IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision-21.02.2017

1. CRM-M No.37102 of 2016(O&M)

Sudesh Kumari and another ... Petitioners

Versus

State of Punjab ... Respondent

2. CRM-M No.37122 of 2016(O&M)

Parmod Kumar and another ... Petitioners

Versus

State of Punjab ... Respondent

3. CRM-M No.39600 of 2016 (O&M)

Sunny Sanyal ... Petitioner

Versus

State of Punjab ... Respondent

4. CRM-M No.39713 of 2016(O&M)

Jasbir Kaur ... Petitioner

Versus

State of Punjab ... Respondent

5. CRM-M No.3696 of 2017

Gurpreet Singh ... Petitioner

Versus

State of Punjab ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. J.S. Bedi, Sr. Advocate with Mr. S.S. Brar, Advocate and Mr. Vaibhav Narang, Advocate for the petitioner(s) in CRM-M No.37102 of 2016 and CRM-M No.37122 of 2016.

Mr. Rishu Mahajan, Advocate for the petitioner(s) in CRM-M No.39600 of 2016.

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Mr. V.K. Sandhir, Advocate for the petitioner(s) in CRM-M No.39713 of 2016 and CRM-M No.3696 of 2017.

Mr. Ankur Jain, AAG, Punjab.

Mr. A.P.S. Deol, Sr. Advocate with
Mr. Himmat Deol, Advocate for the complainant.

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__RAJ MOHAN SINGH, J.__

[1]. Vide this common order, CRM-M No.37102 of 2016, CRM-M No.37122 of 2016, CRM-M No.39600 of 2016, CRM-M No.39713 of 2016 and CRM-M No.3696 of 2017 are being decided as all these petitions have arisen out of the same FIR.

[2]. Petitioners have applied for grant of anticipatory bail in case bearing FIR No.543 dated 21.09.2016 registered under Sections 420, 467, 468, 471, 120-B, 465 IPC at Police station Civil Lines, District Police Commissionerate, Amritsar. The FIR was registered at the instance of Kapil Kumar Galhotra. Complainant alleged that he along with his brother Kaushal Kumar Galhotra are the joint owners of land situated in villages Miran Kot Kalan and Muradpura, District Amritsar. They used to conduct land transactions through Jatinderbir Singh Bhullar @ Judge being their trusted person. They had a deal to purchase the land measuring 21 kanals, 2 marlas in village Sohia Khurd, Tehsil and District Amritsar, owners of which were Gurwinder Singh, Gurjant Singh and Smt. Balwinder Kaur. On 01.09.2015, Jatinderbir Singh Bhullar called the complainant and his brother on the seat of Sunny Siyal, deed writer at 5:00 P.M in Tehsil

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Complex Amritsar for the purpose of getting the sale deed registered in their favour. He made us to believe that he had already got prepared all the documents from Sunny Siyal, deed writer as two days prior, he had already taken expenses for getting the sale deed registered. When the complainant and his brother reached at the seat of Sunny Siyal, deed writer, then Jatinderbir Singh Bhullar and his accomplice Gurpreet Singh and Sunny Siyal, deed writer were found present. They told that since time was almost over, they had stopped the Sub Registrar with great difficulty and they handed over already prepared documents to the complainant and his brother and asked them to sign the same. Since Jatinderbir Singh Bullar was a trusted fellow, therefore, complainant and his brother singed the documents which were already prepared by them. While signing, the complainant and his brother saw the signatures of witnesses already present there. The complainant party signed the document on 01.09.2015 regarding the purchase of land at village Sohia Khurd. Thereafter, they were made to appear before the Sub Registrar and got their photographs clicked. Thereafter, they were asked to sit outside. After execution of sale deed of land in respect of village Sohia Khurd, the complainant party came at their house. Complainant alleged that on 01.09.2015, the complainant party did not execute any general power of attorney in favour of anyone, nor they got any such general power of attorney registered with the Sub Registrar.

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Jatinderbir Singh Bhullar went abroad in December, 2015. Thereafter, the complainant came to know that Jatinderbir Singh Bhullar in connivance with his accomplice Gurpreet Singh and Sunny Siyal, deed writer have fabricated one power of attorney dated 01.09.2015 in favour of Jasbir Kaur mother of Jatinderbir Singh Bhullar qua the land situated in villages Mira Kot Kalan and Muradpura with an intention to grab the said land.

[3]. Complainant had denied the very execution of said power of attorney. Thereafter, complainant party inspected the entire revenue record and came to know that the accused in connivance with each other after getting the forged general power of attorney prepared on 01.09.2015 in favour of Jasbir Kaur used the same in selling the land in villages Mira Kot Kalan and Muradpura to number of persons i.e. Sudesh Kumari, Suman Bala, Harsimran Singh, Supinder Kaur, Balwinder Kaur, Shiv Shakti Enterprise and others and executed the sale deed by receiving the amount. At the time of registration of sale deed of village Sohia Khurd, time of document was mentioned as 5:34:45 PM, whereas on the fabricated power of attorney, time was recorded as 5:37:113 PM. The aforesaid general power of attorney was not presented for attestation on 01.09.2015, nor any photograph of the complainant party was clicked for that purpose. The photographs were clicked only for the purposes of sale deed on 01.09.2015 and those photographs were misused on the general power of attorney as well with the help of deed

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writer, Sunny Siyal by getting the photograph pasted on the said power of attorney. The age of Jasbir Kaur was disclosed as 80 years in the alleged power of attorney.

[4]. Complainant further alleged that Jasbir Kaur in her advance stage could not take care of herself and the complainant party having good reputation in the city as they have owned one hotel in the name and style of Mohan International and have also dealership of two wheelers and commercial trucks and have been running many educational institutions like M.K. Group of Institutions with separate team of professionals who have been taking care of various business and are capable of taking care of business of the complainant party. Complainant party had no occasion to execute such power of attorney that too in favour of an old and uneducated lady of the village. Complainant also alleged that in the power of attorney, Jasbir Kaur was shown as Bua whereas the complainant has no such relationship with Jasbir Kaur, nor they belong to the caste of Jasbir Kaur. Connivance and conspiracy were alleged in the entire exercise of preparing forged power of attorney and selling the land of villages Mira Kot Kalan and Muradpura. On the basis of alleged power of attorney, Jasbir Kaur had further sold the land to various sellers.

[5]. I have heard learned counsel for the parties.

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[6]. Learned counsel for the petitioners alleged that the complainant party and Jatinderbir Singh Bhullar along with his mother Jasbir Kaur are running many educational institutes by forming a society in the name and style of M.K. Education Society. They are partners in the business. Names of Jatinderbir Singh Bhullar and Jasbir Kaur find mentioned in the amended list of governing body of M.K. Education Society for the period 2008-2010.

[7]. Learned counsel for the petitioners submitted that Jatinderbir Singh Bhullar and Jasbir Kaur were known to the complainant party and the general power of attorney was voluntarily executed vide which authority was given to Jasbir Kaur to deal with the properties. General power of attorney was duly attested. On the basis of aforesaid general power of attorney, the land was sold to the vendees i.e. petitioners in CRM-M No.37102 of 2016 for lawful consideration and Jasbir Kaur received the amount. After registration of general power of attorney, complainant party got the same cancelled by way of cancellation deed dated 11.03.2016. While getting the general power of attorney cancelled, it was specifically recited in the cancellation deed that general power of attorney vide document No.1314 dated 01.09.2015 vide bahi No.4, jild No.2023 page No.21-22 of the Sub Registrar was executed and now the executants do not need to have general power of attorney and they sought to cancel the same. The execution of general power

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of attorney was admitted in the cancellation deed of general power of attorney.

[8]. Learned counsel further submitted that in an inquiry conducted by Additional Deputy Commissioner (J), Amritsar, it came to fore that persons who have purchased the properties on the basis of general power of attorney are innocent and the cancellation of their sale deed cannot be done by the revenue officer for which only the Civil Court has got the jurisdiction. The subsequent vendees have also filed civil suit for declaration and permanent injunction to restrain the complainant party from dispossessing them from the land in question.

[9]. In the Civil Suit titled as Sudesh Kumari Vs. Kapil Galhotra and others, in which Jasbir Kaur is one of the defendant, trial Court has already granted *status quo* regarding possession and alienation of the suit property vide order dated 01.07.2016. In the aforesaid suit, in the written statement filed by defendant No.3 i.e. Jasbir Kaur, factum of receiving the sale consideration was admitted. Defendant No.3 also admitted that on the basis of valid power of attorney executed by the complainant party in her favour, she executed valid sale deed for lawful consideration. Consideration was duly paid and receipts were duly issued by her in favour of the plaintiffs and possession was also delivered to them. She also alleged that her son Jatinderbir Singh Bhullar has got business dealing and

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partnership in other properties with the complainant and they have been settling their account from time to time.

[10]. Learned counsel also submitted that there is a presumption with regard to registered document. Though in the sale deed, cheques were shown towards payment of consideration from the account which was not opened, but thereafter cash payments were made which stand acknowledged by Jasbir Kaur while filing written statement in the civil suit. Petitioners were not required to show issuance of cheques except to show payments made to the general power of attorney of the vendor. The account opening form dated 21.10.2015 had some default mechanism at the instance of the bank. Even cheque book was issued on the same day, but due to default, the account was shown opened on 23.10.2015. The cheque book was issued on 21.10.2015 even before account opening on 23.10.2015.

[11]. Learned counsel further contended that since account opening form was given on 21.10.2015 and the cheque book was also issued on 21.10.2015, it was due to faulty mechanism of the bank that the account was shown opened on 23.10.2015 for which no attribution can be made to the petitioners. Learned counsel also argued that the general power of attorney carries number of signatures of the complainant party. On number of pages, they were shown as first party. On first page, their

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signatures appeared at two places and on the second page, their signatures appeared at 3-4 places. The execution of power of attorney cannot be faulted with as while cancelling the same, complainant party has admitted execution of general power of attorney. It was further submitted that the conduct of the complainant party has to be scrutinized on the basis of general power of attorney executed in the year 2011, land was sold to the petitioners, instances of which are sought to be placed on record by way of moving miscellaneous application.

[12]. Learned counsel further sought to highlight that the first sale deed was executed on 04.09.2015 and possession was delivered. The complaint was made only on 22.03.2016 i.e. after six months. Complainant party cannot be presumed to be unaware that their land is in possession of third person for so long and still they did not initiate any action. Deepak Kumar claimed to be driver of one of the petitioner-Parmod Kumar which is factually wrong. In the cancellation deed, no reference of fraud allegedly committed was mentioned. The possession was found to be with the petitioners as status quo has already been granted with regard to possession and alienation of the suit property by the civil Court. Since no recovery is to be effected, therefore, petitioners prayed for grant of anticipatory bail.

[13]. On the other hand, learned State counsel duly assisted by learned Senior counsel for the complainant

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vehemently opposed grant of anticipatory bail in favour of the petitioners. They submitted that bank opening form was submitted on 21.10.2015. Statement of bank official namely Mange Ram showed that the same was opened on 23.10.2015. Dates of cheques were not written in the sale deeds which were executed in favour of Shiv Shakti Enterprises. Transaction was sham/bogus transaction as the receipts were allegedly executed when cheques were returned. Learned counsel by referring to document (Annexure R6) collectively submitted that date is 15.01.2016. The said receipts were executed when cheques were returned and cash payments were allegedly made by executing these bogus receipts.

[14]. The perusal of general power of attorney itself would show that on the top of it, value was assessed, but stamp duty was not paid. It was paid later on, i.e. 08.10.2015. The document was not registered on 01.09.2015. It was ante dated as entry was made as 546-A in the register. Relationship of Jasbir Kaur viz-a-viz the complainant party was shown to be Bua, but she was not Bua. The signatures of Sunny Siyal, deed writer appearing on power of attorney and sale deeds were differently placed. The time of execution of both the documents i.e. power of attorney and sale deeds in the context of some photographs would give rise to complicity of the accused in connivance with each other. Two documents were executed with same photographs showing two attesting witnesses. Signature of

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Lambardar was missing on the general power of attorney. 16 plots were sold to Sudesh Kumari. Those sale deeds were signed by Parmod Kumar as attesting witness. Thereafter, apparent link was established in the context of complicity of the petitioners on record. Cancellation of general power of attorney was a *bona fide* act as no probing was required at that time. The inquiry conducted by the Financial Commissioner is detailed one. Sale of the year 2011 in favour of the petitioners as sought, has no relevance as piece of land which was purchased by the petitioners was different and only a share was sold in said transaction. There was no semblance of any interest viz-a-viz the khasra number. The forged general power of attorney is to be recovered. The civil suit at the instance of the complainant party was also pending and all the bogus receipts are with the accused. By submitting all these documents, learned counsel for the complainant vehemently opposed the grant of anticipatory bail by relying upon one of the sale deed in favour of Suman Bansal where description of cheque was wrongly given as those were already issued in favour of Shiv Shakti Enterprises.

[15]. I have considered the submissions made by learned counsel for the parties.

[16]. At this juncture, both the parties sought to address arguments by referring to number of instances and litigation which are either subjudiced in the competent Court or which are

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still to be investigated by the investigating agency. This Court is not in a position to comment upon veracity of allegations and pleadings made in respect of dispute of civil nature at this juncture.

[17]. Evidently, the execution of general power of attorney in favour of Jasbir Kaur is the bone of contention in the present case. Execution of subsequent sale deeds on the basis of said general power of attorney whether would provide lawful title in favour of subsequent vendees or not is subjudiced before the civil Court. Both the parties are in civil litigation. At this juncture, genuineness of general power of attorney cannot be commented upon. The general power of attorney was cancelled subsequently. Whether allegations of fraud were required to be incorporated in the cancellation deed is also not to be commented upon at this juncture. This Court has already granted interim protection to the petitioners to join investigation after staying their arrest on 07.11.2016 and thereafter the said order has been made operative subject to joining the investigation by them.

[18]. Keeping in view the entirety of facts and circumstances, I am of the view that since intricated questions are still subjudiced before the civil Court and investigation is going on where investigating agency shall collect the material, it would be just and appropriate to allow the petitioners to join the

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investigation as and when required by the investigating agency. In the event of their arrest, they shall be enlarged on interim bail subject to the satisfaction of Arresting Officer. However, petitioners shall abide by the conditions incorporated under Section 438(2) Cr.P.C. In case investigating agency finds that custodial interrogation of the petitioners is required on account of non-cooperation of the petitioners in the investigation, then the investigating agency would be at liberty to move an appropriate application before the Court concerned.

[19]. In view of aforesaid, these petitions are disposed of.

(RAJ MOHAN SINGH)
JUDGE

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Whether reasoned/speaking Yes/No

Whether reportable Yes/No

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