

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2129-2016 (O&M)

Date of decision: 20.11.2017

Amrik Singh

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Anupam Singla, Advocate for the petitioner
Ms.Monika Jalota, DAG Punjab

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

Impugned in the present revision petition is the judgment dated 29.2.2016, passed by the learned Additional Sessions Judge, SAS Nagar, Mohali, affirming the judgment of conviction and order of sentence dated 12.2.2013, passed by the learned Sub Divisional Judicial Magistrate, Kharar, vide which the present petitioner was convicted under Section 420 read with Section 120B IPC and sentenced to undergo Rigorous Imprisonment for one year and fine of Rs.1000/-, in default of payment of fine, to undergo further Rigorous Imprisonment for one month.

The case was registered on the complaint dated 11.12.2003/
17.11.2003 (Ex.PD) filed by Dharam Pal, Banarasi Lal and Motia Rani, all residents of village Mullanpur Garibdass, District Ropar, addressed to the

Chief Minister of Punjab, in which, it was stated that Amrik Singh, who happens to be brother of then Senior Superintendent of Police, Muktsar, in connivance with Bachan Kaur wife of late Gurdev Singh, resident of Mullanpur Garibdass, Kharar, sold a plot at Mullanpur Garibdass to Dharam Pal, Banarasi Lal, Rajesh Kumar and Motia Rani by showing the documents that the plot was owned by Smt. Bachan Kaur and she has got no right to sell the said plot. The said complainants agreed to purchase the part of the plot from Amrik Singh, which was sub-divided in three parts. Amrik Singh later on got executed the registered sale deeds on 21.8.2003 from Bachan Kaur in favour of the complainants. Amrik Singh also gave an affidavit dated 21.8.2003 that in case of any dispute, he will be responsible. The full payment of the plot was made to Amrik Singh and Bachan Kaur. Later on, the complainants came to know that neither Amrik Singh nor Bachan Kaur was owner of the plot sold to the complainants and the plot was actually owned by Dharam Singh, resident of Naya Nangal, who made a complaint to DSP Kharar that his plot has been fraudulently sold by Amrik Singh and Bachan Kaur. Complainants then contacted Amrik Singh and Bachan Kaur to refund the money but they were threatened. Amrik Singh also filed false application to DGP (Punjab), accusing the complainants of various crimes. Complainants are now being harassed and threatened by SP (D) Sangrur and other police officials of the district. CIA staff is also harassing the complainants and they are being repeatedly called to the police station at Sangrur. Therefore, necessary instructions be issued to the police to register a case against Amrik Singh and Bachan Kaur.

On the basis of the said complaint, an inquiry was held and thereafter recommendations dated 28.12.2004 (Annexure PW7/B) were

made by Additional Director General of Police to SSP Ropar to register a case. Accordingly, present FIR was registered under Sections 420 and 406 IPC and challan was presented against Amrik Singh as well as Bachan Kaur.

In support of its case, prosecution examined the complainant Dharam Pal son of Chand Ram (PW1), Banarsi Lal complainant as PW2, SI Bhagwant Singh as PW3, Motia Rani, complainant (also wrongly numbered as PW3), HC Satwinder Singh as PW4, ASI Ram Kishan, retired SI as PW5, Ramesh Lal as PW6, SI Joginder Pal as PW7. Thereafter, the prosecution closed its evidence.

When examined under Section 313 Cr.P.C., Amrik Singh pleaded that he is innocent and has been falsely implicated in this case. Bachan Kaur also raised a similar plea. However, they did not lead any evidence in defence.

After hearing the prosecution and the accused, the learned Sub Divisional Judicial Magistrate, Kharar vide judgment of conviction and order of sentence dated 12.2.2013, held that offence under Section 406 IPC is not proved. However, offence under Section 420 IPC was held to be proved against Bachan Kaur and offence under Section 420 read with Section 120B IPC was held to be proved against Amrik Singh. Accordingly, they were sentenced as discussed above. Appeal filed by Amrik Singh was dismissed by the learned Additional Sessions Judge, SAS Nagar, Mohali vide judgment dated 29.2.2016. Against the said judgment, Amrik Singh has preferred the present revision petition.

Allegations are that Amrik Singh, who is stated to be a property dealer, prevailed upon the complainants Dharam Pal, Banarasi Lal and Motia Rani to purchase a plot belonging to Bachan Kaur. Accordingly,

different sale deeds were executed on 21.8.2003. However, later on, original owner Dharam Singh son of Munshi Singh made a complaint claiming that he is the owner of the said plots. Therefore, the complainants were forced to purchase the same plots from Dharam Singh son of Munshi Singh again.

It is necessary to examine the sale deeds executed by Bachan Kaur, in which, Amrik Singh is stated to be a mediator being the property dealer. It is further alleged against Amrik Singh that he had executed an affidavit (Ex.PW1/A) dated 21.8.2003 i.e. the date of the sale deed, undertaking the responsibility in case of any defect in the title or dispute.

First sale deed (Ex.PW1/B) is by Bachan Kaur wife of Gurdev Singh, resident of Mullanpur Garibdass in favour of Motia Rani, resident of Mullanpur Garib Dass regarding plot measuring 38.88 square yards, which abuts the road. It is recited that the plot is within *Lal Lakir* of the village and Bachan Kaur, resident of Mullanpur owns the same. The sale deed was witnessed by complainant Dharam Pal son of Chuhan Ram, resident of Mullanpur Garibdass.

Second sale deed (Ex.PW2/A) is of plot measuring 82.22 square yards having 20 feet front abutting the road. Sale is in favour of Banarsi Lal son of Munshi Ram and Rajesh Kumar son of Banarsi Lal resident of Mullanpur Garib Dass. Date of the sale is same i.e. 21.8.2003. The sale is witnessed by Kharaiti Lal son of Hari Raj, resident of Mullanpur Garibdass as well as others.

Third sale deed (Ex.PW6/A) is regarding plot measuring 66.11 square yards by Bachan Kaur having 17 feet front towards road in favour of Dharam Pal son of Chuhan Ram resident of Mullanpur Garib Dass. In all the

sale deeds, it is recorded that the said plots are in the *Lal Lakir* of village Mullanpur Garibdass.

It is apparent from the sale deeds that said three plots adjoin each other and probably, one big plot has been divided into three parts. All the sale deeds were executed on 21.8.2003. Sale consideration is recorded to have been paid.

Now, the affidavit of Amrik Singh (Ex.PW1/A) who is stated to be property dealer states that the plots have been sold which are within *Lal Lakir* of the village. Possession has been delivered. Amrik Singh undertook that in case of any defect in the title or any legal dispute raised by anybody, Amrik Singh himself will be responsible for the same. Affidavit was also given on the stamp paper on 21.8.2003. One is to see whether through the said affidavit, Amrik Singh also incurred criminal liability. In all the said sale deeds, one Gurdev Singh, Namberdar of the village Mullanpur Garibdass is also a witness.

Now, it comes out that one Dharam Singh son of Munshi Singh, resident of Ropar, claims the ownership of the said plot situated within *Lal Lakir*. He appointed Kharaiti Lal son of Hari Ram, resident of Village Mullapur as power of attorney vide deed dated 18.9.2003. On the strength of the said power of attorney, said Dharam Singh son of Munshi Singh through his attorney Kharaiti Lal sold one plot, dimensions of which are mentioned in the sale deed, for Rs.one lakh in favour of Motia Rani on 22.9.2003 vide sale deed (Ex.PW1/C). It was witnessed by Dharam Pal son of Chuhar Ram as well as Namberdar Balwant Singh. Similarly, said Kharaiti Lal also sold a plot in favour of Banarsi Lal and Rajesh Kumar vide sale deed (Ex.PW2/D) dated 22.9.2003. Through third sale deed, another

plot was sold to Dharam Pal son of Chuhar Ram. All the said plots are stated to be recorded within *Lal Lakir* of the village Mullanpur Garibdass. In this way, it is clear that the complainants first purchased the plots from Bachan Kaur vide sale deed dated 21.8.2003 and subsequently, purchased the same from one Dharam Singh son of Munshi Singh, resident of Nangal, District Ropar, through sale deeds dated 22.9.2003 i.e. a month later.

Now, this Court is to examine the nature of the area situated in *Lal Lakir*. Regarding the area situated in the *Lal Lakir*, there is no record of ownership and possession is treated to be best proof of title. In all the sale deeds, Bachan Kaur claimed that she is the owner of the plots and in possession thereof. The possession is also recorded to have been delivered to the purchasers.

It also comes out that all the three purchasers, namely, Dharam Pal son of Chuhar Ram, Banarasi Lal and Rajesh Kumar, Motia Rani are also residents of village Mullanpur Garibdass and Bachan Kaur also belongs to the same village. Therefore, the said purchasers had an opportunity to see whether Bachan Kaur is in possession of the said plot and could sell the same. Dharam Pal appearing as PW1 has stated that that Amrik Singh, being the property dealer, had shown him the plot. He had also shown him the agreement with Bachan Kaur. Cross examination of Dharam Pal reveals that he has been residing at village Mullanpur since long. His forefathers have also been residing there. He has been born and brought in the said village. Entire dimension of the plot is 45'x36'. The said plot is in the Abadi of village Mullanpur. He had seen the disputed property earlier also. He admitted that Bachani (Bachan Kaur) is also resident of village Mullanpur. Her husband Gurdev Singh was known to him. He knew

Bachani (Bachan Kaur) since he gained senses. Gurdev Singh was landlord and owner of substantial land in the village abadi. Gurdev Singh died 10-12 years back. Dharam Pal son of Chuhar Ram has purchased the plot measuring 70'x35' on which he later on constructed shops. He further stated that Dharam Singh son of Munshi Singh was earlier residing in village Mullanpur at some distance from his house. He sold house 35 years back and went to Nangal.

Banarsi Lal (PW2) admitted that he is residing at village Mullanpur since 1975 and he had seen the plot before purchasing the same from Bachni (Bachan Kaur). Motia Rani also admitted that Bachan Kaur is resident of village Mullanpur. She knew her after she came to the village i.e. after her marriage, which took place in the year 1977. She started knowing Bachni after 8-10 years of her marriage in village Mullanpur. She also claimed that she had also filed civil suit against Amrik Singh regarding cancellation of sale deed. She admitted that property involved in the sale deed is in abadi area known as Bara. It was a vacant site. However, there was manure heap on the same. But she cannot tell who had put the manure heap on the same. She does not know whether the manure heap belongs to Bachni. She also admitted that vacant possession of the said plot was handed over to her by Bachni.

In this way, it is clear that all the three purchasers, namely, Dharam Pal son of Chuhar Ram, Banarasi Lal as well as Motia Rani are living in the same village Mullanpur, where Bachan Kaur is also residing and that they knew each other for long. Therefore, they had an opportunity to see the plot and also see as to who is in possession of the same, since no revenue record of the same is available on account of the fact that it is

within *Lal Lakir* of the village. In case of property within *Lal Lakir* of the village, possession is construed to be best proof of title. Therefore, said purchasers had the opportunity to see the plot and the person who is in possession thereof, before purchasing the same.

In these circumstances, it cannot be said that they merely acted on the representation made by Amrik Singh, property dealer.

Now, the question is as to whether a subsequent man Dharam Singh son of Munshi Singh, resident of village Nangal is the owner of the said plots. Said Dharam Singh son of Munshi Singh was not examined in the Court to claim or to state as to how he claims the ownership of the said plots. It appears that Dharam Singh son of Munshi Singh made a complaint to the DSP and said purchasers having been summoned to police station frightened and got the sale deed executed from said Dharam Singh son of Munshi Singh. On the file, there is no document to show that Dharam Singh son of Munshi Singh was the owner of the said plot. He had left the village Mullanpur for Nangal many years back and there is nothing on file to show that Dharam Singh son of Munshi Singh was in possession of the said plot, to claim its ownership. Presence of manure heap shows that somebody from the village was using the same. Therefore, the purchasers had the opportunity to see as to who is in actual possession before purchasing it.

Now, the question would arise as to whether the complainants have been cheated and Amrik Singh entered into the criminal conspiracy with Bachan Kaur to cheat the complainants. So far as Bachan Kaur is concerned, it comes out from the judgment of the lower appellate Court that most probably she has compromised with the complainants. The offence of

criminal conspiracy to cheat must be proved beyond all reasonable doubts. There is no proof that Bachan Kaur was not the owner of the said plots. The complainants did not check any document from Dharam Singh son of Munshi Singh before re-purchasing the same plot from said Dharam Singh son of Munshi Singh on the basis of his claim that he is owner of the same. A copy of the judgment (EX.P1) dated 22.11.1999 shows that there was a litigation between Gram Panchayat on the one hand and Rattan son of Munshi, Dharam Singh, Jarnail Singh, Pinki, Dev regarding one plot measuring 8 biswas comprising khasra No.18(0-7) in the Shamlat Deh. Suit filed by Rattan Singh and Dharam Singh etc. was dismissed and appeal was also dismissed vide judgment Ex.P1. Another suit for permanent injunction between Gurdev Singh Rattan Singh, Dharam Singh etc. was dismissed under Order 9 Rule 8 CPC vide order Ex. P8. In this way, there is no clinching evidence on the file to show that Dharam Singh son of Munshi Singh was in fact the real owner and that the claim of Bachan Kaur being the owner of the said plot on the basis of possession was incorrect. Therefore, it cannot be said that all the complainants, namely, Dharam Pal, Banarasi Lal, Motia Rani were cheated by Bachan Kaur and that Amrik Singh had entered into criminal conspiracy with said Bachan Kaur to cheat the complainants. He was merely a property dealer and might have acted for commission. Affidavit (Ex.PW1/A) merely makes Amrik Singh liable in case of legal dispute. It can be construed to refer to a civil dispute and does not mean that Amrik Singh had admitted that in case of defect of title, he also will be held to be criminally liable. Both the Courts below have erred in properly appreciating the evidence.

In view of the foregoing discussion, I am of the view that the

prosecution could not prove that Amrik Singh entered into criminal conspiracy with Bachan Kaur to cheat the complainants. Accordingly, offence under Section 420 read with Section 120B IPC is not proved. Consequently, the judgment dated 29.2.2016, passed by the learned Additional Sessions Judge, SAS Nagar, Mohali as well as judgment of conviction and order of sentence dated 12.2.2013, passed by the learned Sub Divisional Judicial Magistrate, Kharar, are hereby set aside and the petitioner stands acquitted of the charges framed against him. His bail bonds and surety bonds are discharged.

Petition is accordingly allowed.

20.11.2017*gk***(Kuldip Singh)
Judge**

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes