

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Misc. No. M-35948 of 2015 (O&M)

Date of decision : September 08, 2017

Monika Garg **Petitioner**

VERSUS

State of Punjab **Respondent**

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

PRESENT: Mr. Deepak Aggarwal, Advocate, for the petitioner.
Mr. Dhruv Dayal, Senior Deputy Advocate General,
Punjab.
Sarvshri CS Pasricha and Sunny Kohli, Advocates, for
the complainant.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

Per A.B. Chaudhari, J.

This Court had dismissed the above petition filed by petitioner-Monika Garg, along with a separate petition (CRM-M-35316-2015) filed by her husband-Bhagwan Dass, for the reasons recorded in order dated 02.06.2017. The present petitioner-Monika Garg filed a Special Leave Petition before the Supreme Court, which made the following order :-

“Learned counsel for the petitioner submitted that the finding of the High Court, that the property mortgaged was covered by road and drainage, is not correct as he has a certificate and affidavit of the Patwari concerned in this regard which has been obtained subsequently.

It will be in the interest of justice that the petitioner files affidavit along with documents before the High Court in this regard, for re-consideration of the matter. We remit the matter to the High Court for re-consideration.

The special leave petition is disposed of.”

A perusal of the above Apex Court order shows that the matter has been remitted for reconsideration by this Court because the petitioner stated before the Supreme Court that certificate and affidavit of the concerned Patwari were obtained subsequently to buttress the claim of the petitioner that the mortgaged property was not covered by road and drainage. Acting on the said statement, the Apex Court remitted the matter to this Court for reconsideration. Accordingly, the learned counsel for the parties were heard at length.

By way of fresh material, the petitioner has filed CRM-19943-2017 along with documents and in para-7, the following are the averments made:-

“7. That as per the allegations by the respondent complainant bank the property which is mortgaged with the bank is under streets and drainage which also has been acquired by the government and compensation has been paid to one Rattan Lal who had already purchased the said piece of land in the year 2007 itself. It is

submitted that this allegation leveled by the prosecution/complainant is without any basis as the property mentioned in the deeds No.9923 and 9924 dated 16.12.2011 which are mortgaged with the respondent bank is a part of co-sharer property which has yet not been partitioned. The property in question is a co-sharer property between petitioner Bhagwan Dass, Monika Garg and Ratan Lal and portion of the said property which has been acquired by the government falls into the share of Ratan Lal and therefore, Ratan Lal has successfully claimed the amount of compensation for that portion only and the remaining portion is intact and has not been acquired by the government or any other authority and the same is lying mortgaged with the bank.”

The contesting respondent has filed a detailed reply to the said application by way of affidavit of Vijay Kumar Bansal, Senior Manager, Central Bank of India. It would be appropriate to quote the following portion from the reply/affidavit :-

“3. It is submitted that the Petitioners have not mentioned Number of Registered Sale deed alleged date of 18/7/1995. Moreover the Petitioner Monika did not purchase property on 18/07/1995. It is further submitted that as per revenue record Bhagwan Dass and Sharan Dass sons of Nohar Chand had purchased the total land measuring 13 Kanal 13 Marlas out of total land 27 Kanal 7 Marlas, Comprising Khasra No. 462/5/12 (11-9), 463/2/6 (15-17), Khata No 62/136/154. Jamabandi for the year 1991-92. It is pertinent to mention here that out of above mentioned property i.e. 13 K 13 M, Sharan Dass sold out property measuring 0 k 50 Marlas to the parties vide mutation No. 5707 (0-17), 5700(0-19 1/2), 6486 (0-14), and Bhagwan Dass sold out the property out of his share

through mutation No. 5528(3-4),5712(0-9),5714(0-15 1/2), 5736(1-51/2), 5745 (0-11) & 5795(0-7 1/2). After selling out the above mentioned property total property was remained 4 Kanal 9 ½ Marlas. The remaining land was remained left for passage to the respective plots. Thereafter the petitioners in connivance with Sharan Dass got executed two gift deeds in favour of Bhagwan Dass and Monika Garg, which is as follows:- the Registered Gift Deed No.9924 dated 16/12/2011 was executed by Bhagwan Dass in favour of his wife Monika Garg showing himself to the east side and the Gift deed No. 9923 dated 16/12/2011, was executed by Sharan Dass in favour of Bhagwan Dass s/o Nohar Chand showing his wife namely Monika Garg to the West Side. It is pertinent to mention here that it is not possible that while executing gift deed No.9923, petitioner Monika Garg was already owner to the one side of the said property as mentioned in Gift Deed No.9923. It is also necessary to mention here that Two Empanelled Advocates have given their thorough report in which they have asserted that the mortgaged property is not in existence rather mentioned property is of Street Land.

4. It is submitted that in the revenue record i.e. Jamabandi for the year 1991-92 name of Bhagwan Dass and Sharan Dass was entered as co sharer as the property was purchased without demarcation and was in shares. Moreover neither name of the petitioner Monika was entered in revenue record nor she had purchased property in question in the year 1995 as alleged by the petitioner. It is further submitted that the petitioner Monika has concealed that she has purchased property in dispute in the year 1995 and Bhagwant Dass has also concealed the fact that he has sold out his total share out

of land measuring 6 Kanal 6 1/2 Marlas except 0 Kanal 3-1/2 Marlas from the Hon'ble Court. Further the Jamabandi for the year 1991-92, itself reveals that name of petitioner Monika is not reflecting and the said jamabandi also not disclosing that petitioner Bhagwan Dass has sold out his entire property to the respective parties.

5. It is submitted that the Bhagwan Dass and his brother Sharan Dass have already sold out the entire property except 1/3rd share i.e. 4 Kanals 9 1/2 Marlas, which is of street land out of total land Measuring Land 13 Kanal 13 Marlas, purchased in the year 1995. As the said area was not approved developed area by the PUDA. Hence the remaining land i.e. land of street was showing in the revenue record to be on the name of Sharan Dass and Bhagwan Dass. Taking the benefit of the said entry of ownership in the revenue record, Bhagwan Dass and Sharan Dass got executed the two respective gift deed as mentioned above in connivance with each other.

6. It is submitted that the property mentioned in the gift deeds is land of street. As the Petitioners and Sharan Dass in connivance with each other, With the intention to cheat and misappropriate the payment of the Bank, had hatched the conspiracy to execute the Said gift deeds and mortgage the same. It is further submitted that the act of the said persons create doubt that at the time of executing gift deed No. 9923 dated 16/12/2011, when

Monika Garg was not owner of any property in that khasra even then her name has been mentioned to the west side of the property. Moreover if Bhagwan Dass was willing to purchase the share of his brother i.e. 4 Kanal 6 1/2 Marlas. Then no necessity was required to execute the remaining share of 3 1/2 Marlas in favour of his wife through gift deed No.9923 dated 16/12/2011.

7. It is further submitted that petitioners have admitted that one Rattan Lal is Co-Sharer and he has received the amount of acquisition land which was abutting to the Bathinda Goniana Road. But the petitioner has cleverly tried to conceal the fact and tried to misguide the Hon'ble court that how he has distinguished his alleged land from Rattan Lal. It is pertinent to mention here that in the gift deed No. 9923 dated 16/12/2011 and in the Sale Deed of Rattan Lal East side is Street i.e. Bathinda- Goniana Road. It is also pertinent to mention here that the petitioners have failed to show their land, which they are alleging to be in their possession to the Bank or Police Authority. It is specifically denied that the property is not partitioned and the petitioners and Rattan Lal are co-share of joint property. In previous paras of this petition petitioners have asserted that they have purchased land in the year 1995 and are in possession of the same. The entry of the same has been entered in the revenue record being owner. The averment in this Para is self contradictory. As they have mentioned that the petitioners and Rattan Lal are co shares of Joint Property.

8. It is submitted that initially the petitioners have disposed of the goods and loan amount was not

deposited with the bank. On fresh verification of record by the empanelled Advocates i.e. Ms. Poonam Kohli and Mr. R.P.Singh, that the said property does not exist. Rather the property mentioned in two respective gift deeds are of street land. And the petitioners have show the demarcated property of some another person mentioning the sides in gift deeds as per sides of Rattan Lal. It is submitted that the Patwari Concerned is not co-operating to demarcate the property of the location.”

A perusal of the above reply shows that the averments made by petitioner-Monika Garg, again, are based on 'suppressio veri suggestio falsi'. The petitioner is again trying to play hide and seek having got the matter remitted from the Apex Court. A perusal of the reply filed by the Bank shows that it gives all necessary details, including the execution of gift deed and so on and so forth. It is not necessary to repeat the same in my own words as the entire reply clearly shows that the petitioner along with her husband duped the Bank of crores of rupees. It may not be out of place to mention here that the Bank officers who advanced huge loan to the petitioner in the sum of ₹ 2.70 crores are equally responsible for not taking care of the public money.

Submission made by the learned counsel for the petitioner is that since the matter was lodged before the Debts Recovery Tribunal, the petitioner should be granted anticipatory bail. What is seen is that the petitioner had sought huge loan from the bank and siphoned the public money by furnishing false and bogus documents of land, by way of mortgage.

Suffice it to say, her petition sans any merit and must be dismissed.

In the result, the petition is dismissed.

September 08, 2017
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(A.B. CHAUDHARI)
JUDGE