

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-43005 of 2017

Date of Decision: November 20, 2017

Baljeet Singh and another.....Petitioners

Versus

State of Punjab and another.....Respondents

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

**Present:** Mr. C.S.Bakshi, Advocate for the petitioners.

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**ARVIND SINGH SANGWAN, J.**

Petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short `Cr.P.C.) seeking quashing of order dated 31.7.2017(Annexure P10) passed by the Sub Divisional Judicial Magistrate Jagraon and order dated 16.10.2017 passed by the Additional Sessions Judge, Ludhiana (Annexure P12) along with all consequential proceedings arising therefrom.

Brief facts of the case are that an application was moved by complainant-Deepak Maria to Senior Superintendent of Police Jagraon for registration of the FIR against Gurcheen Singh, Nirmal Singh, Binder

Singh, Jagjeenan, Baljeet Singh, Gurdev Singh and Amar Nath Dudharia for execution of sale deed on the basis of forged power of attorney. It has been alleged that Deepak Maria is holder of a registered power of attorney of Balaur Singh vide Vasika No. 462 dated 26.3.2012 with Sub Registrar, Jagraon. The aforesaid accused prepared a forged power of attorney and sold three killas of land on 27.6.2012 to Gurdev Singh son of Hazura Singh and Gurcheen Singh son of Mukhtiar Singh vide Vasika no.1776. On the said allegation a written complaint was made to the Senior Superintendent of Police and FIR was registered on 10.7.2012 and the challan under Sections 420,465,467,468,471,120-B, and 201 IPC was presented against all the accused.

After the challan was presented, petitioners filed CRM-M-26328-2013 (Annexure P5) praying for quashing of FIR and subsequent proceedings. Vide order dated 24.7.2015, this Court allowed the petitioner to withdraw the same with liberty to raise all the pleas before the trial Court.

Thereafter the charges were framed by the trial Court on 9.5.2016 under Section 120-B, 467,468,471, 420-B IPC. Petitioners filed the revision petition for setting aside the said order before the Sessions Court and vide order dated 1.12.2016, the aforesaid order was set aside and the matter was remanded back to the trial Court to decide the application filed by the petitioners under Section 239 Cr.P.C seeking discharge from the case.

After remand, the trial Court vide order dated 24.3.2017 again framed the charges against all the accused persons. Petitioners filed the second revision petition before the Court of Sessions and the Sessions Court

again set aside the order dated 24.3.2017 and again remanded the case back to the trial Court vide its order dated 10.7.2017 directing to pass again a fresh order in the light of earlier order of remand dated 24.3.2017.

After the second remand by the Court of Sessions, the trial Court again passed a detailed order dated 31.7.2017 framing the charges under the aforesaid Sections. A perusal of this order (Annexure P10) shows that the trial Court has duly considered the allegations levelled in the FIR.

The petitioners filed the third revision petition before the Court of Sessions challenging the order dated 31.7.2017 passed by the trial Court framing the charges against the petitioners for the third time. This petition was dismissed by the Court of Sessions vide impugned order dated 16.10.2017 (Annexure P12).

The operative part of the order reads as under:-

“I have heard learned counsel for the petitioners and learned APP for the state and have perused the file.

Firstly I would like to discuss the law settled by Hon'ble Apex Court till date on the question of framing of charge.

The Hon'ble Supreme Court in (2009) 1 SCC (Cr1) 721 Syed Basheer Ahamed and Others v. Mohammed Jameel and Another has held that a strong suspicion about commission of offence and accused's involvement was sufficient for framing of charges and at that stage there was no necessity of formulating opinion about prospects of conviction.

In a subsequent decision i.e. Union of India v. Prafulla Kumar Samal, Hon'ble Apex Court after adverting to the conditions enumerated in Section 227 of the Code and other decisions of this Court, enunciated the following principles:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. The Hon'ble Supreme Court is of the firm view that a strong suspicion may not take place

of the proof at the trial stage and yet it may be sufficient for the satisfaction of the trial judge in order to frame a charge against the accused.

The following guidelines emerge for a trial judge as per the ratio laid down by the Hon'ble Supreme Court:

- 1.The Court would find prima facie case against the accused that there is sufficient ground for proceeding against him.

- 2.The Court need not take up a roving enquiry or fishing enquiry at the stage of framing of charges.

- 3.The Court ought to discern a strong suspicion over the existence of facts constituting offence as against the accused.

- 4.There is no necessity for the Court to evaluate the probative and evidentiary value of the materials nor oral evidence placed by the prosecution and see whether they would be adequate to convict the accused.

- 5.The Court is not at a duty at the intermediate stage to speculate whether allegations are true or false to direct discharge.

From the above, the Court is only to see whether a case for framing of charge is made out. The Court is not required to look into the probability of the material produced by the prosecution. The evidentiary value has to be ascertained at the time of final hearing of the case.

Now I would like to go through the ingredients required

to prove offence under Section 420 IPC, the following ingredients are to be proved by the prosecution.

“(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived;and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived.”

In order to constitute an offence under Section 420 IPC, there should not only be cheating but as a consequence of said cheating, the accused should have dishonestly induced the person deceived

“i- to deliver any property to any person , or

ii-to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).”

Further, in order to make out an offence under Section 420

IPC, the reading of Section 415 IPC is necessary. It stipulates as under:

415.Cheating.---Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”

Further, in order to prove in offence under section 467 IPC, the prosecution has to prima facie show that the accused has forged a document which purports to be a valuable security or a will, or an authority to adopt a son or which purports to give authority to any person to make or transfer any valuable security or to receive the principal, interest or dividends thereon or to receive or deliver any money, movable property or valuable security or any document purporting to be an acquittance or receipt acknowledging the payment of money or an acquittance or receipt for the delivery of any movable property or valuable security. To attract an offence under section 468 IPC, the said forgery must be committed for the purpose of cheating and for an offence under section 471 IPC, the cheating must have been done by using a forged document or electronic record fraudulently or dishonestly as genuine believing it to be forged.

Learned counsel for the accused/petitioners has contended that vide order dated 1.12.16 passed by the undersigned in the CRR no. 1 dated 8.7.16, the learned Trial Court was directed to consider the grounds raised

by accused Baljeet Singh and Jagjeewan Singh through an application under Section 239 Cr. P. C and to consider the contentions otherwise raised and to pass a fresh order. Learned Trial Court again while framing charge sheet on 24.3.17 did not consider the contentions raised in an application under Section 239 Cr. P. C and did not dispose of the said application vide order dated 10.6.17. Learned trial court was directed to dispose of the application under section 239 Cr.P.C by considering the averments in the same. Learned trial court again while passing order dated 31.7.17 framed the charge sheet against all the petitioners. No prima-facie case is made out against any of the petitioners. Baljeet Singh and Jagjeewan Singh petitioners are only attesting witnesses to the sale deed and no offence is attracted qua them. He has further argued that even no offence is made out against petitioner Gurcheen Singh. He was vendee and was expected to exercise due caution before entering into an agreement to sell. He inquired on his behalf about the said fact and found that a registered general power of attorney dated 11.8.99 was executed by Balaur Singh in favour of Nirmal Singh. From a bare perusal of said general power of attorney dated 11.8.1999, it becomes clear that one Gurcharan Singh and Darbara along-with one Balour Singh issued power of attorney in favour of Nirmal Singh in the year 1999. Hence, petitioners Baljeet Singh and Jagjeewan Singh cannot be linked with the offence. No question about the genuineness of the sale deed dated 27.6.12 arises if the question has arisen about the genuineness of the power of attorney dated 11.8.1999. Hence, prayed for setting aside of order dated 31.7.17 and for discharge of all the accused.

On the other hand, learned Addl. PP for the State has advanced the arguments that the learned Trial Court has passed the order dated 31.7.17 in detail while framing the charge and has complied with the

previous orders passed by the learned revisional court about the disposal of application under Section 239 Cr. P. C., and has considered all the contentions raised by the petitioners at the time of framing of the charge. Hence, prayed for dismissal of the revision-petitions.

Vide order dated 1.12.16, earlier order dated 9.5.16 passed by the Court of Shri Pardeep Synghal, SDJM, Jagraon, charge sheeting the accused for the offences under Sections 420/465/467/468/471/120B IPC in FIR No. 95/10.7.12 , PS City Jagraon was set aside. It was held that the application under Section 239 Cr.P. C for discharge of accused Baljeet Singh and Jagjeewan Singh was moved on 30.10.15 inter-alia on the grounds that they have no role to play in sale deed and they even did not sign the same; that the sole intent of the complainant to involve the accused is to humiliate and pressurize their family members; that no evidence is forthcoming which can connect the petitioners with the alleged offences and that as per case reported as M. B. Ibrahim and others vs. State of Bihar and another 2009 (4) RCR Criminal 369, no offence is made out against Baljeet Singh and Jagjeewan Singh and the said application was not disposed of . Order dated 9.5.16 was set aside. The case was sent back to the learned Trial Court to consider the contentions raised by the petitioners and to pass a fresh order. Vide order dated 24.3.17, learned Trial Court again charge sheeted all the accused for the offences punishable under Sections 420/467/468/471/120-B IPC without considering the contentions raised by petitioners Baljeet Singh and Jagjeewan Singh in an application under Section 239 Cr. P. C and without disposing of the said application. Hence, order dated 24.3.17 was set aside. The learned Trial Court was directed to consider the contentions raised by Baljeet Singh and Jagjeewan Singh through an application under Section 239 Cr. P. C moved on 30.10.15 and to give the fresh hearing to all

the petitioners/accused and pass a fresh order by following the said guidelines in letter and spirit. Vide order dated 31.7.17, learned trial court passed the detail order considering all the facts arguments raised by the learned counsel for petitioners and framed the charge against the petitioners under sections 120-B, 467, 468, 471 and 420 IPC. He has also considered the contentions raised by the petitioners through an application under section 239 Cr.P.C and has found prima facie case against all the accused. I have perused order dated 31.7.17. It has been passed in compliance of the previous orders passed in the revision petitions filed by the petitioners and by considering all the documents annexed with the report under section 173 Cr.P.C. In view of the law laid down in the various authorities as discussed above, prima facie case is made out against all the petitioners and they have been rightly charge sheeted for the same. I do not find any ground to interfere in order dated 31.7.17. Hence, the same is upheld and all the three revision petitions are dismissed. Parties are directed to appear through their counsel before the learned Trial Court on 26.10.2017. Copy of this order be placed in the remaining two revision petitions. Record of learned Trial Court be returned alongwith the copy of this order. Revision file be consigned to record room."

Learned counsel for the petitioners has submitted that, as per the allegations in the FIR, the petitioners are only the witnesses to a sale deed dated 27.6.2012 and that they are not beneficiary and, therefore, the trial Court has wrongly dismissed the application filed by them under Section 239 Cr.P.C. for discharging them.

Learned counsel for the petitioners has also submitted that there is no allegation against the petitioners that they were part of conspiracy relating

to execution of the general power of attorney dated 11.8.1999 executed by Bhuller Singh in favour of Nirmal Singh and, therefore, at the most, the petitioners are witnesses to a sale deed which is executed after a long lapse of time i.e. on 27.6.2012 disposing of the property of said Bhuller Singh. It is also argued that the FIR has been registered by the subsequent general power of attorney of Bhuller Singh namely Deepak Maria and not by Bhuller Singh and, therefore, the charge framed under Sections 120-B, 467, 468, 471, 420-B IPC against the petitioners is erroneous.

After hearing the learned counsel for the petitioners, I find no merit in this petition.

It is apparent that the trial Court on three occasions have framed the charges against the petitioners and the co-accused and the petitioners had challenged the said order by way of filing three different revision petitions, out of which on two occasions, the case was remanded by the Court of Sessions to trial Court to redecide the matter and pass a fresh order regarding framing of the charges. In the order deciding third revision petition, the revisional Court has clearly held that the trial Court has passed the order and framed the charges in accordance with the settled proposition of law.

The argument raised by the learned counsel for the petitioners that the petitioners are only witnesses to a sale deed of 27.6.2012 is not sustainable, in view of the allegation in the FIR, where it is stated that Bhuller Singh has never executed the general power of attorney dated 11.8.1999 and the petitioners, in conspiracy with co-accused Nirmal Singh, have fabricated the aforesaid power of attorney and, therefore, on the face of

it, in the FIR, there are allegation of conspiracy regarding forging of power of attorney dated 11.8.1999 against the petitioners as well. It is apparent that by filing repeated revisions, the petitioners are delaying the trial as the FIR pertains to the year 2012 and is still at the stage of framing of charges. In view of the same, I find no illegality or irregularity in the order passed by both the Courts below and the same is dismissed.

**(ARVIND SINGH SANGWAN)**  
**JUDGE**

**November 20, 2017**  
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Whether speaking/reasoned: Yes  
Whether Reportable: Yes