

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRR-2235-2017 (O&M)

Om Parkash

..... Petitioner

Versus

State of Haryana

..... Respondent

2. CRR-2336-2017 (O&M)

Chiranji Lal

..... Petitioner

Versus

State of Haryana

..... Respondents

Date of decision 16.11.2017

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Vishwajeet Mehla, Advocate
for the petitioner (in CRR-2235-2017).

Mr. Ashok Arora, Advocate
for the petitioner (in CRR-2336-2017).

RAMENDRA JAIN, J.

1. This order shall dispose of two above titled revisions against the judgment dated 22.05.2017 of the Ist Appellate Court, Bhiwani in separate appeals filed by the petitioners, affirming the judgment of conviction dated 13.07.2015 and order of sentence dated 15.07.2015, of the trial Court, holding the petitioners guilty under Sections 420, 467, 468, 471 and 120-B IPC and sentencing them to undergo rigorous imprisonment for a period of 3 years and pay fine of ₹ 500/- each under all the heads. In default of payment of fine, further undergo rigorous imprisonment for a period of

one month each. All the sentences were ordered to run concurrently. Fine

was paid before the trial Court. For brevity, the facts are being extracted from CRR-2235-2017 (O&M).

2. On 19.09.2008, on receipt of a complaint from the office of Sub Registrar, Tosham, that on 09.09.2008, one Mahender son of Amar Singh (co-accused expired during trial) had got registered four forged and fictitious sale deed Nos. 1199, 1200, 1201 and 1202, qua land measuring 62 kanals, 11 marlas in his office allegedly executed by vendor Saroj Devi, who had already expired, but was impersonated by some fictitious lady, FIR No. 238 dated 19.09.2008 under Sections 420, 467, 468, 471 and 120-B IPC was registered at Police Station Tosham. After completion of investigation challan was presented in Court against the petitioners and they were charge-sheeted as such.

3. After closure of the prosecution evidence, the statements of the petitioners under Section 313 Cr.P.C. were recorded, putting entire incriminating evidence brought on record against them to which, they denied and pleaded their false implication. In defence, they examined Mahabir, Numberdar as DW-1 and Partap Singh, Deed Writer as DW-2.

4. On appraisal of evidence brought on record and hearing learned counsel for both the sides, the learned trial Court convicted and sentenced the petitioners as referred to above in the opening part of this judgment. Being dissatisfied, the petitioners preferred their separate appeals before the Ist Appellate Court, which too were dismissed vide impugned judgment dated 22.05.2017.

5. Learned counsel jointly submitted that the prosecution could not prove the case against the petitioners to the hilt beyond any shadow of reasonable doubt, inasmuch, as it did not make any effort for comparison of

their alleged signatures/thumb impressions on the alleged forged sale deeds by obtaining their specimen signatures/thumb impressions. In the absence of any such endeavour, both the Courts below have erred in convicting the petitioners. Link evidence is also missing as the alleged forged sale deeds were not sent to the Forensic Science Laboratory, for examination. The police did not arrest the ladies, who had allegedly impersonated themselves in place of deceased vendors, despite their knowledge from the alleged confessional statements made by both the petitioners that they have impersonated the deceased vendors by producing their own wives, daughters and family members. The petitioners are not the beneficiaries of the alleged transactions. Chiranji Lal-petitioner (in CRR-2336-2017) had only identified co-accused-Mahender (since deceased) who was a genuine purchaser of the land and, thus, he has wrongly been convicted. All the alleged four sale deeds have already been cancelled by the Sub Registrar and, therefore, no loss occurred to anyone. The original owner did not lodge the FIR, rather the same was got registered by the Sub Registrar, Tosham. PW-1 Ramesh Kumar, Patwari, had turned hostile.

6. I have given anxious consideration to the submissions made by learned counsel for the petitioners.

7. All the above arguments raised by learned counsel for the petitioners have already been raised and fully dealt with by both the Courts below and, thus, do not require any further discussion. Having gone through the judgments of both the Courts below, this Court is satisfied about the correctness, legality and propriety of the concurrent findings given by them.

8. For the facility of reference, the learned Ist Appellate Court in

para Nos. 15 to 17 of its judgment dated 22.05.2017 has recorded the findings which are as followed:-

“15.Perusal of the case file further reflects that accused Chiranji Lal in the capacity of Sarvara Nambardar had denied to give his thumb impression which fact is clear from application ex.PW3/A. There is statement of accused Chiranji Lal vide which he had denied to give his thumb impression for the purpose of tallying the same. In this regard PW3 Subhash Chander Inspector (retired) has stated for moving the application Ex.PW3/A wherein it has been mentioned that accused Chiranji Lal had denied to give his thumb impression. This fact clearly goes against accused Chiranji Lal.....

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.....As many as three owners out of the eight owners have been died namely Smt.Saroj Devi, Sarla Jain and Shanti. Similarly, Shri Ratish Jain son of Rajender Kumar Jain has deposed about application Ex.PW11/B which was moved by him and stated that his mother Smt.Saroj Jain had died on 16.07.1989 in Delhi. He proved the death certificate Ex.PW11/A in this regard. PW Saurabh Kumar Jain has proved that his mother Smt.Sarla Jain had died on 16.07.1993 and registration qua her death was got entered before Sub Registrar, Birth and Death, Central Zone, Lajpat Nagar, Delhi. He proved one application Ex.PW12/A.

16. Thus, in the light of the evidence, the prosecution has been able to prove atleast this fact that as many as three vendors of accused Mahender Singh such as Smt.Saroj Devi, Smt.Shanti Devi and Smt.Sarla Devi had died prior to the date of execution of the sale deeds Ex.PW3/B, Ex.PW3/C, Ex.PW3/D and Ex.PW3E. In sale deeds Ex.PW3/B and Ex.PW3/D, Smt.Shanti has been shown as one of the vendors, whereas in Ex.PW3/C and Ex.PW3/E, Smt.Shanti Devi, Smt.Sarla Devi and Smt.Saroj Devi have been shown as the co-vendors alongwith the other vendors. This way, Mahender Singh (co-accused since died) had got executed as many as four sale deeds in his favour atleast by way of impersonation by bringing as many as three female members at place of late Smt.Shanti, Smt.Saroj Devi and Smt.Sarla Devi who had already expired much prior to the execution of these sale deeds. In the considered opinion of this Court, it was the foremost duty of accused Chiranji Lal being Sarvara Namberdar to identify the real persons, however, the said accused rather had identified both the parties of all the sale deeds which fact is clear from the endorsement given by the Joint Sub Registrar, Tosham on the sale deeds wherein it has been evidently mentioned that both the parties were identified by Chiranji Lal Sarvara Nambardar as well as by Om Prakash son of Hari Singh. This way, the presence of

both these accused at the time of registration and execution of all the four sale deeds has been proved by the prosecution.

17.They further argued that the real beneficiary was co-accused Mahender who has since been died as he had purchased the land through sale deeds. This Court is not inclined to accept the said submission of the learned counsel for the accused for the reason that in such type of cases there is always a secret agreement between the purchaser and the witnesses. When accused Chiranji Lal was belonging to village Bajina then why he identified those vendors who were evidently of Tosham and why he further identified co-accused Mahender who was evidently a resident of village Nakipur. So is the position of other accused Om Prakash who is evidently a resident of Brijwasi Colony, Bhiwani. Meaning thereby, there was a secret agreement in between both these accused with co-accused Mahender Singh and this fact cannot be accepted to the mind of this Court that these two accused were not the beneficiaries in the process of execution of as many as four sale deeds. This fact with regard to the identification of a wrong woman at the place of the real owner of the property who had already been died much prior to the execution of all these four sale deeds, has become more relevant when some of the vendors had

already died and despite that fact, both these accused had identified both the parties per the endorsement of the Joint Sub Registrar. This fact proves the active roles of both the accused in the offence.”

9. Learned counsel for the petitioners have not been able to point out any irregularity in the proceedings conducted by both the Courts below except repeating the arguments as discussed above have already been raised before the Courts below. In case, no effort was made by the prosecution for comparison of thumb impressions/signatures of the petitioners, in that eventuality, it was quite open to the petitioners too to get the same compared in their defence to prove their innocence. Not doing so by the petitioners requires to draw an adverse inference against them that they did not adopt such exercise deliberately, knowing well that the same would go against them. The vendors, who were ladies, had died long ago prior to the execution of alleged forged sale deeds Exs. PW3/B to PW3/E. Therefore, there was no necessity to trace out the ladies, who had appeared on behalf of the original vendors by impersonation, more particularly, when the factum of fraud had come into light and could be proved from the witnesses examined by the prosecution.

10. In view of the discussion made above, both the revisions stand dismissed.

November 16, 2017
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No