

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

**CRM No.32950 of 2018 IN/AND
CRM-M No.13992 of 2016
Date of decision: 19.09.2018**

Bimal Kumar

....Applicant/Petitioner

Versus

Jhankour Shyam and others

....Non-applicants/Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rahul Rampal, Advocate
for the applicant/petitioner.

ARVIND SINGH SANGWAN J. (Oral)

CRM No.32950 of 2018

Prayer in this application is for recalling the order dated 11.09.2018 whereby the petition i.e. CRM-M No.13992 of 2018 filed by the applicant/petitioner, has been dismissed for non-prosecution.

Heard.

In view of averments made in the application supported by an affidavit of the counsel for the petitioner, the application is allowed, order dated 11.09.2018 is recalled and the petition is ordered to be restored to its original number and the same is being taken up today for hearing.

MAIN CASE

Prayer in this petition is for setting-aside the order dated 25.02.2015 (Annexure P1) passed by the Judicial Magistrate Ist Class, Ludhiana vide which the complaint filed by the petitioner under

Sections 406, 420, 506 and 120-B Indian Penal Code (in short 'IPC') was dismissed while discharging the respondents/accused holding that no *prima facie* offence punishable under Sections 420 and 120-B IPC is made out as well as the order dated 19.08.2015 vide which the revision filed by the petitioner was dismissed by the Additional Sessions Judge.

Brief facts of the case as alleged in the complaint are that the complainant is the son of Smt. Bimla Devi, who is the legal heir and daughter of Sh. Duni Chand. Sh. Duni Chand was allotted one property bearing No.63-L, Model Town, Ludhiana in lieu of the property he had left behind in Pakistan by the Ministry of Rehabilitation through Certificate No.L/144/VIII, Index number of claim No.P/LH4/16950 placed on record as Ex.P1 and Ex.P2. After his death, the said property was devolved to his legal heirs i.e. Smt. Bimla Devi and her brothers. The mother of the complainant has since expired leaving behind the complainant as her only legal heir, who is entitled to succeed to her share in the above said property. It is further alleged that the accused persons i.e. brothers of Smt. Bimla Devi committed fraud upon the complainant and his mother by getting the aforesaid property transferred in their names by concealing the factum of Smt. Bimla Devi being daughter of Sh. Duni Chand. An affidavit Mark A and B, have been placed on record vide which the accused persons allegedly committed the said fraud upon the complainant, in which they have stated that there is no other legal heir and they have no sister. The complainant has, thus, filed the complaint before the trial Court.

Thereafter, on the basis of the preliminary evidence, the

accused persons were summoned to face trial under Sections 420, 120-B IPC and 506 IPC.

In pre-charge evidence, the complainant examined himself as CW1 and Brijmohan Sharma as CW2 and after conclusion of the pre-charge evidence, the trial Court discharged the respondents vide order dated 25.02.2015 (Annexure P1). The trial Court while discharging the petitioners vide order dated 25.02.2015, has recorded the following findings:-

“From the evidence that has come on record, the complainant has proved that he is the son of deceased Bimla Devi who in turn was daughter of Duni Chand. Shri Duni Chand was allotted a land on which plot bearing No.63, Model Town, Ludhiana, was built. The ministry of rehabilitation certificate in this regard is Ex.P1. Ex.P2 is the form. It has been alleged by the complainant that accused persons forged an affidavit making false claim that they are only legal heirs of Shri Duni Chand and have no other brother or sister. In fact, the accuser persons had allegedly prepared this affidavit for the purpose of cheating the complainant from inheriting the share of property that would come to the share of his mother Bimla Devi. The complainant has also placed on record Mark-A affidavit, which has been alleged to be forged in order to cheat the complainant by the accused and the same is Mark-A. Original affidavit alleged to have been prepared by the accused persons has not been placed on record. The complainant has alleged that he found the affidavit in the house of the accused persons and that the same had been prepared to cheat him of his share in the property. He has also placed on record Mark-B application moved by the accused persons to the Superintendent House Tax Municipal Corporation Ludhiana for transfer of

ownership rights in the abovesaid house in their named. These documents are mere copies and original has not been placed on record nor proved by the complainant as per the rules of Indian Evidence Act. Even if alleged affidavit is observed to be true copy of the original, the allegations of the complainant in the present case would not constitute an offence under Section 420 IPC for which the accused have been summoned in the present case. Section 420 IPC provides for punishment in case a person cheats another in order to defraud him and induce delivery of a valuable security or amount so as to cause wrongful loss to him or wrongful gain himself. In the present case, however, the complainant has failed to prove that the accused ever used the said affidavit in order to cause wrongful loss to him. Thus accused can not be said to have acted upon or used the affidavit in question. Even, if it is proved that affidavit was prepared by all the accused persons, same fails to invite criminal action against the accused persons. It is essential that criminal dishonest intention is present at the time of execution of a document. The affidavit in question was allegedly prepared on 19.09.1994. The mother of the complainant Smt. Bimla Devi had supposedly died. The complainant has not disclosed the date of death of his mother. However, it can be presumed that accused persons might have prepared the affidavit in the light of the fact that their sister Bimla Devi was no longer alive. False inducement with dishonest intention has thus not been established from the facts of the present case as well as from the evidence placed on record. On the basis of my discussion above, this Court is of the opinion that no prima facie case under Sections 420/120-B IPC is made out against the accused persons. Accordingly, accused persons are discharged of the offences for which they were summoned

in the present case. File be consigned to the record room.”

Thereafter, the complainant preferred a revision petition before the Additional Sessions Judge, Ludhiana, which was also dismissed vide order dated 19.08.2015.

Aggrieved against the said order, the complainant has filed the present petition before this Court.

Counsel for the petitioner has submitted that the petitioner is the legal heir of Smt. Bimla Devi, daughter of Dhuni Chand, whose succession is in dispute. It is further submitted that at no point of time, the mother of the petitioner had given an affidavit in favour of her brothers/accused persons, who are the maternal uncle of the complainant and there is no other legal representative except sons of Dhuni Chand and the affidavit filed by the accused persons for seeking the succession for transfer of the house in their names by way of furnishing an affidavit that they are the only legal representatives excluding Smt. Bimla Devi, is fraudulent act and constitute an offence punishable under Sections 420 and 120-B IPC.

Counsel for the petitioner has further submitted that the owner of the property Sh. Dhuni Chand, the maternal grandfather of the petitioner was having a House No.63-L, Model Town, Ludhiana, which was allotted to him in lieu of the property, which he has left behind in Pakistan. It is further argued that during the pre-charge evidence, the complainant has proved on record that by way of the allotment letter (Exs.P1 and P2), the said property was allotted to Sh. Dhuni Chand. It is further submitted that Sh. Dhuni Chand, expired in the year 1986 and, thereafter, the property devolved upon his LRs including the

mother of the complainant namely Smt. Bimla Devi.

Counsel for the petitioner, on a query raised by the Court, has submitted that Smt. Bimla Devi expired somewhere in the year 1990 and thereafter, the complainant, who was minor at that time, has filed the present complaint in the year 2013. It is further argued that the affidavit Mark A and Mark B submitted by the accused persons for excluding Smt. Bimla Devi, while seeking the succession of the house in their own names, are apparently the false and fabricated documents and, therefore, the Courts below have wrongly discharged the respondents/accused persons.

After hearing counsel for the petitioner, I find no ground to differ with the findings given by both the Courts below. The petitioner has failed to prove the original affidavits Mark A and Mark B on record and even if, on the face of it, they are taken to be correct, they were prepared in the year 1994 whereas Bimla Devi had died somewhere in the year 1990, as stated at Bar by counsel for the petitioner, therefore, both the Courts below have rightly held that the accused persons might have prepared the affidavits in the light of the fact that after the death of Bimla Devi, they are the only legal representatives of their father.

The complainant has failed to lead any evidence to show that Bimla Devi, after the death of her father has ever applied for claiming succession in his property as she remained alive for a period of about 04 years after the death of Dhuni Chand. The petitioner has further failed to give any satisfactory explanation as to why the present complaint has been filed after a period of about 19 years when the affidavits were prepared in the year 1994.

Therefore, finding no ground to interfere in the impugned orders passed by the Courts below discharging the respondents/accused, there is no merit in the present petition and the same is accordingly, dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

19.09.2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No