

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

**CRM No.M-40792 of 2015
Date of decision: 06.12.2017**

Ram Avtar Sharma (since deceased) through his LRs

....Petitioner

Versus

Ganpat Ram and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for setting-aside the judgment dated 28.02.2013 passed by the trial Court in criminal complaint No.261-C of 2007 titled as 'Ram Avtar Sharma and another vs Ganpat Ram and others' as well as the revision filed by the petitioner against the aforesaid judgment passed by the trial Court.

Brief facts of the case are that the complainant – Ram Avtar Sharma and Rajesh Kumar Bharti have filed a criminal complaint against the respondents/accused with the allegations that the complainant has 04 brothers and 03 sisters namely Ram Kumar, Ganpat Ram, Mahavir, Ram Avtar and Brahma Nand i.e. brothers and Kalawati, Kailasho and Subhadra i.e. sisters. Their eldest brother Ram Avtar died issueless and the agricultural land owned by their father Chiranji Lal

Sharma had devolved upon remaining 07 legal heirs. It was further stated that two of the sisters namely Kailasho and Subhadra transferred the land of their share in favour of his younger brother namely Ganpat Ram – accused No.1 and in favour of Pawan and Sanjiv sons of his younger brother whereas his sister Kalawati has not given her property to them and it was, thus, pleaded that since his sister Kalawati had 02 sons and 03 daughters who are alive, accused No.1 – Ganpat Ram filed a false affidavit dated 08.05.2006 deposing that Vinod Kumar was the sole legal heir of Kalawati and got the mutation of the land falling to the share of Kalawati sanctioned in favour of Vinod Kumar. Later on, accused – Ganpat Ram got the release deed executed in favour of Vinod Kumar. It was, thus, submitted that the accused persons have cheated the 05 legal heirs of Kalawati. It was also stated that Mahender Kumar son of Kalawati filed a complaint against Ganpat Ram at Police Station Bond Kalan, however, he was forced to withdraw the complaint. With the said allegations, the complaint was filed that his sisters Kailasho, Sushila and Krishna had no legal right to executed the release deed in favour of Ganpat Ram and the share of his deceased – Kalawati has been wrongly mutated in favour of Vinod Kumar on the basis of a forged affidavit.

The complainant examined himself as CW1, one witness Ram Avtar appeared as CW2 and Kalu Ram appeared as CW3. Certain documents were also produced on record as Exs.C1 to C10.

The trial Court vide order dated 05.09.2007 directed the SHO, Police Station Bond Kalan to enquire into the matter and submit a report under Section 202 Cr.P.C. and report dated 16.12.2007 was

produced before the trial Court.

After hearing the counsel for the parties and on perusal of the report filed under Section 202 Cr.P.C., the trial Court vide its impugned judgment dated 28.02.2013 dismissed the complaint holding that no case for summoning the accused persons for facing the trial is made out on the basis of the prosecution evidence.

The petitioner/complainant challenged the said order by way of filing a revision petition before the Revisional Court. The Revisional Court, on re-appreciation of evidence available on record vide its impugned judgment dated 24.08.2015 also dismissed the revision.

The operative part of the judgment passed by the trial Court is reproduced as under:-

“5. Having heard the arguments and perusal of file, I am of the considered opinion that the present complaint deserves dismissal.

6. In the instant complaint, complainant has claimed that accused Ganpat furnished false affidavit Ex.C3, wherein, she as other LRs also and as such, has given false affidavit, but, this allegation and argument of complainant is not acceptable for the simple reason that firstly, the complainant has not brought on record the death certificate of Kalawati, which was the very basic document and as such, for withholding such a vital document, an adverse inference is liable to be drawn against complainant. Secondly, in the report submitted by officer-in-charge of police station, Bond Kalan, it is clearly stated that other legal heirs of Kalawati have given affidavits that they have authorized Vinod Kumar, to deal with the land on their behalf. The report of police is

accompanied by the photocopies of the affidavits furnished by other LR's of Kalawati. Complainant has not dared to neither examine any other LR of Kalawati showing that they have not given an affidavit or bring an evidence showing that the report or affidavits are wrong. Therefore, once the affected persons themselves have authorized Vinod Kumar to deal with the property on their behalf then, the affidavit Ex.C3 claiming Vinod Kumar to be sole LR of Kalawati cannot be said to be false. Rather, it is clear in the report of police as well as from the facts and circumstances that the complainant is having grudge against accused because his sisters have not given their share to him and have given their share to accused and the present complaint is outcome of that grudge only.

7. Furthermore, it has come in the report of police that complainant has already filed a civil suit in this regard, but, the complainant has not whispered qua civil suit in the complaint, therefore, it appears that complainant is intentionally concealing the true and material facts from the Court.

8. Similarly, in the present case, the affected party were LR's of Kalawati and therefore, had anything wrong as alleged by complainant would have taken place, they might have agitated their case or would have come and deposed before this courting support of complainant, therefore, silence of other LR's of Kalawati further show that they have authorized Vinod Kumar to deal on their behalf and resultantly, the affidavit Ex.C3 was furnished.

9. Lastly, there is nothing on file to suggest that accused No.2 has identified wrong person and accused No.3 has done anything wrong as such, in my considered opinion, no case is made out to summon the accused for facing trial and as such, instant complaint is hereby dismissed. File be consigned to the record room, after due

compliance.”

Counsel for the petitioner has submitted that the trial Court has given more weightage to the report dated 16.11.2013 submitted by the police under Section 202 Cr.P.C. whereas it has come in the evidence of the complainant's witnesses i.e. CW1 to CW3 that the respondent/accused – Ganpat Ram has forged an affidavit dated 27.11.2006 and got the land mutated in favour of Vinod Kumar. It was also submitted that sisters of the complainant namely Kailasho, Sushila and Krishna have no legal right to execute the release deed with regard to the land relating to their share as they could have sold the property in favour of the petitioner instead of executing the release deed in favour of accused persons. It is also submitted on behalf of the petitioner that, though, the petitioner has lodged a complaint with the police but the police instead of registering an FIR had not taken any action on the complaint of Deepak Kumar. Counsel for the petitioner has further submitted that the Courts below have wrongly held that on account of non-production of death certificate of Kalawati, it cannot be held that the accused had not committed any offence and this fact has been proved by the complainant's witnesses produced by the petitioner. It was also stated that Kalawati had 05 legal heirs whereas accused – Ganpat Ram had given an affidavit dated 08.05.2006 (Ex.C3) that Vinod Kumar was the sole legal heir of Kalawati.

After hearing counsel for the petitioner, I find no merit in the present revision petition. A perusal of the record show that the trial Court has sought the report of the police under Section 202 Cr.P.C. and as per the report of SHO, Police Station Bond Kalan on the basis of

affidavit furnished by legal representatives of deceased Kalawati dated 16.11.2007, has held that the allegations levelled by the complainant are false as the other legal heirs of Kalawati has given an affidavit that they have authorized Vinod Kumar to deal with the land on their behalf and, therefore, no criminal offence is made out.

Perusal of the evidence led by the petitioner show that they have failed to examine any of the legal representative of Kalawati as a witness to submit that any fraud has been committed with them. In the absence of any complaint, on behalf of any of the legal heir of Kalawati, the petitioners have no right to say that one son of Kalawati has wrongly got the land on the basis of the affidavit filed by accused – Ganpat Ram whereas the police enquiry report says that all the legal representative of Kalawati have given an affidavit in favour of said Vinod Kumar and, therefore, the allegations in this regard are not proved. It has also come on record that the complainant has already filed a civil suit against the accused persons and in the criminal complaint, this fact has been concealed by the complainant. The allegation of the complainant that 03 of their sisters have wrongly transferred the land in favour of complainant – Ganpat Ram and other co-accused is already a subject-matter of civil suit and even otherwise, they being the absolute owner were well within their competence to transfer the land in favour of any person. On face of it, the allegation in the complaint itself made out that the complainant is trying to settle a grudge against the accused persons because their sisters have not given their share of the property to him and have released it in favour of petitioner's other brother i.e. accused – Ganpat Ram.

For the reasons stated hereinbefore, I find no merit in the present revision petition as the findings recorded by both the Courts below are based on the proper appreciation of evidence.

No ground for interference is made out.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

06.12.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No