

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

CRR-3655-2013

Date of decision : 15.09.2017

Babu Lal

..... Petitioner

Versus

State of Haryana and another

..... Respondents

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

Present : Mr. Alankar Narula, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

This criminal revision petition is directed against judgment dated 08.10.2013 passed by Additional Sessions Judge, Rewari vide which he had dismissed criminal appeal against judgment of conviction dated 01.10.2010 and order of sentence dated 05.10.2010 passed by Chief Judicial Magistrate, Rewari, in terms of which accused - Babu Lal while being convicted for offences under Section 420, 468, 471 of the Indian Penal Code

(for short - “IPC”) was sentenced as follows:-

Under Section 420 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹1,000/- and in default of payment of fine to further undergo rigorous imprisonment for fifteen days.
Under Section 468 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹1,000/- and in default of payment of fine to further undergo rigorous imprisonment for fifteen days.
Under Section 471 IPC	To undergo rigorous imprisonment for three years and to pay a fine of ₹1,000/- and in default of payment of fine to further undergo rigorous imprisonment for fifteen days.

All the substantive sentences were ordered to run concurrently.

Briefly stated facts of the case are that complainant - Ram Giri widow of Chandgi Ram resident of village Nangal Mundi, Tehsil and District Rewari had filed a complaint against Babu Lal for offences under Sections 419, 420, 466, 468, 471 IPC. Inter alia the complainant had alleged that she along with her daughters Kamla and Saroj have been owners in possession of agricultural land measuring 12 kanals and 4 marlas situated at village Nangal Mundi; that the complainant is a simple illiterate lady; the accused obtained a decree regarding that land purports to have been suffered by her passed by the Court of Sub-Judge First Class, Rewari on 20.12.1991 in Civil Suit No.833 dated 18.02.1991; that the accused had caused appearance of some other woman in place of complainant and he had obtained thumb impressions as well as admitted written statement and caused appearance of an impersonator in the Court getting her statement recorded there. The mutation was also got sanctioned on the basis of that

fraudulent decree. The complainant alleged that she had neither engaged any counsel nor filed any written statement, for that matter she had neither appeared in the Court nor recorded her statement there. Therefore, decree obtained by the accused is result of fraud and impersonation so as to grab her share. The complainant came to know about such fraud played upon her, a months before filing of complaint when she was cutting grass in the field and accused came there asking her not to do so since he had become owner of the said land on the basis of decree passed by the Court. Thereafter, the complainant made inquiries from the Halqua Patwari and came to know about passing of the decree, as such, she brought a complaint in the Court of law.

After recording preliminary evidence, accused was summoned to face trial for offences under Sections 420, 468, 471 IPC by Chief Judicial Magistrate, Rewari vide order dated 02.12.2003.

During the pre-charge evidence, complainant examined Krishan Kumar, record keeper as PW-1, who had brought the file titled as 'Smt. Ramgiri vs. Babu Lal' bearing No.531 of 04.11.2000; PW-2 Vijay Rustogi Handwriting and Finger Print Expert proved his report Ex.PW2/1; Smt. Ram Giri-complainant PW-3 testified that she had inherited the land about 5 kanals 2 marlas from her husband, of which she has been owner in possession but Babu Lal got a decree from Civil Court fraudulently, she reiterated the allegations in the complaint. With that the pre-charge evidence stood closed.

After hearing arguments, finding a prima facie case, accused was charge-sheeted by Additional Chief Judicial Magistrate vide order dated 27.05.2009.

After framing of charge, complainant – Ram Giri appeared as

PW-1, besides examining Sh.Vijay Rustogi Handwriting and Finger Print Expert as PW-2 and as such after charge evidence was closed.

Statement of accused under Section 313 Cr.P.C. was recorded in which all the incriminating circumstances appearing against him were put to him, but he denied the allegations and pleaded his false implication in this case.

During his defence evidence, accused examined DW-1 Kamla Devi, DW-2 Saroj and DW-3 Shamsheer Singh Malik Fingerprint and handwriting expert.

After hearing arguments, learned trial Magistrate convicted and sentenced the accused as mentioned above, which left him aggrieved and he had filed an appeal in the Court of Sessions, but was unsuccessful there, as such, he has knocked at the door of this Court by way of filing instant criminal revision petition.

I have heard learned counsel for the parties and have gone through the record minutely with their able assistance.

The main thing to be seen is as to whether the consent decree said to have been suffered by complainant in favour of accused is a legal and valid document or the same was procured by the accused by fraud and impersonation. It is commonly said that men may tell lies but circumstances do not. Admittedly, the finger prints of two individuals in this world do not match. The handwriting expert examined by the complainant vide a well reasoned report has arrived at the conclusion that the disputed thumb impressions do not tally with the admitted thumb impressions of the complainant. I find the report submitted by him to be worthy of reliance and a very important piece of evidence in this case. The judgment passed by Civil Court dated 05.04.2008, copy of which Ex.PA, had declared

complainant- Ram Giri to be owner in possession of suit land and impugned decree dated 20.12.1991 passed in civil suit No.833 of 1991 titled as ‘Babu Lal vs. Kamla’ and mutation No.613 sanctioned on the basis thereof illegal, null & void and not binding on the right of the complainant, after observing that impugned decree is outcome of fraud by way of impersonation and is not binding upon rights of plaintiff – complainant. This is a very important piece of evidence for the complainant to prove her case.

Learned counsel for the revision-petitioner has pressed into service various authorities, first being **Magan Bihari Lal vs. The State of Punjab, 1977 AIR (SC) 1091** wherein it was observed that *it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This type of evidence, being opinion evidence, is by its very nature, weak and infirm and cannot or itself form the basis for a conviction.*

There cannot be any dispute with the observations made in the authority by Hon’ble Supreme Court, however, in the instant case, besides the expert opinion, there is very important piece of evidence in favour of the complainant, in the form of a decree passed by the civil Court declaring impugned decree set up by accused to be illegal, null & void result of fraud and impersonation not binding upon rights of the complainant. Therefore, after considering the entire evidence adduced by the complainant, oral as well as documentary, conviction of the accused has been based and not only on the opinion of the finger print and handwriting expert, therefore, this authority does not help the revision-petitioner in any manner.

For the similar reasons the other citations on the point i.e. **Jai Pal vs. State of Haryana and another, 2016(3) RCR (Criminal) 642** by a Co-ordinate Bench of this Court and **State of Gujarat vs. Shah Sanjay Kumar K. and others, 2000(4) CCR 454** by High Court of Gujarat do not

help the revision-petitioner in any manner.

Admittedly, this judgment and decree have attained finality. The law is well settled that decision of civil Court is binding upon criminal Court, though vice-a-versa is not true. Therefore, the complainant has successfully proved the allegations in the complaint, the accused had failed to render any reasonable explanation for his alleged false implication in the case. Though he had examined his sisters Kamla as DW-1 and Saroj as DW-2, who stated that they had accompanied their mother Ram Giri to the Court who suffered decree in favour of Babu Lal putting her thumb impression on the statement, but keeping in view the fact that in terms of report by PW-2 Vijay Rustogi Handwriting and Finger Print Expert that disputed thumb impression Q1 to Q5 on written statement, application and *Vakalatnama* are not affixed by Ram Giri, who had fixed her thumb impressions S1 and S2 and in view of the decree passed by the Civil Court declaring the impugned judgment and decree result of fraud and impersonation, the depositions of these witnesses do not help the accused in advancing his case rather it comes out that they had come forward to save the accused from punishment. DW-1 Kamla in her cross-examined feigned ignorance about the Advocate stating that he had been engaged by Babu Lal. She further stated that she had not filed any written statement in the case. Similarly DW-2 Saroj stated that she had suffered a decree and transferred her share in favour of her brother, but that does not convincing and plausible. DW-3 Shamsher Singh Malik, Handwriting and Finger Print Expert who had engaged by the accused who in his report Ex.DW3/A with the help of negatives Ex.DW3/C1 to Ex.DW3/C8 and specimen sheet Ex.DW3/C9 had opined that disputed thumb impression and specimen were of the same person i.e. Smt. Ram Giri.

The report and deposition of DW-3 Shamsheer Singh Malik, Handwriting and Finger Print Expert do not inspire confidence. As such, I conclude that the judgments passed by the Courts below are well reasoned one based on proper appreciation of evidence and correct interpretation of law. There is no illegality or legal infirmity therein calling for interference by this Court while exercising revisional jurisdiction. Those judgments are upheld as regards conviction and sentence part.

Revision is found to be without any merit and is dismissed accordingly.

The order passed by this Court suspending sentence of the petitioner and granting him bail dated 22.11.2013 is withdrawn. Chief Judicial Magistrate, Rewari is directed to issue non-bailable warrant against the petitioner to get him arrested and send him to jail to undergo remaining sentence.

Intimation in this regard be sent to the quarter concern.

15.09.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

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