

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRR-3647-2014 (O&M)
reserved on 7th November, 2017
Pronounced on 16th November, 2017

Joginder Singh ..Petitioner

versus

Amar Kaur and others ..Respondents

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Mr. Sudhir Sharma, Advocate,
and Mr. Ram Krishan Rana, Advocate,
for the petitioner.

Respondent no.1 expired.

Mr. Munish Gupta, Advocate for respondent no.2.

Mr. M.S. Longia, Advocate, for respondent nos 3 and 6.

RAMENDRA JAIN, J.

1. Through this instant revision, the petitioner has assailed the impugned judgment dated 12.8.2014 of Additional Sessions Judge, Hoshiarpur, accepting the revision filed by accused-respondent No.1 Amar Kaur and respondent no.2 Iqbal Kaur, thereby setting aside the impugned order dated 26.10.2012, of Addl.Chief Judicial Magistrate, Hoshiarpur, summoning respondents 1 to 7 under sections 420, 465, 468 and 471 read with section 120-B IPC in a complaint case under sections 420, 465, 467, 468 and 471 read with section 120-B IPC.

2. The facts necessary for the disposal of this revision are that Ajit Singh son of Harnam Singh expired on 27.12.1997, leaving behind his three daughters, namely, Iqbal Kaur, Gurpreet Kaur and Jaswinder Kaur and widow, namely, Amarjit Kaur. Gurpreet Kaur, one of the daughters of Ajit Singh is married to complainant Joginder Singh. Ajit Singh (deceased),

during his life time, executed a will dated 14.9.1996 in favour of his legal heirs, bequeathing them different shares out of his properties. Amar Kaur (widow) and Iqbal Kaur (daughter), with a view to defeat the legal right of the wife of the complainant Joginder Singh, namely, Gurdeep Kaur (daughter) executed a power of attorney dated 1.8.2003 in favour of co-accused Gurchain Singh, who sold land measuring 1 Kanal- 10 ½ Marlas bearing khasra nos. 82/14/2 and 17/2 situated at village Bajwara for a consideration of Rs.2,20,000/- despite the fact that no mutation had been sanctioned exclusively in favour of Amar Kaur and Iqbal Kaur without consent and knowledge of the wife of the complainant. Even no amount was paid to her out of the sale proceeds. However, a bogus entry in the revenue record was made in connivance with the Patwari. Even Amar Kaur and Iqbal Kaur, in collusion with each other got prepared a forged document in the shape of a family settlement without the knowledge of the wife of the complainant. Though, the property was sold for Rs.2,20,000/- but it was shown to have sold for Rs.1,20,000/-. They also prepared a forged consent letter dated 23.6.2003 (Annexure P-8), allegedly, written by the wife of the complainant regarding selling her share illegally in the property situated in village Bajwara. Finding no other alternative, a private complaint was filed before the court when the police did not take any action on the complaint of the complainant.

3. The trial court, vide order dated 26.10.2012, after analysing ocular as well as documentary evidence produced by the complainant at the preliminary stage, summoned the accused to face trial under sections 420, 465, 468, 471 read with section 120-B IPC. Aggrieved against the summoning order, the respondents-accused filed revision before the lower

revisional court, who, vide judgment dated 12.8.2014, accepted the revision and set aside the summoning order of the trial court. Against this judgment, the petitioner-complainant, through the instant revision, came up before this court.

4. Learned counsel for the petitioner has contended that the learned lower revisional court has committed a grave error in setting aside the summoning order of the accused, which was based on appreciation of ocular as well as documentary evidence in its correct perspective. The learned lower revisional court did not consider that the property was sold for Rs.2.20,000/- instead of Rs.1.20,000/-, as is evident from the contents of the sale deed. The alleged consent letter written by the wife of the petitioner was forged one as per the report dated 4.10.2010 (Annexure P-7) of the Finger and Handwriting Expert, inasmuch as the same was not signed by her. The learned lower revisional court erred in relying upon the contents of the alleged will that after the land in village Bajwara was sold by the Chairperson of “The Vikram Ajeet Singh Cheema Foundation”, the sale proceeds thereof would have to be deposited in the funds of the Foundation. The observations made by the learned lower revisional court are totally against the record, inasmuch as Ajit Singh Cheema expired before coming into existence of any such Trust.

5. Per contra, learned counsel for respondent nos.3 and 6 refuted the submissions made by learned counsel for the petitioner contending that the learned lower revisional court has, after appreciating the entire material available on the record, has rightly set aside the order of the trial court summoning the accused-respondents for a trial.

6. Having given thoughtful consideration to the submissions made

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

7. There is no denying fact that Ajit Singh expired on 27.12.1997 leaving behind his widow and three daughters. All are married. One of his daughters, namely, Gurpreet Kaur is married to the complainant. Ajit Singh, during his life time, executed will dated 14.9.1996 in favour of his legal heirs, bequeathing them different shares out of the properties left by him. The grouse of the petitioner is that the share of his wife, namely, Gurpreet Kaur was illegally sold by accused-respondent no.4 Gurchain Singh, the attorney of respondent no.1 Amar Kaur and respondent no.2 Iqbal Kaur. Therefore, a dispute inter se parties arose with respect to inheritance of properties left by Ajit Singh (deceased), a litigation regarding which, is pending before the civil court.

8. A cursory glance of the record shows that number of complaints were made before the higher authorities, but no criminal proceedings were launched for the simple reason that they were not convinced with the allegations made in the complaint, inasmuch as the controversy between the parties regarding their shares was already sub-judice before the civil court and the parties were required to wait for the final verdict by the civil court.

9. The bone of contention between the parties revolves around the sale deed, allegedly executed by Gurchain Singh-respondent no.4, being the attorney of Amar Kaur and Iqbal Kaur, though the same was not on the file of the trial court. Another dispute that arose between the parties is with respect to a wrong entry made in the mutation, on the basis of which, the

property was sold. There is nothing on the file to suggest that whether mutation regarding inheritance of Ajit Singh was sanctioned or rejected. All these documents, in the considered opinion of this court, were required to be brought on the record to determine as to whether any offence of cheating or forgery was made out against the accused. The learned lower revisional court, in para no.10 of its judgment, has rightly made an observation, which reads as follows:-

“ In order to put a person on trial for having forged documents, it is legal requirement that there must be evidence to show that a person has prepared a document in the name of somebody else but again no such evidence is on the file. Even if the report of Shri Navdeep Gupta is to the effect that alleged consent letter is not signed by Gurprit Kaur but there is no evidence as to who had signed it. So, mere presumptions are not sufficient to summon the accused for putting on trial.”

10. The learned counsel for the petitioner has not been able to rebut the above findings recorded by the learned lower revisional court. The observations made by the learned lower revisional court, in my considered opinion, are correct and do not call for interference.

11. So far as the will, allegedly executed by late Ajit Singh though, it was not produced before the trial court, but the same was produced on the record before the learned lower revisional court is concerned, this court is of the view that the contents of the will are not essential to be gone into at this stage, but since the complainant himself arose a dispute in his complaint with respect to sale proceeds of the properties, which were to be deposited with the funds of the Trust, though, according to him, it was not in existence

during the life time of deceased Ajit Singh. It would be appropriate to go into the contents of the will, in order to find out the veracity of the allegations, executed by deceased Ajit Singh, wherein it has been clearly mentioned by the executant that the sale proceeds were to be deposited in the funds of the Trust namely, Vikram Ajit Singh Cheema Foundation. In such circumstances, the averment in the complaint that the Trust was not in existence during the life time of the deceased, is proved to be false and as such, an argument, in this regard, as noted above, being without any basis, is misconceived and is liable to be rejected summarily.

12. Another argument that the property was sold for Rs.2,20,000/- whereas in the sale deed, it has been shown to have sold for Rs.1,20,000/-, is a matter of evidence, which would be determined by the civil court on the basis of cogent and convincing evidence on the record. Moreso, whether forged documents were got prepared by the accused in order to defeat the legal right of the wife of the complainant, is again a matter of evidence, which would be ascertained only on the strength of material that would be made available by the parties before the civil court.

13. The summoning of accused, in the considered opinion of this court, cannot be made in a routine manner, inasmuch as in order to substantiate the allegations of cheating or forgery, the complainant was required to prove and produce on the record concrete evidence to connect the accused with the commission of crime. Merely recording of oral evidence by the complainant himself corroborated by the other interested witnesses produced in support of his case, would not be sufficient to fulfil the necessary ingredients of the offence of cheating and forgery. Therefore, the order passed by the trial court in summoning the accused, in my

considered opinion, has rightly been set aside by the lower revisional court.

I do not find any illegality or perversity in the findings recorded by the learned lower revisional court giving sound reasoning therein and as such, the same are affirmed.

14 In view of the foregoing reasons, this revision, being without any basis, fails and is dismissed.

16th November, 2017
VK

(RAMENDRA JAIN)
JUDGE

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