

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-40176-2015
Date of decision: 09.02.2018.

Darshan Singh and another Petitioners

vs.

Smt. Bhagwant Kaur and another Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.P.S.Deol, Sr. Advocate with
Mr. Davinder Bir Singh, Advocate, for the petitioners.

None for respondent No.1.

Mr. Jasdeep Singh Walia, Sr. DAG, Punjab
for respondent No.2-State.

ARVIND SINGH SANGWAN,J.(ORAL)

Prayer in this petition is for quashing of criminal complaint No.51 dated 10.08.2009 (Annexure P9), filed under Sections 419, 420, 467, 468, 471, 506 and 120-B IPC as well as summoning order dated 02.08.2013 (Annexure-P11) and the order dated 12.08.2015 passed by the Revisional Court, dismissing the revision petition filed by the petitioners against summoning order.

Brief facts of the case are that; respondent No.1-Bhagwant Kaur filed a criminal complaint against 8 persons. The petitioners Darshan Singh and Mohinder Singh were arrayed as accused No. 7 and 8 in the said complaint. The allegations in the complaint are that the husband of the complainant, i.e. Nardev Singh, died on 03.03.2009. The complainant has four children and one of her sons, namely, Hari Rattan Singh, is settled in USA and after 1987, he never returned back to India. One daughter of the

complainant is also residing in USA, the 2nd daughter is residing in Chandigarh and the 4th child, i.e. son, Rattan Dev Singh, who was arrayed as accused No.3, is also an NRI and now is residing at Bathinda. Daughter of the complainant has lodged a compliant with the police in USA that his brother Hari Rattan Singh was missing. The said compliant was lodged in the year 1994 and in the year 2002, the police in USA has submitted a report that his whereabouts were not traceable. It is further alleged in the complaint that property of aforesaid son of the complainant, namely, Hari Rattan Singh, is in her possession and she is taking care of the said property. The other son of the complainant i.e. accused No.3-Rattan Dev Singh, in connivance with accused No. 7 and 8, has sold the land of the missing son of the complainant i.e Hari Rattan Singh, on the basis of a fake and forged GPA and said land has been purchased by accused No. 4 to 6. It is also stated that her son, i.e. accused no. 3, has also committed the same fraud with regard to other properties of Hari Rattan Singh situated at Bathinda and Mansa.

Complainant has given a complaint to the police on 22.05.2009 regarding the commission of offence by accused No. 3 to 8, however, no action was taken, as the police is influenced by her son-accused No.3. It is also stated that complainant filed a civil suit on 16.03.2009 regarding the land in dispute against the accused persons and accused No.3 has given a statement that he is going to effect compromise with the complainant and other sisters. It is further stated that the complainant made a written request to SSP, Barnala, on 22.05.2009 but no action was taken and the complaint was filed on 11.06.2009.

In the preliminary evidence, complainant herself appeared as

CW-1 and also examined Nartesh Kaur as CW2, Jagtar Singh as CW3, Jarnail Singh as CW4 and Bant Singh as CW5. She has also placed on record copies of sale deeds No.445 and 446 and, thereafter, the evidence was closed.

Thereafter, the trial Court, vide impugned order dated 02.08..2013 summoned the accused persons, including the petitioners.

The petitioners filed a revision petition before the Revisional Court challenging the summoning order and the Revisional Court, vide its order dated 12.08.2015 dismissed the revision petition.

The present petition has been filed challenging the aforesaid two impugned orders.

Counsel for the petitioners has argued that the petitioners are not the attesting witnesses of the GPA which was allegedly executed by Hari Rattan Singh in favour of his brother-accused No.3, i.e. Rattan Dev Singh, and they are only attesting witnesses to the sale deed dated 29.04.2009 vide which accused No.3-Rattan Dev Singh had sold the property on the basis of aforesaid GPA in favour of accused No.4 to 6. It is further submitted that since accused No.3 was holding power of attorney of his own real brother, there was no reason to disbelieve that the said power of attorney was a fake document. It is also submitted that the petitioners are not the beneficiaries of the sale deeds and being attesting witnesses to the sale deeds, wherein, they have only identified accused no.3 and the purchasers, i.e. accused No.4-Paramjit Singh, accused No.5-Mandeep Kaur accused no.6-Gora Singh. It is also submitted that it is not the case of the complainant that the petitioners being attesting witnesses, have identified any wrong persons as identification of all these four persons is not in

dispute.

Counsel further submits that there is no evidence on record to show that the petitioners had any previous knowledge that the GPA set up by accused No.3 was a fake document.

It is further submitted that when the complaint was filed, the police conducted an inquiry and as per the inquiry report dated 25.08.2009, it was reported as under:-

“Enquiry into the enclosed application was got conducted through Superintendent of Police (Hqrs), Barnala. From the perusal of enquiry report, it has been found that Nardev Singh Dhaliwal husband of applicant Bhagwant Kaur was the famous Advocate of Bathinda, who has huge ancestral property in his name. This property is situated at Village Thikriwala, District Barnala.

Bhagwant Kaur has two sons namely Hairattan Singh and Rattandev Singh. Likewise two daughters namely Nartesh Kaur and Taptesh Kaur. Both the daughters and sons are married. Rattandev Singh and Harirattan Singh are residing in California U.S.A. since a long time. Harirattan Singh is missing from U.S.A prior to 5.2.1994. Regarding his missing, a report stands registered vide case No. 94-39099 dated 10.7.2002, Fresno California U.S.A., attested copy of which is enclosed. Neither Harirattan Singh returned back till date nor it is known whether he is dead or alive.

Nardev Singh Dhaliwal Advocate has executed his will deed dated 10.8.89, in which he wrote that his son Harirattan Singh, who had gone to U.S.A. has not returned back and he neither written any letter to him nor he was seen by his friends or relatives. He himself also went to America, but he was not met him. He has doubted, whether he is alive or otherwise. Copy of Will

deed executed by Nardev Singh duly attested is enclosed.

Nardev Singh Dhaliwal died on 3.2.2009. After his death Rattandev Singh on the basis of Power of Attorney dated 7.9.1983 given by Harirattan Singh, got executed Sale deeds of the land of his ownership measuring 49 kanal 13 marlas and 130 kanal 4-1/2 marlas in the name of his driver Gora Singh, by showing him purchaser and got the signatures of witnesses Mohinder Singh s/o Surjan Singh r/o Handiaya and Darshan Singh Nambardar r/o Thikriwal on the Sale deeds. As recorded in their statements, they were not apprised what he is doing.

As per sale deed No. 445 dated 29.4.2009, it is mentioned in column No. 8 of the conditions that the person who gave Power of Attorney is alive and he did not cancel the Power of Attorney, whereas, as per record Harirattan Singh is missing prior to 5.2.1994 and his whereabouts are not known.

Likewise, as per Sale deed No. 446 dated 29.4.1999, he got the property of his brother donated. In column No.2 of the conditions, it is written that Smt. Mandeep Kaur is looking after him for the so many years and he is happy from her services and she has no children. There is not mentioned that who is Mandeep Kaur and as saying by him that she has no children, is wrong, whereas, she has three daughters. As per rules, the person to whom the property is donated, his presence in the Court is necessary. Whereas, property got donated to Mandeep Kaur through Gora Singh, who is driver of Rattandev Singh, as per rules, the property cannot be donated to anybody on the basis of Power of Attorney. Likewise, it is mentioned at Sr. No.7, the person who is giving Power of Attorney should be alive and he did not get the Power of Attorney cancelled, whereas, Harirattan Singh is missing for the last 20

years. As per Indian Law, if the whereabouts of any persons are not known for 7 years, whether he is dead or alive, then he is considered as dead. In these circumstances, there remained no importance of Power of Attorney given by Harirattan Singh to Rattandev Singh.

Rattandev Singh has executed two Sale deeds dated 29.4.2009 at Village Thikriwal to two different persons, keeping in view the Power of Attorney given by Harirattan Singh, regarding which Smt. Bhagwant Kaur w/o Hardev Singh submitted an application to Deputy Commissioner, Barnala that Intkal of the Sale deeds got made by his son Rattandev Singh may not be entered, regarding which, the Deputy Commissioner, Barnala wrote a letter to S.D.M., Barnala vide his office letter No.320/CEA dated 22.5.09 that Intkal relating to the application of Smt. Bhagwant Kaur be kept pending.

Apart from it, Smt. Bhagwant Kaur filed a case No. 136/09 in the Court of Sh. R.K.Beri, Ld. Civil Judge, Barnala. The Ld. Court on hearing the request of Smt. Bhagwant Kaur through her Advocate, summoned Rattandev Singh for 22.7.09.

The sale deed Nos. 445, 446 dated 29.4.09 got executed by Rattandev Singh on the basis of Power of Attorney dated 7.9.1983 given by Harirattan Singh, whether these sale deeds are genuine or otherwise. In view circumstances mentioned above, from the legal opinion of D.A.(Legal), Barnala, it has been found that 'no criminal case is made out against the respondent'.

No action is required to be taken on the application. Hence the enclosed application is recommended to be filed. Photo copies of Enquiry report and statements are enclosed.

*Sd/-
Sr. Superintendent of Police,
Barnala."*

It is also submitted that civil suit No. 136 dated 11.06.2009 filed by the complainant-Bhagwant Kaur alongwith her two daughters, namely, Nartesh Kaur and Taptest Kaur, against her son Rattan Dev Singh and the purchasers Paramjit Singh, Sharndeeep Kaur and Mandeep Kaur, challenging the aforesaid sale deed, stands dismissed by the Civil Court, vide its judgment and decree dated 20.10.2016, holding that sale deeds executed by Rattan Dev Singh, being GPA of his brother Hari Rattan Singh, in favour of aforesaid purchasers are legal and valid document

It is, thus, submitted that once the civil Court has recorded the finding that GPA and sale deeds are not outcome of fraud, the prosecution of the petitioners is an abuse of law.

Counsel for the petitioners has relied upon **1987 Cr.L.R., 619**, titled as **Sardool Singh and another vs. Nasib Kaur**, where Hon'ble Supreme Court has held that when the question regarding validity of Will is sub judice before the Civil Court, the criminal prosecution on the allegation of the Will being a forged one, cannot be instituted. It is thus, submitted that since the Civil Court has recorded the finding that GPA and sale deed are valid documents, the prosecution of the petitioners is not maintainable.

Counsel for the petitioners has further relied upon **2017 (3) MLJ (Criminal), 146**, titled as **Sanjaybhai Chandulal Parekh vs. State of Gujarat and another**, wherein Hon'ble Supreme Court has held that when basic essential ingredients of dishonest misappropriation and cheating are missing the prosecution under Sections 406, 420 and 120-B IPC is liable to be quashed. In this case, the accused persons were the subsequent purchasers and it was held that they had no knowledge about the genuineness of the GPA.

It is thus submitted that the petitioners believing the GPA to be a genuine document executed by real brother of accused No.3 in his favour, had only attested the subsequent sale deeds.

Counsel further relied upon **2017 (4) RCR (Criminal), 1024**, titled as **Ankur Gupta Vs. State of U.P. and another**, wherein, the Hon'ble Supreme Court has held that where a person is not a beneficiary of transaction between complainant and other accused persons, there is no reason as to why he should face criminal trial for the offence under Sections 406 and 420 IPC.

Despite issuance of notice of motion, no one has appeared on behalf of respondent No.1 and no reply has been filed .

In the reply filed by respondent No.2-State by way of affidavit of DSP, Sub Division, Barnala, it is stated that on the application filed by the complainant dated 22.05.2009, an inquiry was conducted by the Superintendent of Police (Hqrs), Barnala and as per inquiry report, annexed with the petition as Annexure R-1/T, it was found that sale deeds No. 445 and 446 dated 29.04.2009, executed by Rattan Dev Singh on the basis of power of attorney of his brother, were found to be genuine documents.

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

(a) Admittedly, the petitioners are not beneficiaries of sale deeds and they are only the attesting witnesses of the same;

(b) There is no allegation in the complaint that as attesting witnesses to the sale deeds, the petitioners have identified any wrong person, i.e. seller Rattan Dev Singh (on the basis of GPA of his brother) or purchasers i.e. Paramjit Singh, Mandeep Kaur and Gora Singh;

(c) the police on investigation has found that the sale deeds on which the petitioners are attesting witnesses are genuine documents, as per inquiry report (Annexure R-1/T);

(d) Even the Civil Court in civil suit No. 136 dated 11.06.2009, filed by complainant Bhagwant Kaur alongwith her two daughters, vide its judgment and decree dated 20.10.2016, has held that both, i.e. GPA and sale deeds, are not out come of fraud;

(e) Since the petitioners are not attesting witnesses to the GPA, which is stated to be outcome of fraud, in ordinary course, they had reasons to believe that GPA executed in favour of Rattan Dev Singh by his real brother Hari Rattan Singh is genuine document, and believing so, they had identified the parties in the sale deeds, therefore, no *mens rea* is attributed to them to commit any offence.

(f) On the face of it, it was not disputed even as per the trial Court judgment the disputed GPA is held to be a genuine document between the complainant, on one side and her son Rattan Dev Singh, as well as purchasers, on other side and in view of the judgment of **Sardool Singh and another (Supra)**, that the prosecution of the petitioners is not maintainable.

(g) Even from a bare perusal of a complaint, it is alleged that accused No.3 in connivance with the petitioners has committed the offence. However, on the face of it, no such ingredients of fraud or cheating are made out against the petitioners in view of judgment of **Sanjaybhai Chandulal Parekh (supra)**.

For the reasons stated above, this petition is allowed.

The complaint No.51 dated 10.08.2009 (Annexure P9), under

Sections 419, 420, 467, 468, 471, 506 and 120-B IPC as well as summoning order dated 02.08.2013 (Annexure-P11) and order dated 12.08.2015 passed by the Revisional Court, qua the petitioners are quashed.

(ARVIND SINGH SANGWAN)
JUDGE

09.02.2018

smriti

Whether speaking/reasoned Yes/No

Whether reportable Yes/No