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

**CRR No. 62 of 2015 (O&M)
Date of Decision: 04.10.2017**

Ram Kumar

..... Petitioner

Versus

Jagdish and others

..... Respondent

CORAM: HONBLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Tapan K. Yadav, Advocate,
for the petitioner.

Mr. Shashikant Gupta, Advocate,
for respondents No. 1 and 2.

Mr. D.R. Singla, D.A.G., Haryana,
for respondent No. 3.

SUDIP AHLUWALIA J. (ORAL)

CRM No. 30107 of 2017:

Allowed as prayed for.

Application stands disposed off.

CRR No. 62 of 2015:

This revisional petition is preferred against the impugned judgment passed by the Ld. Additional Sessions Judge, Narnaul, in Criminal Appeal No. 51 of 2011 on 31.10.2014, whereby the earlier

judgment of acquittal of the respondents passed by the Ld. Judicial Magistrate Ist Class, Narnaul, on 17.03.2011, was upheld. Therefore, the petitioner is aggrieved by the decisions of both the Trial as well as Appellate Court, acquitting the respondents, who had been originally charged for the offences under Sections 467/471 read with Section 120-B of the Indian Penal Code to the effect that they had motivatedly forged a deed of agreement on 04.02.2001, by making overwritings and additions in the same to cheat the petitioner/complainant and dishonestly used the said forged document in a civil proceedings in pursuance of their criminal conspiracy. It may be further mentioned that the civil suit filed by respondent No. 2 Har Lal, seeking specific performance of the purported agreement of sale, was decreed by the Civil Court, which held the disputed document to be valid, notwithstanding the overwritings made therein. The judgment was, however, set aside by the Ld. Appellate Court, which, *inter alia*, recorded certain facts:

“Had the intention of the appellants been to sell the land as per writing then what was the necessity to add the word Kayami in the writing. If the writing was to include the Kayami also then it was the duty of the respondent to have it specifically mentioned in the initial writing which the respondent has failed to establish. Had the overwriting been made with the consent of Ram Kumar etc. then it should have bore the signature of Ram Kumar etc. and it would have been cleared on the file. It is wrongly held by the trial court that the cuttings and overwriting are not going to affect the case of the respondent on merit but this court is of the view the cuttings, overwriting have changed and nature of the writing to make the writing into an

agreement to sell.”

2. The other aspect of the matter is that in order to prove the charges of forgeries/interpolations in the disputed document, the same had been got referred to the Forensic Science Laboratory, Haryana, for examination, whose Report concerning the same was also led into the evidence in the Ld. Trial Court and had been marked as Exhibit PX.

3. Nevertheless, the Ld. Trial Court acquitted the respondents after considering the oral evidence led in the case, but did not at all refer to the aforesaid Report of the Forensic Science Laboratory and observed, *inter alia-*

“Even if cutting or overwriting is deemed as true then in these circumstance the cutting, overwriting are not going to affect the case of the plaintiffs on merit meaning thereby share of the complainant has been alienated in favour of present accused Har Lal.”

4. The specific grievance of the petitioner in this regard is that the judgment of acquittal passed by the Ld. Trial Court was manifestly perverse inasmuch as it has not even cared to look into the Forensic Science Laboratory Report, regarding any interpolations/overwritings, having been made subsequently in the original document, which resulted in causing wrongful loss to the complainant/petitioner.

5. Thereafter, the Ld. Appellate Court also dismissed his appeal by making detailed references to the provisions of Section 195 of the Code of Criminal Procedure, and held the petitioner's complaint non-maintainable by observing, *inter alia-*

“It was held that once it was accepted that

Section 463 defined forgery and Section 467 punished forgery of a particular category, the provisions in Section 195 (1) (b) (ii) Cr.P.C. would immediately be attracted and on that basis the prosecution would not be maintainable in the absence of a complaint by the court. In Kodati Ramana Vs. Station House Officer 1991 (3) Crimes 839 (AP) held fabricating a false evidence i.e. Creating a forged agreement of sale and filing the same in the court along with affidavits, is an offence which is committed in, or in relation to a proceeding in the court and that being so, the bar laid down in Section 195 (1) (b) (ii) Cr. P.C. squarely applies to the case.”

6. In this connection, the petitioner's side has cited the decisions of the Supreme Court in **“Sachida Nand Vs. State of Bihar”, 1998 (1) R.C.R. (Criminal) 823**, wherein it has held, *inter alia*, that:

“24. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a Court. Accordingly we dismiss this appeal.”

7. The aforesaid decision was relied by a Larger Bench of the Supreme Court subsequently in the case of **“Iqbal Singh Marwah Vs. Meenakshi Marwah”, 2005 (2) R.C.R. (Criminal) 1789** and it was held that:

“26. In the present case, the will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge.

Therefore, the bar created by Section 195(1)(b)(ii) Criminal Procedure Code would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.”

8. Relying on the aforesaid decisions, the Apex Court thereafter in **“P. Swaroopa Rani Vs. M. Hari arayana @ Hari Babu”, 2008 (2) R.C.R. (Criminal) 492** held that:

“15. Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute.”

9. In this backdrop of the matter, when the charges against the respondents/accused were that they had “forged the agreement, dated 04.02.2001, by making overwritings and adding in it to cheat the complainant Ram Kumar and dishonestly used the same in Civil Suit No. 243, dated 29.11.2002”, there remains no doubt that the aforesaid forgery imputed to the accused was alleged to have been committed before the forged document was actually relied upon in the civil proceedings. In such circumstances, observation of the Ld. Appellate Court that the complaint was non-maintainable, in view of the bar under Section 195 of the Code of Criminal Procedure is certainly erroneous.

10. It has, however, been asserted on behalf of the respondents that the revisional jurisdiction of this Court under Sections 379 and 401 of the Code of Criminal Procedure is very limited and that this Court cannot

appreciate the entire evidence led in the case (“Kanwar Lal Vs. State of Haryana” (H.C.), 2016 (2) R.C.R. (Criminal) 645). Other decisions to this effect of Co-ordinate Benches of this Court in “State of Haryana Vs. Mukesh”, 2016 (2) R.C.R. (Criminal) 712 and “Angrej Singh Vs. State of Punjab”, 2016 (2) R.C.R. (Criminal) 392 have also been cited, but the maximum reliance of Ld. Counsel for the respondent(s) is on the Supreme Court decision in “Johar Vs. Mangal Prasad”, 2008 A.I.R. (SC) 1165, wherein it was held that:

“9. Revisional jurisdiction of the High Court in terms of Section 397 read with Section 401 of the Code of Criminal Procedure is limited. The High Court did not point out any error of law on the part of the learned Trial Judge. It was not opined that any relevant evidence has been left out of its consideration by the court below or irrelevant material has been taken into consideration. The High Court entered into the merit of the matter. It commented upon the credentiality of the Autopsy Surgeon. It sought to re-appreciate the whole evidence. One possible view was sought to be substituted by another possible view.

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13. In the instant case the High Court not only entered into the merit of the matter but also analysed the depositions of all the witnesses examined on behalf of the prosecution. It,, in particular, went to the extent of criticising the testimony of Autopsy Surgeon. It relied upon the evidence of the so-called eye-witness to hold that although appellants herein had inflicted injuries on the head of the deceased, Dr. Y.K. Malaiya, PW-9, deliberately suppressed the same. He was, for all intent and purport, found guilty of the

offence under Sections 193 and 196 of the Indian Penal Code. The Autopsy Surgeon was not cross-examined by the State. He was not declared hostile. The State did not even prefer any appeal against the judgment.

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17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under Sections 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

11. The aforesaid position of law expounded by the Supreme Court is undisputed. But, the key observation in the same is “it was not opined that any relevant evidence has been left out of its consideration by the Ld. Court below ...”, which observation is the most applicable factor to the circumstances of the present case.

12. As already noted earlier, the most appropriate evidence for considering whether there were forgeries/interpolations in the disputed document, for which the respondents were facing trial, ought to have been the Report of the Forensic Science Laboratory, which was also exhibited. But, the same was not even referred to in either of the two judgments of the Ld. Lower Courts, on account of which, this certainly appears to be a fit case for this Court to interfere in its revisional jurisdiction.

13. For the aforesaid reasons, this petition is allowed and the two impugned judgments of the Ld. Lower Courts are set aside. The matter is now remanded back to the Ld. Trial Court with a direction to pass a fresh

judgment after considering all the oral as well as documentary evidence led before it during trial, including the Report of the Forensic Science Laboratory, and thereafter, pronounce its fresh findings after giving appropriate opportunities to the concerned parties to assist the Court in this regard.

14. The Ld. Trial Court shall endeavour to pass its fresh judgment accordingly as expeditiously as possible and preferably within a period of three months from the date of communication of this order. The parties are directed to appear before the Ld. Trial Court on 23.10.2017.

(SUDIP AHLUWALIA)
JUDGE

04.10.2017
Apurva

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No