

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

CRM-M-34414-2015

Date of decision:-23.5.2018

Balwant Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.M.L.Saggar, Senior Advocate with
Mr.Rohit Joshi, Advocate
for the petitioners.

Mr.Saurav Khurana, DAG, Punjab.

Mr.S.S. Rangi, Advocate
for respondent No.2.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. has been filed by
petitioners Balwant Singh, Jaswant Singh, Jaswinder Singh, Sikandar
Singh and Jeet Singh seeking quashing of order dated 31.7.2014 passed
by Sub Divisional Judicial Magistrate, Payal and order dated 4.8.2015

passed by learned Additional Sessions Judge, Ludhiana.

Inter alia in the petition, it is contended that respondent No.2 Kulwinder Singh had filed a criminal complaint against the present petitioners on the allegations that Gurmail Singh son of Surjan Singh had entered into an agreement to sell dated 4.6.2005 regarding land measuring 7 Kanals 10 Marlas situated at village Lapran, Tehsil Payal, District Ludhiana for a sum of Rs.2.75 lakhs delivering actual physical possession thereof to the proposed vendees; that it was agreed that the sale deed would be executed within a period of six months after termination of litigation between Gurmail Singh and others i.e. sale deed dated 2.7.1984 executed by Surjit Singh in favour of Surjit Kaur regarding land measuring 15 Kanals 18 Marlas situated at village Lapran; that mutation No.811 was entered and sanctioned in favour of Surjit Kaur and she was delivered possession; that Jaswant Singh and Balwant Singh had knowledge of the agreement to sell dated 4.6.2005; that on 10.3.1987, Jaswant Singh and Balwant Singh had fabricated a will of Surjit Singh regarding the land, getting it registered with Sub-Registrar, Payal; that despite the fact that Surjit Singh had no right to bequeath the land already sold by him on the basis of the registered will, Balwant Singh and Jaswant Singh got the mutation No.1561 entered and sanctioned in their names; that Sikander Singh and Gaja Singh, Lambardars were the witnesses during the mutation proceedings; that Gurdev Singh filed a suit for permanent injunction being attorney of Surjit Kaur regarding the land, however, the suit was dismissed by Civil Judge, Ludhiana vide judgment and decree dated 3.11.2014 and the sale deed dated 2.7.1984 was set aside; that in the complaint it was further

alleged that the accused when came to know about the agreement to sell abused the complainant and threatened him with life.

After recording of preliminary evidence, all the accused had been summoned to face trial for the offences under Sections 420, 465, 468, 471, 506 and 120-B IPC by Sub Divisional Judicial Magistrate, Payal vide order dated 31.7.2014; that the petitioners had challenged the summoning order by way of filing criminal revision petition, however, the same was dismissed by learned Additional Sessions Judge, Ludhiana vide order dated 4.8.2015, which left the petitioners aggrieved and they have approached this Court by way of filing the present petition. According to the petitioners, the impugned orders along with complaint are liable to be quashed on the following grounds:

- (i) that the dispute is of civil nature;
- (ii) that the Will dated 10.3.1987 executed by Surjit Singh and got registered in the office of Sub-Registrar was to come into effect after the death of testator and if some property is alienated by the testator then the Will is not to operate qua the said property;
- (iii) that according to the complainant, he had delivered possession of land measuring 7 Kanals 10 Marlas at the time of agreement to sell dated 4.6.2005, therefore, he cannot say that any loss has been caused to him;
- (iv) that as regards the sale deed executed in favour of Surjit Kaur, as stated by the complainant himself

- Civil suit No.202 dated 23.7.1997 was filed by Surjit Kaur, which had been dismissed by Civil Judge, Ludhiana vide judgment and decree dated 3.11.2004;
- (v)that Surjit Kaur had filed an appeal which was dismissed by the Court of learned Additional District Judge, Ludhiana vide judgment dated 27.8.2007 and the Regular Second Appeal No.941 of 2009 had been filed by Gurmail Singh, which is pending in this Court;
- (vi)that no prima facie offences disclosed against them and the complaint filed is an abuse of process of law and summoning order was passed by the trial Magistrate in a casual manner, the revision petition preferred by petitioners was also dismissed by Additional Sessions Judge, Ludhiana;
- (vii)that the petitioners – Lambardars, who had appeared during mutation proceedings were only to attest the pedigree table before the revenue officials and identify the persons during mutation proceedings or during the registration of documents before the Sub-Registrar, therefore, they cannot be said to have committed any offence.

The petitioners pray that the petition be accepted.

Notice of the petition was issued to the respondents, who put in appearance through counsel.

Respondent No.2 has filed reply controverting the

assertions in the petition contending that the dispute manifestly has overtones of criminal offence forging and fabrication of Will of a person amounts to commission of criminal offence, which had been committed by all the petitioners in connivance with each other. The order passed by the trial Court summoning the accused and order passed by Additional Sessions Judge, Ludhiana dismissing the revision petition are defended as legal and valid while praying for dismissal of the petition.

I have heard learned counsel for the parties besides going through the record.

A perusal of the impugned order passed by Sub Divisional Judicial Magistrate, Payal goes to show that most part of the order is devoted to discussing the allegations in the complaint and evidence adduced by the complainant. The operative part i.e. para No.10 runs as follows:

“It is clear from the oral statement and documentary evidence that Surjit Singh had already sold his property to Surjit Kaur who further sold her land to Gurmail Singh. Hence no question was arises with Surjit Singh to execute will dated 10.3.1987. From the statement of complainant and other witnesses, it stands established that prima facie there are sufficient grounds to proceed against the accused for committing an offence punishable under Sections 420, 465, 468, 471, 506, 120-B IPC. Let all the accused be summoned to face trial for the above said offence for 14.11.2014 on filing of PF and copies of complaint within a week. Summons may be taken dasti, if

required.

The accused have been summoned to face trial merely for the reason that Surjit Singh has already sold his property to Surjit Kaur, who had further sold the same to Gurmail Singh, therefore, there was no occasion with Surjit Singh to execute will dated 10.3.1987. It has nowhere been observed that the will is not a genuine document or that it is a result of forgery and fabrication. Even if it is taken that in the recital of the will, there is mention of the land which testator had already sold to Surjit Kaur that does not go to show commission of any offence since as rightly submitted in the petition the testator can bequeath the property which he owned at the time of his death and not the one which he had already sold during his life time. Though while passing an order summoning the accused, the trial Magistrate is not required to give detailed reasons but then the order must show application of mind as to how the offences for which the accused were being summoned are made out against them. Just by writing that prima facie there are sufficient grounds to proceed against the accused of committing the offence under Sections 420, 465, 468, 471, 506, 120-B IPC without mentioning as to how it was so and which particular accused was being summoned for which offence, the order has been passed. Though the impugned order is quite lengthy but it does not show proper application of mind and the same is not sustainable. Similarly, the order passed by learned Additional Sessions Judge, Ludhiana, also does not stand judicial scrutiny.

Therefore, the petition is accepted, the impugned orders are set aside. However, it is observed that the trial Court may pass a fresh

order in accordance with law in light of the observations made in this order.

23.5.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No