

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

**CRM-M-32489-2015
Date of decision: 27.09.2018**

Dalbir Singh

...Petitioner

Versus

Paramjeet Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Akashdeep Singh, Advocate
for the petitioner.

Mr. Ajay Kamboj, Advocate
for respondent Nos. 1, 2, 3 and 5.

Mr. Subhash Godara, Advocate
for respondent No. 4.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of order dated 19.07.2013 (Annexure P-7), passed by the trial Court, vide which, the complaint filed by the petitioner was dismissed; as well as for quashing of order dated 21.04.2015 (Annexure P-8), vide which, the revision filed by the petitioner against the aforesaid order was dismissed by the Additional Sessions Judge, Fatehabad.

Brief facts, as set up by the petitioner in the complaint, are that the father of the petitioner/complainant, namely late Baljeet Singh, got married to one Paramjeet Kaur (respondent No. 1 herein) who stayed in the matrimonial home for few years and three children were born out of the said wedlock i.e. Dalbir Singh (petitioner herein), Balwinder Singh (since deceased) and Kulwinder Kaur. It is further stated that in the year 1998,

Paramjeet Kaur left the matrimonial home and never returned back and all the three children were brought up by Baljeet Singh. In 2004, the brother of the petitioner, namely Balwinder Singh, had purchased a property measuring 1 Kanal 19 ½ Marlas along with other family members and share of Balwinder Singh in the said property was to the extent of 6 ½ Marlas. It is further stated that on 29.03.2011, Balwinder Singh died and thereafter, respondent No. 1, mother of the petitioner, submitted an application dated 26.07.2012 impersonating herself as mother of Balwinder Singh and filed an affidavit that she is the only legal heir of her deceased son Balwinder Singh and his property be transferred in her name. On the basis of the said application, supported by the affidavit, a mutation was sanctioned in favour of respondent No. 1. The petitioner on coming to know this fraud, filed an appeal before the Assistant Collector, Fatehabad and during the pendency of the said appeal, the present complaint was filed with the allegations that respondents have committed the offence punishable under Sections 192, 193, 199, 205, 420, 463, 464, 468, 469, 470, 471 and 120-B of the IPC.

Thereafter, the trial Court recorded the preliminary statement of the petitioner/complainant who examined PW-1 Dharam Pal, PW-2 Neelam, PW-3 Narender Singh, PW-4 Manohar Lal, PW-5 Sahi Ram, himself as PW-6 and Inderjeet Singh as PW-7. Petitioner/complainant placed on record documents Ex. P-1 to P-14 as detailed in the impugned orders passed by the courts below.

The trial Court, thereafter, holding that the matter is purely of civil nature and it is the own case of the petitioner/complainant that he has filed an appeal before the revenue authorities challenging the correctness of the mutation (Ex. P-1) and finding no case to summon the accused persons,

dismissed the complaint, vide order dated 19.07.2013 (Annexure P-7).

The petitioner thereafter preferred a revision before the Court of Sessions. The revisional Court summoned all the respondents/accused and after hearing learned counsel for the parties, dismissed the revision by passing the following order:

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9. After hearing counsel for the parties and after appreciation of record of the learned trial court, this court is of the considered view that the impugned order passed by the learned trial court is perfectly valid and legal and it does not call for any interference by this court in its limited revisional jurisdiction for the reasons given below.

10. The revisionist Dalbir Singh filed the present complaint against the respondents claiming that he had a brother Balwinder Singh and sister Kulwant Kaur and they were three brothers and sister and their mother had left the family in the year 1998 and since then she never returned nor she ever met them nor they heard about her. 1 kanal 19 ½ marlas plot was purchased by complainant with his brother vide registered sale deed in the area of Bhuna in the year 2004. His brother Balwinder Singh died on 29.03.2011 and thereafter all the respondents in criminal conspiracy with each other impersonated one lady as his mother Paramjeet Kaur and got mutation of the share of his deceased brother recorded in her name, even though, she was never heard off. The impersonation was done by respondent No. 1 and the other respondents assisted her in preparation of forged documents and in her identification and when he came to know about that fact he challenged the mutation in

favour of respondents No. 1 and 2. Even the original record was tampered with, forcing the complainant to file the present complaint.

11. However, after perusal of preliminary evidence led by the complainant, it is not established that any impersonation or forgery has been committed by any of the respondents or any forged document has been prepared. To substantiate the allegations against the respondent, first of all it was necessary for the revisionist to show that his mother Paramjeet Kaur had died or is not heard of since 1998 but except for his own statement there is no other corroboration of this fact especially by any documentary evidence to substantiate the allegation that the mother of the complainant went missing. If any such incident took place it would have been a natural reaction to report the matter to police and thereafter issue public notification to search for their mother but no DDR entry or any publication has been tendered in the preliminary evidence by complainant to corroborate this fact. Further the respondent No. 1 Paramjeet Kaur has also got sanctioned mutation in her favour relating to the share of Balwinder Singh deceased brother of the complainant which was jointly purchased by him with his brother. Even in those proceedings the revisionist-complainant was unable to prove that the lady who got the mutation sanctioned in her favour is an impersonator and not his mother. Regarding the cutting in the record proved by the complainant witnesses examined in preliminary evidence, it is seen that it does not show any tampering with the original record but only correction made and it is not established who has done so. In fact, neither the complainant nor his family member filed a suit for

seeking a declaration that his mother be presumed to be dead since she has not been heard of since 1998. thus, the allegations levelled by the complainant against the respondents are not established to summon them as co-accused. The parties are also litigating before the civil court and revenue authorities regarding the transfer of share of Balwinder Singh deceased brother of the complainant in the plot in dispute. However, from the preliminary evidence on file, prima facie no criminal offence is made out against any of the accused as observed by the learned trial court.

12. Law is well settled that criminal law cannot be set into motion as a matter of course by examining only two witnesses. Hon'ble Supreme Court of India in *M/s Pepsi Food Limited vs. Special Judicial Magistrate and others 1998 Criminal Law Journal 1* has held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course by examining two witnesses to support his allegations in the complaint by the complainant. The trial Court has to carefully scrutinize evidence brought on record to find out the truthfulness of the allegations and thereafter pass appropriate order. A similar view has been taken by Hon'ble Punjab and Haryana High Court also in *Arun Jha and another vs. State of Haryana and another 2006 (1) CCJ 527*.

13. No other arguments advanced by counsel for the revisionist.

14. So keeping in view the aforesaid factual and legal position, no illegality or material irregularity has been committed by the learned trial court by dismissing the complaint filed by the complainant-revisionist Dalbir Singh. The present revision petition is devoid of merits

and the same is accordingly dismissed.

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Learned counsel for the petitioner has argued that respondent No. 1 Paramjeet Kaur has left the family in the year 1998 and she never returned back. It is further submitted that the brother of the petitioner/complainant, namely Balwinder Singh, had purchased a plot in the year 2004 in which he had a share to the extent of 6 ½ Marlas, however, Balwinder Singh died on 29.03.2011 and respondent No. 1, by filing an application that she is the only legal heir of Balwinder Singh, being his mother, got the said property transferred in her name by way of mutation (Ex. P-1).

Learned counsel for the petitioner further submitted that respondent No. 2 is the Numberdar who identified accused/respondent No. 1; respondent Nos. 3 and 4 are the Patwari and Kanungo, who signed and verified the mutation and respondent No. 5 is the Naib Tehsildar who attested the same and, therefore, all of them, in conspiracy with each other, have committed the offence.

Learned counsel for respondent Nos. 1, 2, 3 and 5 submitted that respondent No. 1 is the destitute lady and was turned out of her matrimonial home by her father-in-law Surinder Singh and husband Baljeet Singh and since then she is residing with her parents. It is also submitted that respondent No. 1 is the real mother of Balwinder Singh and petitioner Dalbir Singh so there was no impersonation at any point of time by respondent No. 1. It is also submitted that respondent No. 1, being real mother of Balwinder Singh, is the only legal heir of his deceased son as he was unmarried. Learned counsel further submits that both the courts below have rightly dismissed the

complaint as well as revision filed by the the petitioner/complainant and prays for dismissal of the present petition.

Learned counsel for respondent No. 4 has submitted that there is no evidence against respondent Nos. 3 to 5 who are the government officials and they have acted on the verification done by respondent No. 2 who was the Numberdar of the village. It is further argued that from the bare perusal of the preliminary evidence, it is not established that respondent No. 1 has committed any impersonation or forgery as nothing has come on record that the mother of the petitioner had died or was not heard of since 1998, therefore, on the basis of the evidence led by the petitioner, the courts below have rightly held that the same is not worth summoning the respondents/accused persons.

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

Both the courts below have concurrently held that the petitioner has failed to lead any evidence to prove impersonation or forgery at the hands of respondent No. 1. It is also held that it is not proved that respondent No. 1 Paramjeet Kaur is not the mother of deceased Balwinder Singh and the petitioner. Even otherwise, it is the own case of the petitioner that Balwinder Singh was unmarried and died issueless and, therefore, respondent No. 1, being real mother and Class-I legal heir, was entitled to inherit the disputed plot after the death of her son Balwinder Singh.

The petitioner has further failed to prove that during the proceedings when the mutation was sanctioned in favour of respondent No. 1, any impersonation was done.

Therefore, I find no ground to differ with the findings recorded

by the courts below that neither the petitioner/complainant nor his family members has ever filed any suit for declaration that complainant's mother be presumed to be dead since she was not heard of since 1998 and the parties are litigating before the civil Courts as well as revenue authorities, no offence is made out.

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

September 27, 2018

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No