

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-992-MA-2014 (O&M)
Date of decision: 16.05.2018

State of Haryana

... Appellant

Vs.

Surender Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Naveen Sheoran, DAG, Haryana
for the appellant.

Mr. J.K. Chauhan, Advocate and
Mr. Abhay Chauhan, Advocate
for respondents No.2 & 3.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this appeal is for setting aside the judgment dated 22.01.2014 passed by the trial Court, vide which the respondents-accused were acquitted of the charge under Section 218 of the Indian Penal Code (for short 'IPC').

Brief facts of the case are that on 11.07.2008, an application was given by Superintendent, Flying Squad of Chief Minister, Haryana stating that a complaint is received for investigation against the respondent-accused that they have illegally transferred the shamlat land in the name of 41 persons in violation of the administrative orders issued by then Collector, Panchkula. On investigation, it was found that as per jamabandi for the year 1966-67, land measuring 285 kanals 5 marls was recorded in the name of Patti Hoshiara and

in the subsequent jamabandi for the year 1991-92, the shamlat land of village Khatauli was shown in the name of 09 land owners of Patti Hoshiara. In the year 1960, 123 kanals 1 marla of land was given by Gram Panchayat on lease and thereafter, ownership of the aforesaid land measuring 285 kanals 5 marls was transferred in the name of Gram Panchayat Khatauli, after coming into force the Act No.9 of 1992, vide which certain amendments were carried out in the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'Act of 1961') and a mutation No.1836 dated 31.01.1993 was sanctioned in favour of the Gram Panchayat. The said Act was challenged by way of filing number of civil writ petitions before this Court and a Full Bench of this Court decided the same vide judgment dated 13.03.2003 reported as **2003 (2) RCR (Civil) 578 Jai Singh Vs. State of Haryana**. Subsequently, the proprietors of village moved an application before the revenue authorities i.e. the respondents, for reversing the mutation No.1836, which was sanctioned in favour of Gram Panchayat Khatauli and thereafter, a mutation No.2519 dated 10.09.2007 was sanctioned by the accused persons cancelling the earlier mutation in favour of the Gram Panchayat. Later on, Gram Panchayat filed a suit under Section 13 of Act of 1961 before the Collector, Panchkula, which was decided in favour of Gram Panchayat and aforesaid mutation No.2519 dated 10.09.2007, sanctioned by the respondents-accused/the revenue officials, was set aside. On this premise, FIR No.125 dated 11.07.2008 under Section 218 IPC, was registered at Police Station Chandimandir alleging that the respondents-accused have committed the offence punishable under Section 218 IPC, by not following the administrative instructions issued by the Financial Commissioner and Principal Secretary to Govt. of Haryana, Development and Panchayat Department,

Chandigarh and by the Collector, Panchkula and had sanctioned the aforesaid mutation No.2519 on 10.09.2007.

On submission of challan, the trial Court framed the charge under Section 218 IPC, to which accused did not plead guilty and claimed trial. The prosecution, in its support, examined 10 witnesses, who produced on record the various documents as well as the investigation carried out by the Investigating Officer ASI Gurdev Singh PW6 and Inspector Harbhajan Singh, PW8. In the statement under Section 313 Cr.P.C., accused pleaded their false implication, however, no defence evidence was led.

The trial Court, vide impugned judgment dated 22.01.2014, acquitted the respondents-accused of the charge framed against them. The operative part of the order is reproduced as under: -

“I have heard learned APP for the State as well as learned defence counsel for accused. I have also gone through the case file very carefully. I have given my thoughtful consideration to the arguments of both the parties.

The learned APP for State has submitted that the allegations against the accused have been proved beyond reasonable doubt by the evidence of all the prosecution witnesses examined in this case and that the accused may be punished in accordance with law.

Whereas the learned defence counsel has submitted that the accused have been falsely implicated in this case; that the accused have not committed any offence as alleged; that there was no criminal intention on the part of the accused nor any such intention has been proved on file beyond reasonable doubt; that

earlier one mutation No.1836 Ex.PW2/E was entered and sanctioned in favour of Gram Panchayat on the basis of Act No.9 of 1992; that thereafter, one letter bearing memo No.393-400 dated 10.3.2006 Ex.PW5-C was received in the office of Naib Tehsildar, Barwala from the office of Deputy Commissioner, Panchkula, which was originally sent by Sh. Raj Kumar, IAS Officer, Financial Commissioner & Principal Secretary to Government of Haryana, Development and Panchayat Department, Chandigarh dated 10.1.2006, whereby the necessary directions were given to the effect that in Jai Singh's case the Hon'ble High Court had decided the mutations effected due to Act No.9 of 1992 shall stand cancelled. It is further submitted that in compliance with the above said letter Ex.PW5/C, the necessary mutation was entered, attested and sanctioned by the present accused and in this regard further necessary information was also demanded by Deputy Commissioner, Panchkula vide letter Ex.PW5/D; that thereafter, vide order dated 14.3.2008 Ex.PW5/E, passed by Sh. Rajinder Kumar Kataria, Collector Panchkula the mutation No.2519 was cancelled and it was further directed that the said land may be recorded in the name of Gram Panchayat; that in compliance with the order dated 14.3.2008 Ex.PW5/E further mutation No.2555 dated 10.6.2008 Ex.PW2/G was entered and sanctioned by the accused; that the accused have not violated any orders passed by their Superior Officers and that the mutation Ex.PW2/F was entered and sanctioned as per the order

Ex.PW5/C; that the accused have not prepared any incorrect record nor they have committed any offence; that the allegations against the accused have not been proved beyond reasonable doubt. With these submissions he requested that the accused may be acquitted by giving benefit of doubt.

Having heard the learned APP for State and learned defence counsel and appreciated the entire evidence on case file, this Court is of considered opinion that the allegations against the accused have not been proved beyond reasonable doubts and the accused is liable to be acquitted on the following grounds: -

i) That the present accused have been charge sheeted in this case for commission of offence under Section 218 of IPC on the allegations that they have entered and sanctioned the mutation No.2519 Ex.PW2/F in favour of proprietors of village Khatauli in utter violation of the orders passed by their Superior Officers and prepared the incorrect record. Before starting further, it is necessary to reproduce Section 218 of IPC here, which reads as under: -

“218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or

injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

In the present case the above said contentions made by the learned counsel for accused are liable to be accepted and the accused are entitled to benefit of doubt. All the ingredients of Section 218 IPC are not made out in this case nor fulfilled by the evidence of all the prosecution witnesses examined in this case. Perusal of case file reveals that vide letter Ex.PW5/C, which was sent to the Naib Tehsildar, Barwala vide serial No.393-400 dated 10.3.2006 from the office of Deputy Commissioner, Panchkula the following directions have been given: -

“It is clarified that in Jai Singh’s case the Hon’ble High Court had decided mutations effected due to Act No.9 of 1992 shall stand cancelled. No other mutation in favour of Panchayat is to be cancelled. Even in respect of such mutations, it was clarified that each case be examined in the light of the provisions of the PVCL Act, 1961 and if prima facie the land vests in the Gram Panchayat necessary mutations to that effect be got sanctioned.”

From the above said para it is clear that in the above said letter Ex.PW5/C, it was directed that the mutations effected due to the Act No.9 of 1992 shall stand cancelled as per the decision of Hon'ble High Court in Jai Singh's case. Perusal of the mutation No.1836 Ex.PW2/E clearly reveals that the same has been entered and sanctioned on the basis of Act No.9 of 1992. So, the accused have entered and sanctioned the new mutation No.2519 Ex.PW2/F on the basis of the letter No.393-400 dated 10.3.2006 Ex.PW5/D. So, the accused have not done anything wrong and they have done everything in compliance with the direction given in letter Ex.PW5/C and nothing else. Further vide order dated 14.3.2008 Ex.PW5/E the above said mutation No.2519 was cancelled by Collector, Panchkula and further directions were given for entering and sanctioning the fresh mutation in favour of Gram Panchayat. In compliance of that order dated 14.3.2008, mutation No.2555 dated 12.6.2008 Ex.PW2/G has been entered and sanctioned, even before registration of present case. In these circumstances, the accused have complied with the orders passed by their superior officers and thus they have not disobeyed any order. No criminal offence is proved against the accused. In these circumstances the accused are entitled to benefit of doubt.

For the reasons mentioned above, this Court considers that the prosecution has failed to prove its case against the accused beyond reasonable doubts. So the accused are hereby acquitted from all the charges framed against them. Their bail bonds and

surety bonds stands discharged. File be consigned to record room after due compliance.

Pronounced in open Court: Sd/-
Dated: 22.1.2014 (Man Pal)
Judicial Magistrate 1st Class,
Panchkula.”

The present appeal is filed by State of Haryana challenging the impugned judgment of acquittal.

Learned State counsel submitted that respondent No.1 Surender Singh, Kanungo, who has since expired on 26.06.2015, along with respondents No.2 Lekh Raj Patwari and Sahab Ram, Assistant Collector 1st Grade-cum-Naib Tehsildar, in gross violation of the instructions issued by the State Govt. as well as the Collector, Panchkula, have sanctioned the mutation cancelling transfer of the land in favour of Gram Panchayat Khatauli and thus, they have committed the offence punishable under Section 218 IPC.

Learned counsel for respondents No.2 & 3, in reply, submitted that respondents, in compliance of the directions given in the judgment passed by the Hon’ble Full Bench of this Court in **Jai Singh’s** (supra), have reversed the mutation and therefore, no offence is committed.

The relevant observations made by the Hon’ble Full Bench of this Court in **Jai Singh’s** case (supra) read as under: -

“Insofar as all other cases are concerned, same shall stand disposed of in light of law laid down by us. Resultantly, if the mutations might have come into being on the dint of Act No. 9 of 1992 challenged herein in favour of the State or Gram Panchayat, the said mutations shall stand cancelled or set aside, leaving open for the Gram Panchayat to file an application for eviction

under Section 7 or title suit under Section 13-A, as the case may be, if the lands are such which have since been earmarked for common purposes under the scheme and the proprietors are in unauthorized occupation and, the proprietors to file a title suit in case the lands are such which form part of Bachat land, having not been earmarked for any common purpose in the scheme of consolidation and yet the Gram Panchayat is asserting its title or is in possession thereof.”

It is thus submitted that the mutation, which was sanctioned in favour of Gram Panchayat in pursuance of the aforesaid Act No.9 of 1992, amending the provisions of the Act of 1961, was cancelled in compliance of the aforesaid judgment of Hon’ble Full Bench and therefore, the respondents, being the govt. officials, have not committed any illegality or committed any offence punishable under Section 218 IPC.

After hearing learned counsel for the parties, I find no merit in the present appeal.

In order to prove the ingredients of Section 218 IPC, the prosecution has to prove that a public servant, incharge of preparation of public record, if act in a manner, which he knows to be incorrect or with intent to cause any loss or injury to any person, he is liable to be punished in accordance with law. However, in the instant case, charge against the respondents, that they have not followed the administrative instructions issued by the State Govt. and Collector, Panchkula, is not sustainable, as the instructions cannot have overriding effect over the judgment of the Hon’ble Full Bench passed in **Jai Singh’s** case (supra).

The trial Court has recorded a finding that a perusal of the mutation No.1836 Ex.PW2/E, which was sanctioned in favour of Gram Panchayat, finds mention that it was sanctioned on the basis of amendment made by Act No.9 of 1992 and as per letter Ex.PW5/C, it was directed by the Financial Commissioner that the mutation sanctioned on the basis of Act No.9 of 1992 shall stand cancelled, in compliance of judgment of the Hon'ble Full Bench passed in **Jai Singh's** case (supra), therefore, action of the respondents in cancelling earlier mutation and sanctioning the new mutation No.2519 Ex.PW2/F, in compliance of judgment in **Jai Singh's** case (supra), cannot be said to be an offence falling within the ambit of Section 218 IPC.

For the reasons recorded above, this appeal is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

16.05.2018

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No