regarding the said land clearly shows that a separate Khatauni No.1205 has been issued. Satnam Dass father of the petitioner along with his brothers, namely, Nihal Chand, Ram Chand, Lachhman Dass, Lal Chand and Sunam Ram are in possession of the said land to the extent of 1/6 share each, which is having a separate Khatauni No.1205. Respondent Vijay Kumar is neither in possession of the said land nor any orchard was ever planted on that land.

He has further contended that learned Courts below have not applied the judicious mind and have brushed aside the oral as well as documentary evidence produced on record by the petitioner. He has prayed for setting aside of the impugned orders and for issuance of a direction to the trial Court to summon the respondents No.2 and 3 to face the trial for the offences mentioned in the complaint.

I have heard learned counsel for the petitioner-complainant and find that there is no illegality in the impugned orders passed by the Courts below. Vide order dated 19.03.2014, learned trial Court has observed that no false document has been prepared by the accused-respondents No.2 and 3. The relevant part of para Nos.5 and 6 of the impugned order dated 19.03.2014 passed by learned trial Court reads as under:

5. In the present case the complainant made allegation of forgery against the accused on the ground that earlier the accused mentioned the land of their neighbour Bhoop Ram in application form and later on they made correction by mentioning the land under the possession of the complainant and his father. However, in my opinion for proving forgery against a person it is required on the part of the complainant to show that the accused prepared a false document. But after going through the evidence led by the complainant, I find that no such false document has been prepared by the accused. The complainant has produced on record Ex.C13 wherein the Patwari Gurinder Pal Singh has certified that accused Mehnga Ram is owner being co-sharer in the property mentioned therein. Though I find that correction has been made regarding Khasra number but the same has been made by putting initials by the concerned Patwari Gurinder Pal Singh so if any such correction has been made then it has been made according to law under the supervision of concerned authority. The factum that the accused Mehnga Ram is co-owners qua these Khasra numbers have not been rebutted by the complainant during entire preliminary evidence. So in my opinion by mentioning these Khasra numbers, the accused Mehnga Ram has only shown property under his co-ownership. Thus, no false document has been prepared so no offence under section 467/468/471 IPC has been made out against the accused.”

6. *The another aspect in the present case is that the complainant himself has alleged that both the accused have committed cheating with the department and has availed false subsidy by furnishing false affidavits and by forging the record. Therefore, in my opinion, if for the sake of arguments it is presumed that the accused have committed the offence then in all circumstances the alleged cheating could have been committed with the department and not with the complainant. Therefore, the complainant has no locus standi to file the present complaint on this score alone and it is only the department who could initiate action against the accused if required.”*

Similarly, the revision petition filed by the petitioner against the order dated 19.03.2014 passed by learned Magistrate was also dismissed by learned revisional Court vide order dated 20.03.2015 observing therein that inquiry has been conducted by Deputy Superintendent of Police, Fazilka. As per his inquiry report, Deputy Director, Horticulture Department, Abohar had sent a letter No.268 dated 06.03.2013 to the DSP with report that respondent Vijay Kumar has availed the subsidy from the Department as per rules. Therefore, the Horticulture Department has sanctioned the subsidy to the accused after completing necessary formalities as per rules. As such, no ground is made out that the accused has committed any forgery or has cheated the concerned department.

Even otherwise, no material has been brought to the notice of this Court that the land in question has ever been partitioned and as such, the petitioner cannot claim his exclusive ownership over the land on which the respondents No.2 and 3 have approached the Horticulture Department in order to avail the subsidy so as to plant orchard therein.

Therefore, the impugned order dated 19.03.2014 passed by learned Judicial Magistrate 1st Class, Abohar as well as the impugned order dated 20.03.2015 passed by learned Additional Sessions Judge, Fazilka are affirmed and the present petition, being devoid of any merit, is dismissed.

November 10, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No