

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

CRR-227-2013

Date of decision :28.09.2017

Rulda Singh

..... Petitioner

Versus

Dev Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr. H.S. Dhandi, Advocate
for the petitioner.

None for respondents No.1 and 3.

Mr. Harinder Singh, Advocate for
Mr. J.S.Gill, Advocate
for respondent No.2.

H.S. MADAAN, J.

Complainant - Daulat Singh since dead represented by his LRs
Rulda Singh and Ram Singh had got filed a complaint under Sections 420,
467, 471, 120-B IPC against accused, Dev Singh, Mohinder Kumar, Jaspal
Singh and Darshan Lal. That complaint bearing No.7T/8.02.2005/2009 was
finally disposed of by the Judicial Magistrate Ist Class, Rajpura vide
judgment dated 14.11.2011 inasmuch as accused were discharged holding
that necessary ingredients were not established.

Briefly stated facts of the case as gathered from the allegations in the complaint are that complainant – Daulat Singh was owner in possession of agricultural land measuring 18 Kanals 18 Marlas; that he had two sons namely Dev Singh and Naib Singh, but he had disowned them; that he had earlier filed a civil suit for grant of permanent injunction against his said sons; later on Dev Singh had also filed a civil suit against his father Daulat Singh alleging that the land in his name was a coparcenary property and he had a share in the same; that the said civil suit filed by Dev Singh was withdrawn by him in Lok Adalat held on 25.08.2001, however accused Dev Singh in collusion with the other accused prepared false and fabricated document in the shape of mutation sheet; that the mutation No.484 dated 31.08.2004 in respect of 8 bighas of land out of the said total land of 18 kanals and 18 marlas was sanctioned on the basis of orders dated 25.08.2001 passed by Lok Adalat; that it was a fraudulent act since Lok Adalat had dismissed the suit filed by Dev Singh against his father; that Dev Singh further cheated the complainant and sold the land to Mohinder Kumar vide sale deed dated 03.11.2004, though he had no right of title therein, that mutation was challenged and was set aside by the Collector, Rajpura, though the matter was brought to the notice of Higher Authorities of Police, but no action was taken. During the pendency of the proceedings Daulat Singh had died and he was substituted by Rulda Singh and Ram Singh vide order dated 29.08.2011.

After leading preliminary evidence by the complainant accused Dev Singh was summoned under Section 420 IPC, whereas Darshan Lal, Patwari was summoned under Section 177 IPC. Darshan Lal, Patwari filed the revision petition which was accepted by Learned Sessions Judge, Patiala

vide order dated 31.07.2006, therefore, only accused Dev Singh was ordered to be proceeded against.

During pre-charge evidence of complainant, Sher Singh Registry Clerk proved Wasika No.1082/13.09.1957 as Ex.PW1/A and Bagh Singh as CW-2 supported the version of complainant. The third witness happened to be CW-3 Rulda Singh he deposed as per version of complainant proving various documents.

After hearing arguments the trial Magistrate discharge the accused. A relevant portion of the judgment on the basis of which the trial Magistrate had reached the conclusion happened to be as under:-

“When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the

sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

When we say that execution of a sale deed by a person, purporting to convey the property which is not his, as his property, is not making a false document and therefore, not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.”

The said order challenged by way of filing appeal, however, vide judgment dated 10.10.2012 Additional Sessions Judge, Patiala dismissed the said appeal. Therefore, the present revision petition.

I have heard learned counsel for the parties, besides, going through the record.

The learned trial Magistrate has further observed that even if

complaint moved by the complainant regarding sale of land in dispute in favour of Mohinder Kumar is admitted to be correct on the face of it, then no offence under Section 420 IPC is made out though the matter would have been different if Mohinder Kumar had approached the Court with a complaint against the accused, therefore, prima facie no case was made out under Section 420 IPC.

As far as remaining offences under Sections 467, 468, 471 IPC, the Magistrate has observed the accused were not summoned under those Sections nevertheless those offences were not made out against the accused since as per version of complainant accused had got wrong mutation sanction in his name but from such allegations as well as evidence it comes out that accused himself has not prepared the said mutation and mutation does not fall under the ambit of false document as per Section 464 IPC and mutation cannot be called to be forgery. Learned Magistrate referring to cross-examination of CW-3 has observed that house in which accused lives had been constructed on part of land which was given by Daulat Singh to him; that if mutation was wrongly sanctioned it is clearly a civil dispute for which the complainant has admittedly filed a suit for declaration for challenging the mutation which is pending disposal, therefore, no prima facie was made out against the accused to frame charge since necessary ingredients of the offences are not established.

The scope of revision petition is quite limited. The revisional Court is to interfere only if the order passed by the Court below is patently illegal and perverse which means the error in the order must be apparent on the face of it and the order passed should have been in gross violation of settled principles of criminal jurisprudence. The order in hand does not

suffer from any such infirmity. It is well settled principle that revisional Court is not be upset the order passed by the Court below in a light manner simply because of the reason that another view in the matter is possible.

I do not find any illegality or infirmity much less apparent on the face of it. The judgment of Court below is not perverse, hence instant revision stands dismissed.

28..09.2017
Gaurav Sorot

(H.S. MADAAN)
JUDGE

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**