

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

1. CRM-M-48542-2017(O&M)

Biaso Devi

.....Petitioner

Versus

State of Punjab

.....Respondent

2. CRM-M-11638-2018 (O&M)

Kamal Kishore

.....Petitioner

Versus

State of Punjab

.....Respondent

Date of decision:31.05.2018

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Ritesh Pandey, Advocate
for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab
for the sole respondent.

Mr. M.K. Dogra, Advocate
for the complainant.

MAHABIR SINGH SINDHU, J. (ORAL)

By this order the above two petitions are being disposed off filed by both the petitioners namely Biaso Devi and Kamal Kishore (mother and son, respectively) arising out of the FIR No.26 dated 27.05.2017 under Sections 417, 420, 465, 467, 468, 471, 193, 196 and 120-B of the Indian Penal Code ('IPC' - for short) registered at Police Station Kanwan Tehsil and District Pathankot.

With the consent of both the parties and for convenience, the

facts of the case are taken out from **CRM-M-48542-2017 (Biaso Devi vs. State of Punjab)**.

The allegation of the prosecution in brief are as under:-

That CRM-M-14409-2017 was filed by complainant Kaushalya Devi wife of Late Tej Ram (mother-in-law of petitioner-Biaso Devi and grand mother of Kamal Kishore) and which was disposed of by this Court vide order dated 27.04.2017 and operating part of the same reads as under:-

“Upon hearing arguments at length for some time and on perusal of the records, the present petition stands disposed off with direction to official respondent No.2 to expeditiously consider and decide the representation (Annexure P-6) moved by the petitioner within the framework of law in view of the guidelines laid down in “***Lalita Kumari vs. Government of U.P. and others (2014) 2 SCC 1***” preferably within a period of one month from the date of receipt of certified copy of this order.”

It is necessary to mention that in the above petition, Senior Superintendent of Police, Pathankot was impleaded as party-respondent No.2 and Kamal Kishore and Biaso Devi were respondents No.4 and 5 respectively. The brief contents of representation (P-6) mentioned in the order dated 27.04.2017 and which is the basis for registration of the present FIR are as under:-

That father-in-law of the complainant-Kaushalya Devi namely Sant Ram had 15 kanal 2 marlas land in village Sarna and he died on 09.01.1983. Her husband Tej Ram died on 02.10.1987 and thereafter her son Palwinder Pal (husband of Biaso Devi) also died on 21.05.1991.

Petitioner-Biaso Devi by preparing a forged Will of Sant Ram in favour of her son Kamal Kishore filed a civil suit on the basis thereof, but they lost before learned Trial Court. Thereafter an appeal was preferred in the Court of learned District Judge, but remained unsuccessful and ultimately filed a Regular Second Appeal in this Court and during the pendency of the RSA, Biaso Devi and Kamal Kishore submitted a fake compromise deed dated 01.08.2009 before this Court and on the basis thereof the RSA was decided in their favour. It is further alleged that neither she was aware about any compromise; nor went to the High Court, but by writing her name at number No.1 of the compromise, a fake thumb impression was affixed and tried to grab the share of her land. On 20.03.2017 she submitted an application in the Police Station Kanwan and thereafter on 29.03.2017 an application was made in the office of SSP, Pathankot, but no action was taken and thereafter she filed a petition under Section 482 Cr.P.C. before this Court and which was disposed off on 27.04.2017. In pursuance of the order dated 27.04.2017, passed by this Court the representation (P-6) was inquired into by the Police and statement of complainant was recorded and she affirmed the allegations levelled in the said representation. Complainant-Kaushalya Devi submitted the photocopies of alleged Will of Sant Ram, decision of learned JMJC, Pathankot dated 08.07.1998, High Court decision dated 05.08.2009 rendered in RSA No.1012 of 2009, compromise dated 01.08.2009 original Fard of land and original affidavit dated 19.03.2013. Statement of one Balkar Singh son of Sardool Singh was also recorded and he corroborated the allegations of the complainant. After inquiry DSP, Sub-division

Dharkalan, Pathankot found that Sant Ram was having the land measuring 15 Kanals 4 Marlas at village Sarna *Had Bast* No.244 Tehsil Pathankot and 13 Kanals 19 Marlas at village Raj Prura *Had Bast* No.252 Tehsil Pathankot and he died on 09.01.1983 leaving behind two sons and three daughters namely Tej Ram, Chaman Lal (sons), Mohindro, Samitri and Tej Kaur (daughters). Tej Ram was married with Kaushalya Devi (complainant) and he had one son and three daughters namely Palwinder Pal (son), Kusum, Kanta and Darshana (daughters) and he also died on 09.10.1987. Palwinder Pal was married with Biaso Devi and they have two sons and two daughters namely Kamal Kishore, Sohan Lal (sons), Rimpi and Jyoti (daughters). Palwinder Pal also died on 21.05.1991. Sant Ram's daughters namely Mahindro, Samitri and Tej Kaur sold their share measuring 9 kanals 1 marla to Balbir Dass and Dewan Singh and Balbir Dass had further sold his share of 3 kanals 1 marla to one Karam Singh on 18.12.2001. Similarly, Diwan Singh sold his share measuring 6 kanals to one Balkar Singh on 28.12.2001. Biaso Devi, on the basis of one unregistered Will dated 15.09.1982 alleged to be executed by Sant Ram got transferred all his land in favour of her son-Kamal Kishore and tried to enter the mutation in their favour, which was opposed by complainant and other heirs. Thus, mutation could not be entered and which led to filing of Civil Suit No.534 dated 26.11.1991 before learned Trial Court at Pathankot, but the same was dismissed on 28.07.1998. Thereafter an appeal was preferred by Kamal Kishore before the Court of learned District Judge, which was also dismissed by learned Additional District Judge vide judgment and decree dated 16.10.2008. Thereafter,

Kamal Kishore filed CM No.8561-C-2009 in RSA No.1012 of 2009 in which complainant along with other respondents were made party. It is further revealed that neither the complainant appeared before this Court; nor she engaged any counsel; but Biaso Devi and Kamal Kishore in collusion and fraudulent manner with an intention to defraud the other heirs by hatching the conspiracy prepared a false compromise dated 01.08.2009 and submitted the same before this Court and on the basis thereof, the Chaman Lal son of Sant Ram was given 1/5th share of inheritance of Sant Ram and remaining 4/5th share was given to Kamal Kishore and the compromise was submitted in the High Court and thereafter the RSA was withdrawn as per order dated 05.08.2009 passed by this Court. Consequently, Kamal Kishore and Biaso Devi got entered the mutation of the land of village Raj Prura in the name of Kamal Kishore and Chaman Lal, but when they tried to enter the mutation of land situated in village Sarna, then owner of the land i.e. complainant and Balkar Singh came to know about the matter and they pursued the same to oppose and which is still pending. In the inquiry conducted by the Police it has been revealed that neither the complainant appeared in the RSA before this Court, nor appointed any counsel or affixed any thumb impression in the compromise, nor given any GPA to anybody. Biaso Devi and Kamal Kishore in connivance with each other in a fraudulent manner to grab the land of complainant and other heirs prepared false compromise dated 01.08.2009 before this Court and got entered the mutation of land of complainant of village Raj Prura in the name of Kamal Kishore as well as the land situated at village Sarna. It has also

been found that thumb impression of the complainant was to be verified from the Forensic Science Laboratory as well as original document of compromise attached in CM No.8561-C-2009 in RSA No.1012 of 2009 and consequently the FIR was registered.

It is contended by learned counsel for the petitioner(s) that FIR has been registered on the allegation that petitioner-Biaso Devi along with petitioner-Kamal Kishore has played a fraud while disposing off RSA No.1012 of 2009 by this Court vide order dated 05.08.2009 thereby producing the forged and fabricated compromise deed of the complainant and the present FIR has been registered after considerable delay of more than 8 years i.e. on 27.05.2017. It is further contended that the petitioner-Biaso Devi is in custody since 28.05.2017 and she was granted the concession of interim bail on two occasions by this Court and petitioner-Kamal Kishore was also granted concession of interim bail vide order dated 18.05.2018 and they never misused the concession of same. It is further contended that investigation has been completed and there are total 35 PWs, as such trial would take long time to be concluded. It is further contended that order passed by this Court in RSA No.1012 of 2009 has attained finality and till date the same has not been challenged by either of the parties. It is further contended that one Balkar Singh, who was the subsequent purchaser, also filed application for recalling of order dated 05.08.2009 but remained unsuccessful as his application was disposed off vide order dated 24.02.2011. Therefore no useful purpose would be served by keeping the petitioners behind the bars.

On the other hand, learned State counsel as well as learned

counsel for the complainant have opposed the present bail application(s) on the premises that the petitioner(s) have actively participated and produced the forged and fabricated compromise deed of the complainant in collusion with each other and hatched a conspiracy while producing the alleged compromise deed dated 01.08.2009 and grabbed the land of the complainant by playing a fraud even with this Court and in case the petitioners are released on bail, they would threaten the complainant, who is more than 80 years old widow and there is a definite apprehension that both the petitioners will pressurise the prosecution witnesses also and thus their release on bail is not warranted for the fair trial and prayed for dismissal of the same.

Heard both sides and perused the paper-book.

Unfortunately the dispute is within the family as the petitioner-Biaso Devi is daughter-in-law of the complainant and Kamal Kishore is the grandson. Therefore, this Court has shown the maximum leniency and granted the concession of interim bail to the petitioner Biaso Devi on two occasion as well as to Kamal Kishore once, so that the matter can be resolved between the parties and reference can be made to the orders dated 05.03.2018 and 18.03.2018 which are as under:-

CRM-M-48542-2017

Order dated 05.03.2018 (Biaso Devi)

“Learned State Counsel, on instructions from ASI Balkar Singh, submits that the challan stands presented and charges are yet to be framed. He also submits that the petitioner is in custody since 29.07.2017.

Sohan Lal, son of the petitioner, is present in Court and he has

stated that there are chances of compromise between the parties, but the matter is to be negotiated by his mother as he has already lost his father. Copy of the Driving Licence of Sohan Lal is retained on record as 'X'.

If that is so, let there may be an interim bail so that the parties can explore the possibility of compromise, if any, between them. Consequently, without going into the merits of the petition for seeking regular bail, the petitioner is granted four weeks interim bail subject to the satisfaction of learned trial Court and she will surrender before the Jail Authorities concerned after expiry of the said period.

Adjourned to 04.04.2018 for further consideration.”

Order dated 18.05.2018 (Biaso Devi)

“The instant application has been filed under Section 482 Cr.P.C. for granting interim bail to the petitioner as she wants to settle the matter with the complainant.

For the reasons enumerated in the application, the same is allowed and the petitioner is granted interim bail with effect from 22.05.2018 to 26.05.2018 subject to the satisfaction of learned trial Court and she will surrender before the Jail Authorities concerned after expiry of the said period.”

CRM-M-11638-2018

Order dated 18.05.2018 (Kamal Kishore)

“The instant application has been filed under Section 482 Cr.P.C. for granting interim bail to the petitioner as he wants to settle the matter with the complainant.

For the reasons enumerated in the application, the same is allowed and the petitioner is granted interim bail with effect from 22.05.2018 to 26.05.2018 subject to the satisfaction of learned trial Court and he will surrender before the Jail Authorities concerned after expiry of the said period.”

Despite the interim bail granted to the petitioners, the matter could not be resolved between the parties. Even resort was also made to mediation on the request of the petitioners, but remained unsuccessful on account of the adamant behaviour of petitioner-Biaso Devi as is clear from report dated 25.05.2018 submitted by Mediator and which reads as under:-

“Mediation remained unsuccessful as the behaviour of petitioner-Biaso Devi was adamant not to make any compromise. Let the case file be sent back to Hon'ble Court for further adjudication.”

During the course of hearing, learned State counsel has produced the copy of FSL report dated 04.01.2018 received from Director, Finger Print Bureau, Phillaur (Punjab) which is taken on record and copy thereof has been supplied to the opposite side and the opinion given by him is as under:-

“The impression marked Q (Life size photo enclosed) on the face of third leaf (partly interfered with by the writing) of a compromise Deed between Kamal Kishore verus Smt. Kaushalya Devi and others dated 01-08-2009 is partly ink smudged but otherwise it is comparable and is different from the ten digit impressions of Smt. Kaushalya Devi on her sample paper as the ridge characteristic details of the case print do not tally with the impressions of the above said persons.”

Perusal of the relevant part of the FSL report clearly reveals that, the thumb impression of the complainant-Kaushalya Devi is distinct from the thumb impression appended on the compromise deed. Thus prima facie it appears that the thumb impressions of complainant was affixed by playing a fraud at the time of disposal of RSA No.1012 of

2009 by this Court on 05.08.2009.

The law is well settled by Hon'ble Supreme Court that a judgement or decree obtained by fraud is nullity and nonest in the eyes of law and the same can be challenged even in the co-lateral proceedings also and the opening paragraphs of the judgment rendered by Hon'ble Supreme Court in case titled as **S.P. Chengalvaraya Naidu (Dead) by LRs vs. Jagannath (Dead) by LRs and others, 1994(1) SCC 1** reads as under:-

“Fraud avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

Since there are specific allegations of conspiracy and fraud played by both the petitioners against the complainant and they did not spare even this Court also while daring to procure a favourable order on the basis of fake thumb impression of complainant-Kaushalya Devi on the compromise dated 01.08.2009 attached with CM No.8561-C-2009 in RSA No.1012 of 2009.

In view of the above discussion, the argument on behalf of the petitioners that there is considerable delay in lodging the FIR is of no consequences; rather it becomes the duty of this Court that such types of greedy litigation should be discouraged at all levels with the stern hand to

uphold the majesty of law and to maintain the purity of judicial proceedings, otherwise people will make the mockery of the system.

The argument that order dated 05.08.2009 passed by this Court in RSA-1012-2009 has attained finality is not acceptable, in view of the fact that a CM No.11067-C-2010 was filed by Balkar Singh and Karan Singh (purchasers from legal heirs of Sant Ram), but the same was disposed off by this Court vide order dated 24.02.2011 with liberty to the applicants to seek other remedy as per law and an SLP No.19604-05 of 2012 against that order is stated to be pending before Hon'ble Supreme Court. Thus it is wrong to say that the order dated 05.08.2009 passed by this Court has become final.

Since the FSL report has already been received in this case and the same is *per-se* admissible in evidence in view of Section 293 of the Cr.P.C. Even the charges have also been framed by learned Trial Court on 26.03.2018 and the case is fixed for prosecution evidence. There are allegations by the respondents that the complainant being an old lady is apprehending threat at the hands of the petitioners and in view of the gravity of the charges and seriousness of the matter the petitioners may even influence the prosecution witnesses also.

As already discussed above, the petitioner-Biaso Devi was granted the concession of interim bail on two occasions and petitioner-Kamal Kishore was granted concession of interim bail once to settle the matter amicably with the complainant; but the report of Mediator reproduced hereinabove reveals that attitude of petitioner-Biaso Devi remained “adamant” and thus the petitioners are not inclined to settle the

issue with the old aged widow and she is being unnecessary harassed by the petitioners.

Consequently, this Court does not find any merit in the present petition(s) and the same are dismissed.

The above observations may not be construed as an expression of opinion on the merits of the present case.

As both the petitioners are stated to be in custody since 28.05.2017, therefore this Court deems it appropriate to request the learned Trial Court to conclude the trial expeditiously and preferably within a period of six months from the date of receipt of certified copy of this order.

**(MAHABIR SINGH SINDHU)
JUDGE**

31.05.2018
Gaurav Sorot

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |