

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

CRR-3156-2017

Date of decision : 06.09.2017

Ashok Kumar and another

..... Petitioners

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Sanjiv Gupta, Advocate
for the petitioners.

H.S. MADAAN, J.

This criminal revision petition is directed against judgment dated 30.08.2017 passed by the Court of Additional Sessions Judge, Patiala vide which while hearing the appeal preferred by accused-convicts Ashok Kumar and Manjit Kaur against judgment of conviction and order of sentence passed by Sub-Divisional Judicial Magistrate, Samana had remanded the case to the trial Court with a direction to proceed with the case as per provision of Section 216 and 217 Cr.P.C., further to give opinion whether the prosecution / accused are entitled to examine / re-examine the witnesses already examined before charge under Section 409 IPC was

added. The trial Court was further directed to record statement of accused under Section 313 Cr.P.C. as per law.

The accused who are petitioners before this Court pray that their criminal revision petition be accepted, the impugned judgment passed by Courts below be set aside and they be acquitted of the charge framed against them.

Briefly stated facts of the case are that complainant Kimti Lal submitted an application dated 30.08.2010 before Senior Superintendent of Police, Patiala seeking taking of action against his brother Ashok Kumar son of Dariyai Lal alleging that the complainant had been serving in Navy that he owned ancestral land / property in village Nial, Tehsil Patran; that since he was not in possession to take care of property due to his job. He had executed general power of attorney dated 20.11.1987 in favour of his brother Ashok Kumar subsequently he came to know that Ashok Kumar taking advance of said power of attorney had started usurping his land and selling the same, therefore, he got general power of attorney cancelled vide document No.246 dated 07.03.1996 and informed Ashok Kumar in that regard. However, Ashok Kumar had got executed registered sale deed bearing document No.1756 dated 24.12.1996 in favour of his wife Manjit Kaur regarding land of complainant measuring 14 kanals & 15 marlas by cheating and played fraud upon him. The complainant sought taking of action in the matter. After holding due inquiry formal FIR No.222 dated 08.10.2010 was registered against Ashok Kumar and his wife Manjit Kaur for offences under Sections 406/420 IPC. The investigation was carried out, accused were arrested in this case, and thereafter challan was filed in the Court.

On presentation of challan in the Court of Sub-Divisional Judicial Magistrate, Samana, he supplied copies of documents relied upon in

the challan to the accused free of cost as envisaged under Section 207 Cr.P.C.

Learned Sub-Divisional Judicial Magistrate, Samana finding that charge for offence under Sections 420 read with Section 120-B and 409 IPC was disclosed against the accused, charge-sheeted the accused for the said offence, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as six witnesses.

Thereafter, statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

The accused adduced evidence in defence, subsequently an application was moved by prosecution for amendment of charge which was accepted vide order dated 17.08.2015 and charge was framed against accused for offence under Section 409 read with Section 120-B IPC as well as Section 420 IPC read with Section 120-B IPC, subsequently, accused adduced evidence in defence.

After hearing arguments the trial Court convicted the accused and sentenced as follows:-

Ashok Kumar	Under Section 409 IPC	Rigorous imprisonment for 3 years and fine of ₹10,000/- and in default payment of fine simple imprisonment for one month.
Manjit Kaur	Under Section 409 IPC	Rigorous imprisonment

	read with Section 120-B IPC	for 3 years and fine of ₹10,000/- and in default of payment of fine to undergo simple imprisonment for one month.
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Feeling aggrieved the accused preferred appeal which was disposed of by Additional Sessions Judge, Patiala vide impugned judgment as detailed above, as such the petitioners have preferred the instant revision petition.

I have heard learned counsel for the petitioners, besides, going through the file and find that there is absolutely no merit in the revision petition. The scope of revision petition is quite limited. The revisional Court is to interfere only if the order passed by the Court below is patently illegal and perverse which means the error in the order must be apparent on the face of it and the order passed should have been in gross violation of settled principles of criminal jurisprudence. The order in hand does not suffer from any such infirmity. It is well settled principle that revisional Court is not to upset the order passed by the Court below in a light manner simply because of the reason that another view in the matter is possible.

Here it is not so, the Additional Sessions Judge, vide detailed well reasoned judgment has come to conclusion that it was a fit case to remand the case. He set aside judgment passed by the trial Magistrate convicting and sentencing the accused. Accused are feeling aggrieved without any justifiable reason.

As far as the judgment relied upon by learned counsel for the revision petitioners are concerned, the first judgment was **S.Guin vs. Grindlays Bank Ltd. 1986(1) RCR (Criminal) 343** by the Apex Court *which*

was a case where the accused was charged with offence of obstructing bank officer from doing normal business. However, accused was acquitted of the charge though in an appeal against the acquittal filed before the High Court which remained pending for 6 years. High Court not agreeing with acquittal and ordering retrial. The Apex Court had observed that inordinate delay and nature of offence, retrial should not have been ordered even though acquittal was improper. This authority does not help the petitioners in any way for several reasons.

Firstly, the trial Court has convicted and sentenced the petitioners accused and no acquittal order has been passed in their favour.

Secondly, the appeal before Additional Sessions Judge was filed on 03.12.2015 and disposed of on 30.08.2017 i.e. within a period of less than two years.

Thirdly, the allegations against both the accused are very serious and grave that Ashok Kumar despite being informed that general power of attorney in his favour has been cancelled by the complainant, he had executed a sale deed in favour of his wife regarding 14 kanals and 15 marlas of land of the complainant and his such acts fall within definition of criminal acts.

Coming to the second authority **Md Ibrahim and others vs. State of Bihar and another 2009(4) RCR (Criminal) 369** *wherein it was observed that when the accused had sold the plot of land to another person claiming himself to be owner and had executed registered sale deed no offence of forgery under Section 467, 471 IPC was made out. Again the facts of that case are entirely different.*

Here as observed earlier, according to the prosecution even after the complainant had cancelled the power of attorney executed in favour of Ashok Kumar and Ashok Kumar being aware of that fact had executed sale deed regarding 14 kanals 15 marlas of land of complainant in favour of his

wife Manjit Kaur and had got the mutation sanctioned. That clearly shows both the accused having committed criminal acts in conspiracy with each other and for that reason formal FIR for offences under Section 409, 406, 420 IPC was registered against them.

Therefore, finding no merit in the revision petition, it stands dismissed.

Intimation in this regard be sent to the quarter concerned.

06.09.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**