

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.2553 of 2013 (O&M)

Reserved on : 27.9.2017

Pronounced on:-7th October, 2017

Mange Ram

..Petitioner

versus

Rajinder Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. B.S.Mittal, Advocate, for the petitioner.

RAMENDRA JAIN, J (ORAL)

1. The instant revision petition under section 401 of the Code of Criminal Procedure is directed against the judgment dated 18.02.2013 passed by learned Additional Sessions Judge, Sirsa, affirming the judgment of acquittal of the respondents dated 10.07.2010 passed by the then learned Judicial Magistrate 1st Class, Sirsa, in a complaint case under sections 468/120-B/193 and 471 IPC while dismissing the appeal of the complainant.

2. Succinctly, the facts, as projected, in the application under section 340 of the Code of Criminal Procedure moved by petitioner-complainant Mange Ram against the respondents before the trial court are that, respondent nos. 1 to 4 in collusion with respondent nos. 5 to 7 forged a trust deed dated 26.12.1988 and got it registered with the office of the Sub Registrar, Ellenabad. On the basis thereof, the respondents filed an ejectment petition against one Ram Kumar-respondent no.7, with the mutual understanding amongst them that he would appear before the Rent Controller and make a statement that he had delivered the possession to the

Trust, though, respondent no.7 was never in possession of any of the properties of the Trust. In fact, the petitioner was in possession of the property. Consequently, on the basis of the statement of respondent no.7, the ejectment petition was allowed. Earlier to it, respondent no.7 had filed a Civil Suit against Sarvodya Ashram, Ellenabad in the year 1985, wherein a Local Commissioner was appointed, who, on 10.9.1985, visited the spot and submitted a report before the trial court that petitioner-complainant and one Satya Narain were in possession of the property in question. The said civil suit was, ultimately, withdrawn by respondent no.7 in the year 1986. The respondents, in collusion with each other, made an attempt to take the possession of the property wrongfully on the basis of a forged trust deed and as such, they have committed a fraud with the court and thus, were liable to be suitably punished.

3. It is worth mentioning that the application moved under section 340 of the Code of Criminal Procedure was treated as a complaint, whereupon preliminary evidence was recorded by the then learned Additional Chief Judicial Magistrate, Sirsa and the accused were summoned. The accused moved an application for recalling the summoning order, which, vide order dated 30.3.1998, was accepted and the accused were discharged. Aggrieved against the aforesaid order, petitioner-complainant Mange Ram preferred revision, which, vide order dated 10.4.2001, of the then learned Additional Sessions Judge, Sirsa, was allowed, holding that the summoning order be treated as an enquiry report and the learned trial court was directed to proceed as per the provisions of section 340 of the Code of Criminal Procedure. Against the said order, the respondents filed a Criminal Revision no.938 of 2001 before this Court,

which was dismissed vide order dated 5.7.2001. Thereafter, upon allowing the application moved for proper adjudication of the proceedings under section 340 of the Code of Criminal Procedure, by the then learned Rent Controller, Sirsa, the complaint was filed, which was made over to the court of the then learned Judicial Magistrate, Sirsa.

4. Copies of challan and other documents were supplied to the accused free of costs as enshrined under section 207 of the Code of Criminal Procedure. The accused were charge-sheeted under sections 468/120-B/193 and 471 IPC. Thereafter, the statements of five prosecution witnesses were recorded. After closure of the prosecution evidence, statements of the accused under section 313 of the Code of Criminal Procedure were recorded. Upon appraisal or re-appraisal of the evidence and other material available on the record, both the learned courts below acquitted all the respondents.

5. Learned counsel for the petitioner has contended that both the courts below committed a grave error in not appreciating the ocular as well as documentary evidence on record in its correct perspective, which resulted in flagrant miscarriage of justice by acquitting all the respondents wrongly. Both the learned courts below did not appreciate that the alleged deed was got executed and registered with the office of the Sub Registrar, Ellenabad, notwithstanding the fact that it was not signed by Mahaveer Parshad, respondent no.3 and Pawan Kumar respondent no.4. The learned courts below have also ignored the report of the Local Commissioner, whereby petitioner and Satya Narain were found in possession of the property.

6. Having thoughtful consideration to the submissions made by

learned counsel for the petitioner, this court is of the considered view that the revision petition, being without any merit, deserves to be dismissed for the reasons to follow:-

7. From the facts noted above, it would be discernible that both the parties are entangled with a long drawn civil and criminal litigation since 1982. The bone of contention between the parties is with respect to ownership of the property in question. The petitioner claims that his father Brahma Nand was rightful owner of the property, whereas the stand of the respondents, right from the very beginning, has been that they are owners of the property in question. Basically, the matter is of civil nature. The controversy, in the case in hand, revolves around a trust deed, prepared on 26.12.1988 by the name of Sarvodya Ashram, Ellenabad and was got registered with the Sub Registrar, Ellenabad. On the basis of the trust deed, resolution no.13 dated 17.1.1989 was passed. However, the complainant asserts that the signatures of Mahaveer Parshad and Pawan Kumar were obtained on the alleged deed after its registration and therefore, it should be treated as forged and fabricated one.

8. If at all, the alleged trust deed was not signed by two persons, namely, Mahaveer Parshad and Pawan Kumar at the time of its presentation, before the Sub Registrar and it was signed later on before it, in my considered view, it cannot be presumed that the alleged trust deed was a fake or fictitious document. The plea of the learned counsel for the petitioner that the alleged deed was a forged document and the respondents have committed a fraud with the court, is misconceived and cannot at all be held to be sustainable in the eyes of law. Having gone through the judgments of both the courts below, this court finds that this contention of

the learned counsel has been dealt with by both the learned courts below elaborately, giving sound reasoning therein, on the basis of ocular and documentary evidence available on the record. A concluding paragraph no.19 of the judgment dated 18.2.2013 passed by learned Additional Sessions Judge, Sirsa, reads as follows:-

“19 In view of my foregoing discussion, I am of the considered view that merely because the accused had executed a Trust Deed for creating Sarvodaya Ashram Trust, thereafter the litigation that ensued between the parties, cannot be held to fall within the definition of fraud and forgery. Rather from the entire gamut of facts and circumstances, it appears that both the parties having long standing litigation while the appellant/complainant claims that his father Brahma Nand was rightful owner of the property and the respondents have been throughout claiming to be owners of the property, let out to Ram Kumar (A7), who further sublet it to Mange Ram and Satnarayan. Pursuance of ones legal right cannot be termed to be amounting to fraud, howsoever, faulty one's claim may be, merely because the other party feels harassed by ongoing litigation. Although, it is unfortunate that the litigation between both the parties has been going on since year 1982 and even today the civil litigation is pending between them at various levels, but that in itself cannot be made a ground for convicting one of the parties for actively pursuing its legal remedy.”

9. From the observations made above, it is crystal clear that after the trust deed was executed by the trustees for creating Sarvodaya

Ashram Trust and thereafter, the litigation that ensued between the parties cannot be held that it falls within the definition of fraud and forgery.

10 So far as the report submitted by the Local Commissioner, wherein petitioner Mange Ram and Satya Narain were found to be in possession of the property in question is concerned, it has no relevancy, inasmuch as it would be the final outcome of the civil litigations that are pending adjudication between the parties, which would determine, as to who of them is the rightful owner of the property in question. In the facts and circumstances of the case in hand, this court is of the considered view that complainant Mange Ram has not been able to show that he has suffered any loss or injury on account of registration of the alleged trust deed by the trustees of the said ashram on the basis of which, a rent petition was filed against one Ram Kumar respondent no.7 (since deceased). Therefore, it can easily be inferred that the petitioner cannot be termed as a victim by the alleged act of the respondents. The concurrent findings recorded by both the learned courts below do not call for interference.

11 In view of the foregoing discussion, this court does not see any illegality or infirmity in the concurrent findings recorded by both the learned courts below that may warrant interference in exercise of revisional jurisdiction of this court. Consequently, the impugned judgments passed by both the courts below acquitting all the respondents, are upheld.

12 Accordingly, the revision, being without any merit, fails and is dismissed.

7th October, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. Whether speaking/reasoned | Yes/No |
| 2. Whether Reportable: | Yes/No |