

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2480-2013 (O&M)
Date of decision: 19.07.2018

Arvinder Kaur Anand

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rajiv Kataria, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. Navkiran Singh, Advocate
for respondents No.2 to 4.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of the impugned order dated 09.10.2010 (Annexure P-7) passed by the Chief Judicial Magistrate, Ambala, whereby respondents No.2 to 4 were discharged and the order dated 16.08.2012 (Annexure P-9) passed by the Additional Sessions Judge, Ambala, vide which the revision petition filed by the State was dismissed.

Brief facts of the case are that FIR No.57 dated 11.02.2007 was got registered by the complainant-petitioner (hereinafter referred to as 'petitioner') against accused-respondents No.2 to 4 (hereinafter referred to as 'respondents No.2 to 4') under Sections 420, 465, 468, 469, 471, 120-B of the Indian Penal Code (for short 'IPC') with the allegations that the petitioner, on an earlier occasion, had filed a complaint before the Chief Metropolitan Magistrate, Delhi

on 18.01.2005 with similar allegations and the Chief Metropolitan Magistrate took cognizance of the offences under Sections 448, 506 Part II IPC vide order dated 19.09.2005 and directed the petitioner to file a separate complaint in the appropriate Court of jurisdiction. It is further stated that the maternal grandfather of the petitioner namely Partarp Singh owned large estate, whose value was in crores of rupees and the petitioner being legal heir of Partap Singh, is entitled to inherit her share of property from the estate of Partap Singh. In this regard, she has filed a civil suit before the Civil Court at Ambala as respondents No.2 to 4 were pressuring her to relinquish her share. On 15.05.2003, respondents No.2 to 4 came to Delhi and on their asking to sign some papers, the petitioner refused to do so. Again on 20.01.2004, respondent No.4 came to her residence with some other persons but the petitioner refused to relinquish her share. It is also stated that respondents No.2 to 4, in a deceitful manner, filed a petition before the Lok Adalat and entered into a compromise with other LRs of Partap Singh with regard to his estate and a compromise under Section 19 of the Legal Services Authorities Act (for short 'the Act') was entered into between the parties. It is further stated in the FIR that respondents No.2 to 4 forged her signatures on the vakalanama/power of attorney, the petition filed by them under Section 19 of the Act and the compromise deed, on the basis of which the Lok Adalat passed an award dated 06.03.2004. It is further stated that the petitioner got report of the handwriting expert who reported that her signatures were forged on the aforesaid documents and prayed for taking action against respondents No.2 to 4.

After registration of the FIR, police investigated the matter and took in possession all the relevant documents. The specimen signatures and

writing of petitioner Arvinder Kaur Anand as well as respondents No.2 to 4 namely Jasbir Singh, Trilochan Singh and Devender Singh were got compared with the questioned signatures and writing of the petitioner on the disputed documents and thereafter, the challan was presented.

It is relevant to note here that vide order dated 03.08.2009, the trial Court, at the stage of framing of charge, discharged respondents No.2 to 4. Thereafter, the State filed a revision petition before the Additional Sessions Judge and vide order dated 03.11.2009, the case was remanded back to the trial Court to pass a fresh order, after issuing a notice to the petitioner and after hearing both the parties.

Thereafter, vide impugned order dated 09.10.2010, the trial Court again discharged respondents No.2 to 4 holding that though as per report of FSL, Madhuban, the questioned signatures Q1 to A3 do not match with the specimen signatures S1 to S3 and A1 & A2 did not write the questioned signatures. The trial Court thus held that on the basis of report of FSL, it could not be proved that respondents No.2 to 4 have put the questioned signatures Q1 to Q3 and therefore, the prosecution has prima facie failed to show that the questioned signatures and writing of petitioner Arvinder Kaur Anand were forged by any of the accused person. The trial Court further recorded a finding that there is no material on record to frame charge against accused persons. It was further held that the matter is primarily of civil nature as the dispute is with regard to legality of award passed by the Lok Adalat under Section 19 of the Act.

The trial Court has also given a reference to a Will dated 08.08.1959, vide which property of Partap Singh was inherited by his wife

Sitawanti and therefore, she became the absolute owner of the property by virtue of Section 14 (1) of the Hindu Succession Act, 1956 and thus was competent to enter into the family settlement before the Permanent Lok Adalat, on the basis of which award dated 06.03.2004 was passed.

Thereafter, the State filed a revision petition before the Court of Sessions and vide impugned order dated 16.08.2012, the same was dismissed by the Additional Sessions Judge, Ambala, by passing the following order: -

“I have heard learned PP for the petitioner-State assisted by learned counsel for the complainant and the learned defence counsel and have gone through the case file very carefully.

Learned Public Prosecutor for the petitioner-State assisted by learned counsel for the complainant argued that the accused as per the allegations with bad motive and intention for causing loss to the complainant filed a petition before the Lok Adalat on the basis of a compromise/family settlement and on the basis of said settlement, an order was passed by the Lok Adalat. As a matter of fact, there were no signatures of the complainant on the family settlement, petition and vakalatnama. The investigating agency sought the opinion of FSL Haryana corroborating this fact.

Learned Public Prosecutor argued that at the time of framing of charge, the material placed by the prosecution is to be considered. There is sufficient evidence on the file. The report of FSL clearly shows that there were no signatures of the complainant on the family settlement, the petition before the Lok Adalat and the power of attorney. The questioned signatures

marked Q1 to Q3 do not resemble with the standard signatures S1 to S3 and admitted signatures A1 and A2. This clearly shows that the signatures alleged to be of complainant upon the aforesaid documents do not belong to the complainant. The accused must disclose to the court as to who have signed the documents, as the documents have come from their possession. As per the provisions of Section 106 of the Indian Evidence Act, the accused possessed the special knowledge. Reliance was made to the judgment AIR 1956 SC 404.

So much so, the accused have no right to produce any material at the time of consideration of charge. The report of B.R. Sharma alleged to have been produced in the court carries the accused no where. Even the accused have no right to produce any evidence nor any permission was sought. The report has been prepared on Xerox copy which is totally inadmissible. The complainant has filed a civil appeal which is also pending in the court of learned Additional District Judge, Ambala.

Civil and Criminal proceedings are totally distinct. Therefore, in the light of the judgments 1996 CrI. J. 2448, 2000 S.A.R. (Criminal) 910, 2005 (1) SCC 568, the accused have no right to lead any evidence by producing any document and the court has to examine the material produced by the prosecution and only prima facie consider the material. No roving inquiry is required at this stage.

On the other hand, learned counsel for the respondents-

accused opposed these arguments that no prima facie case is made out in favour of the complainant. A false case has been registered by the complainant. The award passed by the Permanent Lok Adalat has been upheld by the civil court. The judgment produced on the file, although the appeal is pending. The presumption of truth is attached to the proceedings before the competent court of law. It may be noticed here that the father and real brother of complainant were also a party to the said proceedings before the Permanent Lok Adalat. They never challenged the award passed by the Permanent Lok Adalat.

The learned defence counsel further argued that no case of forgery and cheating, as alleged by the complainant is made out. The complainant was not entitled to succeed to the estate of Sardar Partap Singh. Partap Singh executed a Will dated 08.08.1959 in favour of his wife Smt. Sita Wanti. The said Will was never challenged by the complainant. No case of complainant causing her wrongful loss and wrongful gain to the accused is made out. The report of handwriting and fingerprint expert does not implicate the accused persons in any manner. There is not an iota of evidence available on the file to show that her signatures or writing were forged by any of the accused.

The learned defence counsel also relied upon the observations made by Hon'ble Apex Court that defence material can be looked into in rare and exceptional cases. The facts of the present case show that she was not legally entitled to succeed to

any interest despite of that the share was given to her by way of family settlement including her father and real brother. Thus, no prima facie case is made out against any of the accused persons.

Heard. The ownership of Partap Singh was not a disputed fact. After his death, the property was inherited by his wife, that too on the basis of a Will dated 8.8.1959. That Will have never been challenged or set aside by any competent court of jurisdiction till today. It has never been challenged by any of the parties including the complainant.

Sitawanti thus became the absolute owner of the suit property by virtue of Section 14 (1) of the Hindu Succession Act.

Sitawanti being the absolute owner entered into a family settlement before the Permanent Lok Adalat and the award dated 6.4.2004 was passed.

The remedy thus available to the complainant was to challenge the said award before the civil court. She has challenged the said award in the civil court. Admittedly civil suit No.109 of 27.8.2004 titled Arvinder Kaur Versus Inderjit Singh etc. was dismissed vide judgment and decree dated 18.2.2012. The appeal is pending. There is observation of the civil court in para No.43 and 44 of the judgment, which reads as under: -

“43. Admittedly, this dispute was at pre litigative stage and Sitawanti was competent to give her properties to her sons, so question of valuation of the property at the time of pre litigative stage do not create dent over the rights of any of

the parties. It has no where been alleged by the plaintiff that signatures of defendant No.1 was also taken fraudulently on the compromise. Till today, the plaintiff had never challenged the Will, relied upon by the defendants. Also, on the present record, she has also failed to prove her rights in the property in question, which is stated to be held by Sitawanti. Document Ex.A1 which has been exhibited by defendants as Ex.D1 shows the signatures of Arvinder Kaur. Strangely enough that award dated 6.3.2004 though challenged by her, but she did not take any effort to get this document exhibited on the case file.

44. In rebuttal, the defendants have examined Harvinder Singh as DW3, N.S. Kohli, Advocate as DW4 and Jasbir Singh as DW6, who have corroborated the version of the defendants and proved the proceedings initiated before the Permanent Lok Adalat. A criminal case with regard to such alleged action was also got registered by the plaintiff and vide judgment Ex.D5, accused/defendants have been discharged. In the present case, plaintiff has failed to lead cogent and positive evidence on the case file in support of her case.”

It was held by the civil court that although the matter is sub judice in appeal, the complainant could not prove her right in the property in dispute and did not even tender the alleged compromise Ex.D1.

Then specific issue No.1 was framed in the civil suit and decided against the complainant.

Much reliance was placed on the FSL report. There is nothing brought on record that the accused persons in fact forged the documents. The report stated so that the person who wrote the specimen signatures mark S1 to S3, A1 and A2 did not write the questioned signatures Q1 to A3 but it nowhere states that said questioned signatures and writings allegedly of Arvinder Kaur were forged or made by any of the accused persons. Rather the report says that any opinion on Q1 to A3 cannot be expressed in comparison to the writing 'A.K. Anand' mark S4 to S6 as well as mark S10 to S12. Mark S4 to S6 are the specimen as of the hand writing of accused Inderjit Singh whereas mark S10 to S12 are the specimen as of the hand writing of accused Tarlochan Singh. It is not possible to fix the authorship of Q2/1, Q3/1 in comparison with S4 to S6, S10 to S12, S13 to S15. It is not possible to express any definite opinion on Q1 to A3 in comparison with writing 'A.K. Anand' mark S7 to S9. Mark S7 to S9 are the specimen of the writing of accused Jasbir Singh.

Therefore, the learned trial Court has rightly held that the prosecution has prima facie failed to show that the questioned signatures and writing of complainant Arvinder Kaur were forged by any of the accused persons.

Thus, there is no legal infirmity in the impugned order passed by the learned trial Court and calls for no interference.

As a sequel to my discussion, the present revision fails and same is hereby dismissed. Trial court record along with copy of judgment be sent back promptly.”

Learned counsel for the petitioner has raised the following arguments: -

- (a) That from the report of FSL, it is proved that the questioned signatures on three documents i.e. Vakalatname, the petition filed under Section 19 of the Act and statement of the petitioner, are not proved to be signed by her.
- (b) That the Courts below have wrongly relied upon the point that there was a Will dated 08.08.1959 executed by Partap Singh in favour of his wife Sitawanti. In this regard, counsel for the petitioner has relied upon **State of Tamilnadu Vs. N. Suresh Rajan, 2014 (11) SCC 709**, wherein the Hon’ble Supreme Court has held that the Court should proceed with the assumption that the probative value of material brought on record should be gone into to find if a prima facie case is made out, while framing the charge.
- (c) That even if as per FSL report, the standard handwriting/signatures of respondents No.2 to 4 do not tally with the questioned signatures, still there is a presumption under Section 106 of the Indian Evidence Act, 1870 that since respondents No.2 to 4 are the beneficiaries of the award passed by the Lok Adalat, therefore, the prosecution need not to prove those facts which are specially in the knowledge of respondents No.2 to 4, as it was not possible for the petitioner to prove who had signed the said documents, as she was not present at the spot. In this regard, counsel for the petitioner has relied upon judgment of the Hon’ble Supreme Court in **Murlidhar Vs. State of Rajasthan, 2005 AIR SCW 2596**.

Learned counsel for the petitioner has further submitted that since from the bare perusal of the FIR and the report of FSL, prima facie offence is made out, the Courts below were not justified in discharging respondents No.2 to 4.

In reply, learned counsel for respondents No.2 to 4 has drawn reference to award passed by the Permanent Lok Adalat (Annexure P-1) to submit that the petitioner along with her two brothers Maninder Pal Singh and Harbans Singh was given 1/4th share in the land measuring 400 sq. yards and she herself being a beneficiary cannot subsequently allege that she was not a consenting party and her signatures were forged. It is further submitted that except for the petitioner, all other legal heirs of Partap Singh are satisfied with the award including her real brothers and the civil suit filed by the petitioner challenging the award passed by the Lok Adalat was dismissed by the Civil Court at Ambala vide judgment dated 18.02.2012 (Annexure R-1). Learned counsel has drawn attention of this Court to the findings recorded by the Civil Judge (Sr. Division), Ambala in para 27 of the judgment, which read as under: -

“For rebutting the claim of the plaintiff Harvinder Singh Anand, appeared in the witness box as DW3 and through his affidavit Ex.DW3/1 has testified that the suit property was earlier owned by Partap Singh i.e. father of Smt. Ravinder Kaur and during his life time he executed a Will dated 8.8.1959 in favour of his wife Sitawanti was his Nani. After the death of Partap Singh, Sitawanti became absolute owner of the suit property. Also stated that she gave some properties to her daughter and there was a family settlement which was got executed in which some property was

given to him along with his sister and father. Also stated that a petition was filed before Permanent Lok Adalat in which earlier his father alone was a party. However, later on, he along with his sister Arvinder Kaur i.e. present plaintiff was added as parties before the Permanent Lok Adalat. Further stated that he along with Harbans Singh, Arvinder Kaur, Inderjit Singh etc. engaged Sh. N.S. Kohli, Advocate to appear on their behalf before the Permanent Lok Adalat, Ambala. He identified his signatures as well as the signatures of his sister Arvinder Kaur on the vakalatnama Ex.D3. He along with Arvinder Kaur, Harbans Singh, Inderjit Singh etc. filed amended petition and all of them signed the amended petition Ex.D4. Sh. N.S. Kohli, Advocate was instructed by all the petitioners including him to appear and give statement on their behalf and also to produce and admit the compromise deed before the Permanent Lok Adalat and as per instructions Sh. N.S. Kohli, Advocate produced and admitted the execution of compromise deed before the Permanent Lok Adalat. He also gave the statement on the instructions of the petitioners including him.”

Learned counsel for respondents No.2 to 4 has further submitted that real brother of the petitioner Harvinder Singh Anand has appeared as DW3 before the Civil Court and in clear and unequivocal deposition, has stated that earlier his father alone was a party before the Lok Adalat and later on, he along with his sister (petitioner) were added as party and engaged Mr. N.S. Kohli, Advocate to represent them before the Permanent Lok Adalat. This witness has

identified his signatures as well as signatures of the petitioner on the vakalatnama Ex.D3 and amended petition Ex.D4. It is thus submitted that the prosecution of respondents No.2 to 4, at the instance of petitioner, is malafide, as they being sons of Partap Singh are sued by the petitioner just to put pressure on them and other beneficiaries of the Lok Adalat award including brother of the petitioner, were not even arrayed as accused in the case.

Learned counsel for respondents No.2 to 4 has further argued that the judgment of the Civil Court has further been upheld by the Additional Sessions Judge, Ambala vide judgment dated 17.09.2014 and a regular second appeal is pending before this Court. It is further submitted that the reference to the Will was given before the trial Court to demonstrate that as per the Will, only three sons of Partap Singh i.e. respondents No.2 to 4 were given the share in the property, however, later on, the family decided to grant share to the daughters also and a perusal of the award (Annexure P-1) passed by the Lok Adalat shows that three sons of Partap Singh-respondents No.2 to 4, three daughters as well as the petitioner and her brothers were also the beneficiary of the award, which was passed on the consent given by all the family members and in that way, respondents No.2 to 4 alone were not the beneficiary and rather they had consented for giving the share to the daughters of Partap Singh as well. Learned counsel has further submitted that the provisions of Section 106 of Indian Evidence Act will not apply in this case, in view of the statement made by brother of the petitioner before Civil Court that the petitioner herself has signed the disputed documents and was a consenting party.

Learned counsel for respondents No.2 to 4 has lastly argued that respondents No.2 to 4 are facing the trial Court since 2009 as they were

discharged by the trial Court on an earlier occasion and after remanding the case back by the revisional Court, they have again been discharged by the trial Court and the revision petition filed before the Court of Sessions has been dismissed.

After hearing learned counsel for the parties, I find no merit in the present petition, for the following reasons: -

(a) That respondents No.2 to 4 along with all other legal heirs of Partap Singh had filed a petition under Section 19 of the Act, which, on the basis of compromise, was decided vide award dated 06.03.2004 passed by the Lok Adalat and except the petitioner, no other legal heir had raised the objection. Even the real brother of the petitioner, in a civil suit filed by the present petitioner challenging the aforesaid award of the Lok Adalat, had not supported her case and rather has deposed before the Civil Court, while appearing as DW3 that he along with the petitioner, Harbans Singh and Inderjeet Singh etc. engaged a counsel to appear on their behalf before the Civil Court. He also identified his own signatures as well as signatures of the petitioner on the vakalatnama Ex.D3 and the petition Ex.D4. The said suit filed by the petitioner was later on dismissed on 18.02.2012.

(b) The petitioner has not initiated any prosecution of her own brothers and other beneficiaries, who had signed the power of attorney/vakalatnama and other documents along with her jointly, while engaging Sh. N.S. Kohli, Advocate and rather has filed the present FIR only against respondents No.2 to 4 who are sons of Partap Singh and as per award of the Lok Adalat, they have conceded to give the share of daughters of Partap Singh, as is evident from the award.

(c) The petitioner, who had filed the aforesaid petition before Lok Adalat, in which the alleged forgery was committed by respondents No.2 to 4, has challenged the award on the similar ground of fraud before Civil Court and has lost her case as the civil Court has dismissed the suit vide judgment and decree dated 18.02.2012 and the said judgment and decree was further upheld by the first appellate Court vide judgment dated 17.09.2014. The mere fact that the regular second appeal is pending, cannot wash away the statement made by real brother of the petitioner that all the documents with questioned signatures Q1 to Q3 were in fact appended by herself and thus the Courts below were justified in discharging respondents No.2 to 4.

(d) Even otherwise, main thrust of the petitioner is that as per FSL report, the questioned signatures Q1 to Q3 do not tally with the standard signatures of the petitioner, nowhere proves that said signatures were in fact appended by respondents No.2 to 4. Except for the report of FSL, there is no independent evidence collected by the police during the investigation as per report under Section 173 Cr.P.C.

(e) The arguments raised by counsel for the petitioner that in view of the provisions of Section 106 of the Indian Evidence Act, respondents No.2 to 4 being the beneficiaries of the award passed by the Lok Adalat, it was not for the prosecution to prove the facts, which were in the knowledge of respondents No.2 to 4, is also devoid of merits. Firstly; the petitioner herself is a beneficiary of the award, as she has been given her share of the property along with her brothers and other legal heirs and the documents with questioned signatures were jointly signed by her brothers and two persons who are also the legal heirs of Partap Singh and therefore, it cannot be held that respondents No.2 to 4

being the beneficiaries, are having the special knowledge in this regard, as the persons, who have jointly signed the vakalatnama and statement etc. with petitioner, are not even arrayed as accused in the FIR. Hence the judgment of the Hon'ble Supreme Court in **Murlidhar**'s case (supra) is distinguishable.

(f) Even otherwise, both the Courts below have concurrently held that there is no material on record to prima facie record a finding that charges can be framed against respondents No.2 to 4.

In view of the reasons recorded above, I find no ground to differ with the findings recorded by the Courts below, in exercise of powers under Section 482 Cr.P.C., therefore, the present petition is dismissed.

[**ARVIND SINGH SANGWAN**]
JUDGE

19.07.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No