

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18875-2018

Date of Decision: 05.10.2018

Darshan Singh

...Petitioner

vs.

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.S.Toor, Advocate
for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

Mr. A.S.Khinda, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN,J

On 06.08.2018, the following order was passed:-

“Prayer in this petition is for quashing of FIR No.40 dated 16.03.1998 under Sections 420, 468, 471, 120-B IPC, registered at Police Station Kotwali, Kapurthala as well as all the subsequent proceedings arising therefrom and the order dated 14.07.1998 (Annexure P-2), vide which the petitioner was declared a proclaimed offender.

Brief facts of the case are that the petitioner is Non-resident Indian and is residing in British Columbia Canada for the last 40 years. The aforesaid FIR was got registered by Sarwan Singh with the allegations that he had purchased a plot measuring 03 marls from one Paramjit Singh vide sale deed dated 13.01.1997. Said Paramjit Singh had purchased the aforesaid plot 25 years ago and was in possession of the same and the accused persons, by way of some forged deed, have sold the land in favour of Darshan Singh i.e. the present

petitioner, though the petitioner has no concern with the plot nor he is in possession of the same. The petitioner is in possession of 03 marls of different plot and has constructed a house over the same. The police, after completing the investigation, submitted the challan, whereas the petitioner was declared a proclaimed offender on 14.07.1998.

Learned counsel for the petitioner submits that the petitioner had filed CRM-33242-M-2004 praying for quashing of the present FIR as well as the aforesaid order dated 14.07.1998 (Annexure P-2). The said petition was dismissed on 03.09.2004, by passing the following order: -

“Admittedly, petitioner was declared a proclaimed offender way back in the year 1998. Proclamation made against him still subsists. No case is made out to entertain application on his behalf for quashing. Dismissed. He may avail other remedy as per law, if so advised.”

Learned counsel for the petitioner further submits that in the meantime, co-accused of the petitioner namely Bikkar Singh faced the full length trial and he was acquitted by the Judicial Magistrate 1st Class, Kapurthala vide judgment dated 09.05.2006. It is further submitted that during pendency of the trial, other accused Piara Singh had expired. The trial Court, while acquitting co-accused of the petitioner, held that since Civil Court has upheld the validity and legality of the sale deed executed by Bikkar Singh in favour of petitioner Darshan Singh, the charge for commission of offence punishable under Sections 420, 467, 471 IPC read with Section 120-B IPC is not proved. It was also observed that since the petitioner was declared a proclaimed offender, the file shall remain consigned to the record room till the petitioner voluntarily surrenders

or is arrested or produced by the police before the Court.

Learned counsel for the petitioner has further submitted that the petitioner was continuously residing abroad and has never returned to India. The petitioner filed another CRM-52990-M-2007, which was again dismissed vide order dated 09.02.2007, by passing the following order: -

“Petitioner Darshan Singh, who has been declared proclaimed offender, has filed this petition under Section 482 of the Code of Criminal Procedure for quashing of FIR No.40 dated 16.3.1998, registered at Police Station Kapurthala, under Sections 420, 468, 471, 120-B IPC and all the subsequent proceedings arising therefrom. Earlier also, the petitioner filed similar petition i.e. Crl. Misc. No.33242-M of 2004 and the same was dismissed on 3.9.2004.

I have heard counsel for the petitioner and gone through the contents of the FIR.

Counsel for the petitioner contends that now after the dismissal of the earlier petition, a civil suit between the parties has been decided, therefore, the matter requires re-consideration.

After hearing counsel for the petitioner, I do not find any ground to quash the aforesaid FIR at this belated stage on the aforesaid ground.

Dismissed.

However, it will be open for the petitioner to take plea regarding finding recorded by the civil court, during the trial in the FIR case.”

Learned counsel for the petitioner has further argued that since the petitioner continued to reside in Canada and could not come back as he was in the process of obtaining the permanent residency, therefore,

the investigating agency knew that the petitioner was residing in Canada and could obtain the address of the petitioner from his co-accused to get the service effected on the petitioner as per the procedure laid down under Section 105-B Cr.P.C. and in the absence of appropriate service, impugned order declaring the petitioner a proclaimed offender under Section 82/83 Cr.P.C. is illegal in the eyes of law.

Learned counsel for the petitioner has thus submitted that there are changed circumstances and in order to show his bonafide, the petitioner is ready to deposit the costs of Rs.2.00 lacs in the Govt. Treasury under a head to be nominated by the Illaqa Magistrate/trial Court.

List again on 06.09.2018 for further arguments.

Learned counsel for the petitioner is directed to produce on record the receipt on the next date of hearing.”

Thereafter, the petitioner placed on record original receipt dated 14.08.2018 regarding deposit of Rs. 2 lakhs as costs as Annexure P15.

Counsel for the petitioner submits that the only allegation against the petitioner is that he has purchased the plot from one Bikar Singh and, thereafter, the petitioner, being a purchaser, parted away the sale consideration in favour of aforesaid Bikkar Singh and being a bona fide purchaser, he has not committed any offence under Sections 420/467/471 IPC read with Section 120-B IPC. He further submits that subsequent to execution of the sale deed, the petitioner had traveled abroad and in the meantime, the possession of the plot was taken by the complainant and, thereafter, the petitioner filed a civil suit No.42 dated 17.03.1998 praying for decree of possession on the basis of the aforesaid sale deed and vide judgment dated 24.01.2006, the said suit was decreed and the complainant,

who was defendant No.5, was directed to deliver the possession of the land to the petitioner. Thereafter, the appeal filed by the complainant was dismissed and now Regular Second Appeal (RSA) is pending in this Court.

Counsel for the petitioner further submits that after registration of the FIR, on the warrants issued against the petitioner, it was reported by one Constable Ravinder Singh that he had gone at the given address and met one Ajit Singh, who has stated that he knew Darshan Singh (petitioner) personally and petitioner had gone abroad on 16.03.1998 and there is no likelihood of coming back. Thereafter, the trial Court declared the petitioner a proclaimed offender, vide impugned order dated 14.07.1998 (Annexure P2).

Counsel further submits that after dismissal of his earlier petition(s), as noticed above in the order dated 06.08.2018, he has filed the present petition on changed circumstances as in the intervening period, the Civil Court has decreed the suit in his favour on 24.01.2006 upholding the sale deed in his favour, which is alleged to be forged in the impugned FIR and the appeal filed by the complainant was dismissed by the Lower Appellate Court and now RSA is pending in this Court.

Counsel for the petitioner further submits that the another changed circumstance is that the co-accused of petitioner, namely, Bikkar Singh had faced the full length trial and he was acquitted by the Chief Judicial Magistrate, Kapurthala, vide its judgment dated 09.05.2006 (Annexure P9) and other co-accused, namely, Piara Singh had expired. The operative part of the judgment is reads as under:-

“I have heard the learned APP for the State and learned defence counsel and have gone through the evidence led on record, carefully with their kind

assistance.

The points for determination in this case are as under:-

a) Whether the complainant was owner of plot indispute sold by accused Bikkar Singh to co-accused Darshan Singh?

b) Whether accused Bikkar Singh was competent to sell the plot in dispute to co-accused Darshan Singh?

c) Whether the conviction of the accused can be recorded on the strength of oral and documentary evidence adduced on record by the prosecution?

To begin, with learned Additional Public Prosecutor for the State Shri R.C.Garg, has submitted that the prosecution has proved sale deed executed by accused Bikkar Singh in favour of accused Darshan Singh in connivance with co-accused by producing scribe and an attesting witness. Learned APP has further contended that as per evidence led on record, by the prosecution, sale deed executed by Bikkar Singh in favour of his co-accused is registered document to which presumption of truth is attached and factum of ownership of vendor of complainant Paramjit Singh of the said plot is proved by their statements, made on oath, in the witness box. Learned APP argued that oral and documentary evidence adduced on record by accused Bikkar Singh facing trial does not absolve him of the criminal liability, because Judgment delivered by the Civil Court has not become final upon the parties, because of pendency of appeal preferred by complainant and others. Learned APP urged that charges against the accused facing trial have been proved beyond shadow o all reasonable doubts, as such, he be held guilty, convicted and punished in accordance with the law.

On the other hand, learned defence counsel Shri Gurmukh Singh Sidhu Advocate has submitted at the

outset that complainant has not produced any proof of ownership of disputed plot, whereas in the witness box he has admitted that the plot in dispute was purchased by his wife and not by him. Learned defence counsel has further contended that as per documentary evidence brought on record by the accused, vendor of wife of complainant was owner of plot, as such, he was competent to sell the same to her, whereas, it is ownership of Ram Rakha father of Bikkar Singh as established by documents produced on record by the accused. Learned defence counsel has further submitted that accused Bikkar Singh sold the plot in dispute to co-accused Darshan Singh as attorney of his father and not in personal capacity, as such, it is evident that author of FIR has set criminal law in motion to pressurise co-accused Darshan Singh to withdraw the civil suit decided by the court in their favour. Learned defence counsel further argued that in view of the verdict delivered in the civil suit by the court accused cannot be said to have illegally executed sale deed relied upon by the prosecution in support of his contentions, learned counsel has placed reliance upon 1997 (2) Civil Court cases (SC) -I Gorie Gouri Naidu vs. Thandrothu Bodemma and others, wherein, it has been held by Hon'ble Apex Court that inter party judgment, even if erroneous binds the party, if the court of competent jurisdiction has decided the lis, learned counsel has further relied upon 1998 (1) Civil Court cases-555 (H.P.) Twarku Vs. Surti, wherein it has been held by Hon'ble Himachal High Court that presumption of correctness of them arises as they are prepared and maintained by public officers in due discharge of their duties.

The arguments advanced by learned counsel has is attractive. In the complaint Ex.PB on the basis of which

criminal law has been set in motion, Sarwan Singh has claimed that he had purchased the plot in dispute from Paramjit Singh son of Mihan Singh, whereas, on remaining part of the said plot PW-6 Paramjit Singh son of Milkha Singh has constructed residential house. He has also stated that he and Paramjit Singh are in possession of the plot sold by accused Bikkar Singh vide sale deed Ex.PW5/A. In the witness box, he has conceded that half portion of the plot sold by accused Bikkar Singh to co-accused Darshan Singh vide sale deed. Ex.PW5/A was purchased by his wife Bhajan Kaur. As such, allegations made in the complaint Ex.PB and in examination-in-chief by him that he purchased the plot in dispute in his own name stand falsified by his own admission. He has also conceded that about 25 years ago his wife had purchased plot for a sum of Rs.90/99. The sale deed executed by Paramjit Singh son of Mihan Singh in favour of his wife has not been brought on record, by the prosecution. Even no document of ownership of vendor of wife of complainant namely Paramjit Singh son of Mihan Singh or his predecessor in interest viz Jagir Singh has been produced on record. It is well settled that a person cannot pass better title than he what himself possess. The wife of the complainant cannot be said to be owner of the plot sold by the accused Bikkar Singh to accused Darshan Singh on the basis of oral assertions alone made by the complainant who in his cross-examination even failed to tell the number of disputed plot, description and boundaries thereof. PW-5 Sucha Singh an attesting witness of sale deed Ex.PW5/A has conceded that PW-6 Paramjit Singh son of Milkha Singh was owner of the disputed site but he does not know about the name of other co-sharers. PW-1 Chaman Lal scribe of sale deed Ex.PW5/A has conceded that accused Bikram Singh has executed the

sale deed as attorney of his father Shri Ram Rakha who was owner of the plot in dispute. PW-5 Sucha Singh has conceded that Paramjit Singh and Shri Ram Rakha father of the accused Bikkar Singh had common ancestors. PW-3 Daljit Kaur has conceded that copy of Jamabandi Ex.PW3/1 is attached with the record maintained in the office of Sub Registrar, Kapurthala, regarding execution of sale deed by accused Bikkar Singh but said document is with held by the prosecution. PW-6 Paramjit Singh has deposed that plot bearing Khasra no. 105 is ancestral land of his family on which he has constructed his house. He has also conceded that his father Milkha singh and Ram Rakha father of accused Bikkar Singh are first cousins. PW-7 S.I. Gian Singh, the Investigating Officer of the case has conceded that he has seen copy of Bandobast in the course of investigation but has conceded that he is not conversant with Urdu language, as such, he cannot tell about the facts mentioned in the said document. He has also conceded that he did not saw even the pedigree table of the family of Bikkar Singh, Jagir Singh and Paramjit Singh and son of Milkha Singh. As such it is clear that he has not made any serious effort to verify the faction of ownership of vendor of wife of complainant before registration of FIR and even in his course of investigation of the case. He has produced on record certified copy of Bandobast for the year 1934 B.K. of Village Wadala Kalan Ex.D-3, whereas, Shri Daya Singh ancestor of Ram Rakha and Milk Singh father of Paramjit Singh PW-6 is shown to be owner of the plot bearing No. 106, whereas, Smt. Hukmi an ancestor of Jagir Singh vendor Paramjit Singh son of Mihan Singh vendor of wife of complainant is recorded owner of plot no. 107 and shown to be member of different family. The accused has also produced certified copies of true

translation of said document Ex.D-4. He has also produced copy of Judgment and decree sheet dated 24.1.2006 Ex.D-1 and Ex.D2 passed in Civil suit no.42 instituted on 17.3.1998 by accused Darshan Singh against Paramjit Singh PW-5, Sarwan Singh complainant and his wife Bhajan Kaur and others. The said suit has been decreed by this court with the verdict that neither Jagir Singh nor Paramjit Singh son of Milkha Singh vendor of wife of complainant have any concern with the land bearing plot no. 106 and Ram Rakha father of accused Bikkar Singh was co-sharer to the extent of 1/2 share, whereas remaining 1/2 is in occupation of PW-5 Paramjit Singh, on which, he has constructed his house. The appeal has been preferred against the verdict delivered by this court in above said suit which has not so far been decided. However, as the prosecution failed to prove the ownership of vendor of wife of complainant and as per documents tendered into evidence by accused Bikkar Singh, they had not concern with the plot in dispute DW-1 Arminster Paul Singh Clerk employed in Election Office, Kapurthala has produced voters list as per which father of Paramjit Singh son of Mihan Singh was never recorded voter in village Wadala Kalan. The accused has also tendered into evidence affidavit Ex.D-5 affirmed by him to the effect that police officials pressurise him to furnish an affidavit acknowledging wife of complainant as owner of the plot in dispute. He has affirmed in said affidavit that his father was co-owner to the extent of 1/2 share in the plot measuring 6 marlas and he has sold the same through him as his attorney to accused Darshan Singh. The documentary evidence adduced on record by the accused in his defence about ownership of disputed plot has gone uncontroverted. PW-6 Paramjit Singh has conceded that suit has been decreed in favour of co-

accused Darshan Singh and Bikkar Singh has executed sale deed Ex.PW5/A on behalf of his father Shri Ram Rakha who is proved to be a co-sharer with his Milkha Singh. He has further conceded that plot bearing no. 105 is in his occupation. This plot has not been sold by accused Bikkar Singh to co-accused Darshan Singh who has not invited any action against him.

In the light of above discussion, I have come to the conclusion that no illegality has been committed by accused Bikkar Singh regarding execution of sale deed Ex.PW5/A on behalf of his father Ram Rakha in the capacity of his attorney in favour of co-accused Darshan Singh as held by this court in civil suit No.42, decided on 24.1.2006. Since case of the prosecution has been demolished by oral and documentary evidence adduced on record by the accused, therefore, conviction of accused Bikkar Singh facing trial cannot be recorded so far as charges for commission of offences under sections 420/468/471 read with Section 120 B IPC are framed against him. Since prosecution has failed to prove guilt of the accused and civil court has upheld the legality and validity of the sale deed executed by him, in the capacity of attorney, of his father, in favour of co-accused Darshan Singh, on behalf of his father Shri Ram Rakha, therefore, he has become entitled to be acquitted of these charges.

No other argument has been advanced before me either by learned APP for the State or learned defence counsel, in the course of arguments.

For the aforesaid reasons, I have come to the conclusion that the prosecution remained unsuccessful in bringing home guilt of accused facing trial under Section 420/468/471/120-B IPC. As such, the accused facing trial is held not guilty of commission of above said offences and acquitted of the charges framed against

him.

File be consigned to the record room with the direction to be taken up against us and when co-accused Darshan Singh who has been declared proclaimed offender voluntarily surrenders or is arrested and produced by the police in the court.”

Counsel for the petitioner, thus, submitted that this judgment of acquittal has become final as no further appeal was filed either by the complainant or the State and, therefore, no purpose will be served directing the petitioner to face the trial.

Learned counsel has relied upon **2011 (2) R.C.R. (Criminal), 453 Sudo Mandal @ Diwarak Mandal vs. State of Punjab**, where the Division Bench of this Court, has held that the accused persons who have absconded and were declared proclaimed offenders and have not faced the trial, the prosecution qua them can be quashed by invoking the power under Section 482 Cr.P.C. to do the real and substantive justice and to prevent the abuse of process of law, if the Court finds that the innocent accused, who have absconded would simply face the empty formality of trial with the same unbelievable and untrustworthy evidence, which would ultimately lead to their acquittal. In the said case, while deciding the appeal against conviction of accused persons under Section 302 IPC, who were acquitted by this Court and on appreciation of evidence, the three other co-accused, who were declared proclaimed offenders, the proceedings qua them were quashed observing that no purpose will be served to send them to face trial.

Counsel for the petitioner, in support of his arguments, has relied upon **2013 (1) R.C.R.Criminal, 310 Jasvinder Singh vs. State of Punjab and another**, wherein, this Court while relying upon the Division Bench judgment of this Court in **Sudo Mandal @ Diwarak Mandal vs.**

State of Punjab, 2011 (2) R.C.R. (Criminal), 453 has held that where the co-accused of a person, who has been declared a proclaimed offender, stands acquitted by the trial Court, the continuation of the prosecution of such person will amount to wastage of time and it will be a futile exercise to continue the proceedings as on the same set of allegations and evidence, co-accused was acquitted and quashed the FIR. Counsel further replied upon *2011 (2) R.C.R. (Criminal), 438 Vinod Kumar @ Vinod Saddi vs. State of Punjab,* wherein, a similar view has been taken by this Court.

Counsel for the petitioner has further relied upon *1991 (3) R.C.R.(Criminal), 235 Thakkar Dass vs. State of Haryana* to submit that the second petition filed under Section 482 Cr.P.C. is maintainable if there are changes in the circumstances.

In reply, learned State counsel as well as counsel for respondent No.2/complainant have argued that since the petitioner has gone abroad in the year 1998 and has not returned back for the last 20 years, the trial Court has rightly declared him a proclaimed offender.

Counsel for respondent No.2/complainant has further argued that though the civil suit filed by the petitioner, praying for decree of possession, on the basis of the sale deed which the complainant has alleged to be a forged sale deed in the present FIR, was decreed, yet the appeal filed by the complainant is pending in this Court and complainant is continuing to be in possession of the plot in dispute as there is an order of status quo in his favour.

In reply, learned counsel for the petitioner has submitted that taking absence of the petitioner from the country, the complainant had taken the possession of plot and therefore, the petitioner had to file suit for

possession.

After hearing learned counsel for the parties, I find merit in the present petition for the following reasons:-

a). The only allegation against the petitioner is that he has purchased 03 marla plot from one Bikkar Singh (co-accused of the petitioner) and, therefore, it is the petitioner who has parted away the sale consideration and, therefore, he is only a purchaser of the plot.

b). A perusal of judgment dated 09.05.2006 (Annexure P9), in which the aforesaid co-accused Bikkar Singh was acquitted, shows that the Court had recorded a finding that the sale deed executed by Bikkar Singh was not an out come of fraud, in the light of the judgment passed by Civil Court on 24.01.2006, decreeing the suit of petitioner-Darshan Singh. Therefore, vide its judgment, the Chief Judicial Magistrate, Kapurthala, has virtually recorded a finding that the sale deed executed by Bikkar Singh, as attorney of his father Ram Rakha, in favour of Darshan Singh could not be proved to be a forged document and, therefore, the prosecution cannot lead any fresh evidence if the petitioner is directed to face trial now.

c). That it is admitted case of the parties that judgment of acquittal qua co-accused Bikkar Singh has attained finality, as no appeal was filed either by the State or complainant and, therefore, no fresh evidence can be led with regard to the sale deed which has already been held to be valid one by the Civil Court. Mere pendency of RSA filed by the complainant, in the absence of pendency of any appeal against judgment of acquittal of co-accused in the criminal case, will be of no help to the complainant.

d.) In view of the judgment passed by this Court in Sudo

Mandal @ Diwarak Mandal' case (Supra), Jasvinder Singh's case (supra)
and Vinod Kumar @ Vinod Saddi'case (supra) and the mere fact that the petitioner is a proclaimed offender, it does not come in his way seeking quashing of FIR as co-accused Bikkar Singh already stands acquitted by the trial Court.

e). Even otherwise, it is undisputed case of the parties that the petitioner is residing abroad in Canada since 1998 and for the last 20 years, he has not returned back and though his earlier petition for setting aside the impugned order declaring him a proclaimed offender was dismissed, yet in view of the changed circumstances i.e.

- (i) acquittal of his co-accused in the criminal trial and
- (ii) decree of his suit praying for possession of the disputed land, both the proceedings based on same sale deed which the complainant claims to be forged and fabricated document, a finding was recorded that the same is valid and legal document and, therefore, in view of the changed circumstances and also in view of the **Thakkar Dass'case (supra)**, the present petition is maintainable.

f). It is worth noticing that the petitioner has already deposited the costs of Rs.2 lakhs for delaying the proceedings before the trial Court, as the petitioner was declared a proclaimed offender.

In view of the above, the present petition is allowed.

The FIR No.40 dated 16.03.1998 under Sections 420, 468, 471, 120-B IPC, registered at Police Station Kotwali, Kapurthala as well as all

the order dated 14.07.1998 (Annexure P-2), vide which the petitioner was
declared a proclaimed offender, are hereby quashed.

05.10.2018
smriti

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No