

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 2096 of 2017 (O&M)

Date of decision : 11.8.2017

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Gurwinder Singh and another

.....Petitioners

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Ashok Bhardwaj, Advocate for the petitioners

Ms. Jaspreet Kaur, Assistant Advocate General, Punjab.

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H. S. Madaan, J. (Oral)

This revision petition is directed against order dated 2.5.2017 passed by Additional Sessions Judge, Sangrur, vide which the application filed by prosecution for secondary evidence has been allowed.

This revision petition has been filed by the petitioners, who were accused in FIR No. 89 dated 25.7.2014 for offence under Section 306 IPC, registered at Police Station Sadar, Sunam and are facing trial in the Court of Additional Sessions Judge, Sangrur.

Briefly stated, the facts of the case as per prosecution version are that FIR in this case was lodged by complainant Gursewak Singh on the allegations that his father Balwinder Singh had committed suicide leaving behind a suicide note in which it was mentioned that Gurwinder Singh and Bhupinder Singh both petitioners had cheated him by executing a forged agreement to sell and that Gurwinder Singh and Bhupinder Singh used to demand more money from the deceased, as a result he used to remain in tension and that a few days before his death, Balwinder Singh had informed his son Gursewak Singh that Gurwinder Singh and Balwinder Singh accused were demanding more money from him and were humiliating him. It may be mentioned here that during investigation of the case, the Investigating Agency had got compared the hand writing /signatures appearing on the suicide note with admitted signatures of deceased on the sale deed executed by him in favour of Harpreet Kaur w/o Nirbhai Singh bearing sale deed No. 3390 dated 25.3.2013. The police had obtained report from a document expert. However, said Harpreet Kaur was not cited as a witness of the prosecution earlier, but on an application under Section 311 Cr.P.C., filed by the prosecution, which was accepted by the trial Court, Harpreet Kaur was allowed to be examined as prosecution witness. She was summoned alongwith sale deed by Balwinder Singh in her favour. She appeared in the Court and stated that she was not in possession of original sale deed since the same had been handed over to village Patwari who did not return it. Nevertheless she had endorsed photocopy of the sale deed available on the court file as Exhibit PW 4/A at the time of exhibition

of the document. Defence counsel had raised an objection on the ground of mode of proof. Thereafter the Additional PP for the State moved an application for leading secondary evidence, so as to prove photocopy of the sale deed. That application was contested by the accused taking various pleas. However, it was allowed by the trial Court vide order dated 2.5.2017. The reasoning given by the trial Court while allowing the application is reproduced for convenience and better appreciation :-

“5. I have considered the rival submissions. During the course of argument, it has been pointed out by the learned Additional P.P. Additionally that IO of the case ASI Mewa Singh is reported to be dead. Since IO Mewa Singh was handling the case and he was the person who got the report prepared through document expert, so he was the best person who could have thrown the light. But since now that person is not available being dead, things are to be taken as appearing on the police file as it is normal course of events. Had the sale deed would not have been existence then it would not have come in the possession of IO. No doubt original sale deed is not traceable but that is the reason for moving the application by leading secondary evidence through photo copy already appearing in the police record/challan in normal set of circumstances. Most importantly this is a registered document whose

second additional copy is always kept in Sub Registrar office. There is no possibility of any manipulation by the prosecution. But in view of the circumstances, this is the best evidence left with the prosecution which should be allowed to be led. It was submitted by prosecution that seeking permission to lead secondary evidence does not prejudice the accused in any manner as before this document can be believed, prosecution shall be duty bound to clear the doubts. But prosecution cannot be deprived to lead evidence itself.

6. After considering the rival submissions, this court is of the opinion that, this is a fit case where permission to lead secondary evidence to prove the sale deed No. 3390 through photo copy should be allowed. Secondary evidence is to be allowed whenever original document is not traceable and the applicant party has been able to convince this court to loss all the documents. Here the natural possessor of the document namely Harpreet Kaur holder of the property is deposing that is she is not in possession of the document. Photocopy of the document duly marked by document expert is appearing in the police challan which is deemed to be prepared in ordinary course of circumstances. IO of the case is dead who could have through some

light as to how this photo copy came into existence. Most importantly the authenticity of this sale deed can always be cross verified from the second alternative copy available with the Sub Registrar if a defence counsel for the accused have some doubt to the standard signatures of Balwinder Singh. Permission of secondary evidence does not mean believing the document. It is merely a formal permission to lead available alternative evidence. In the circumstances when loss of original sale deed has been sufficiently established, prosecution must be given an opportunity to lead secondary evidence as it cannot be deprived from leading evidence though believability may be other issue. Accordingly instance application is allowed. Prosecution is allowed to lead secondary evidence to prove the sale deed No. 3390 already appearing on the record. However accused shall be at liberty to lead contrary evidence at its turn to disprove the same or to put any dents as to veracity of the same. With these directions, application stands disposed of. Now PW-4 Harpreet Kaur be summoned for 17.5.2017 to depose in continuation of order passed by this Court on 26.7.2016.”

The accused are feeling aggrieved by the said order and have filed the present revision petition for getting it set aside.

After hearing rival contention of counsel for both the sides, besides going through the record, I am of the view that there is no merit in the revision petition.

]Learned counsel for the petitioners has argued that photocopy of the sale deed could not be permitted to be produced as to prove by leading secondary evidence and the Court did not take recourse to summoning record from the office of Sub-Registrar or from the Patwari to whom Harpreet Kaur had allegedly given the sale deed. He has referred to authority *Smt. J. Yashoda vs. K. Shobha Rani 2007 (2) RCR (Civil) 840*, wherein it was observed that photostat copies of original cannot be received as secondary evidence in terms of Section 63 of the Indian Evidence Act.

However, I am not convinced by such contention raised by learned counsel for the revision-petitioners. The trial Court has simply granted permission to lead secondary evidence of the sale deed. The petitioners can raise any number of objections when the sale deed is sought to be proved by the prosecution by way of secondary evidence. The admissibility of the secondary evidence is to be seen by the trial Court at appropriate stage and then the accused would be at liberty to point out any legal lacuna in the whole process. It is for the prosecution to decide as to with which document the writing of the suicide note is to be got compared and the courts of it is cannot start summoning record from some office or person, although the court has power to do so under Section 311 Cr.P.C. but then that power is to be exercised in certain eventualities and not in a very cursory and casual manner. Though there cannot be any

disagreement with the authority referred to by learned counsel for the petitioners, but then it does not help the petitioners much in the present case due to the peculiar facts and circumstances of the case in hand.

The order passed by the trial Court is well reasoned one showing due application of mind. There is no illegality or infirmity therein, much less the same being apparent on the face of it. It does not call for any interference on the part of this Court while exercising revisional jurisdiction.

The trial Court was justified in allowing the prosecution permission to lead secondary evidence of the sale deed. The trial Court had already permitted the accused to lead contrary evidence to disprove the same or put any dents as to the veracity of the same. The accused can lead evidence in defence to prove their version but they are not justified in feeling aggrieved by passing of the impugned order.

There is no merit in the revision petition and the same stand dismissed.

However, nothing discussed above shall have any effect on the merits of the case.

(H.S. Madaan)
Judge

11.8.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No