

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

**CRR-2349-2014 (O&M)
Date of decision: 21.05.2018**

Amar Kaur

...Petitioner

Versus

Devinder Singh and others

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. D.S. Gurna, Advocate
for the petitioner.

Mr. Puneet Singla, Advocate for
Mr. Rakesh Chopra, Advocate
for respondents No.1 to 6.

Mr. Dinesh Ghai, Advocate
for respondents No.7 to 9, 11 & 12.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the order dated 31.05.2014 passed by the trial Court, vide which the respondents-accused were discharged in complaint case No.22 dated 30.03.2006 titled as Amar Kaur Vs. Devinder Singh and others, filed under Sections 420, 421, 423, 424, 427, 465, 467, 468 of the Indian Penal Code (for short 'IPC') read with Section 120-B IPC, at Police Station Sirhind.

Brief facts of the case are that the petitioner filed a complaint against the respondents with the allegations that she is joint owner of land comprising in khewat/khatoni No.7/31, khasra Nos.7//8 (5-1), 12 (4-16), 13 (9-14), 17 (5-10), 18 (9-8), (24 (9-10), measuring 43 kanals 19 marlas,

situated at Village Alipur Sodhian, Tehsil and District Fatehgarh Sahib. It is further alleged in the complaint that accused No.1 Devinder Singh had filed an application for partition of the joint land comprised in khewat No.5 and the said application was decided on 26.07.2005 and a Sanad Taqseem by way of partition of the land was prepared by accused No.14 Gurmander Singh, Tehsildar, Fatehgarh Sahib. It is further stated that in fact the khasra numbers of khewat No.7, as detailed above, were not mentioned in Sanad Taqseem i.e. the order of partition dated 26.07.2005, as accused No.14 Gurmander Singh Tehsildar had forged Map 'A' with the help of accused No.15 and 16, who are Kanungos, by including the land comprised in khewat No.7, as detailed above, though the same was subject matter of the partition application filed by her. It is further stated that the conspiracy between accused in preparation of documents came to the notice of the petitioner, when she filed an application for partition regarding khewat No.7 that the respondents have wrongly included the same in the partition proceedings of khewat No.5 and despite having moved a complaint to the police, no action was taken.

In preliminary evidence, the petitioner herself appeared as CW1 and produced the documents as Ex.P1 to Ex.P8 and the trial Court, vide order dated 17.07.2007, summoned the accused persons for commission of offence under Sections 420, 467, 468 IPC read with Section 120-B IPC on the basis of preliminary evidenced led by the petitioner.

The trial Court, while summoning the respondents-accused, has held that as per Sanad Taqseem (Ex.P5), partition of land measuring 574 kanals 13 marls was ordered amongst four co-owners and land measuring 43 kanals 19 marlas did not figure in the Sanad Taqseem, as the same was

wrongly taken into account for the purpose of allocating the shares of different co-owners. It was further held that as per Ex.P6, in addition to land measuring 574 kanals 13 marlas, land measuring 43 kanals 19 marlas was also added and this was a wrong act on the part of the accused, as share of the complainant in 43 kanals 19 marlas was not ordered to be partitioned in the Sanad Taqseem Ex.P5.

Thereafter, the respondents appeared before the trial Court and faced the trial.

It is worth noticing here that the respondents filed CRM-M-49247-2007, challenging the summoning order, which was dismissed as withdrawn vide order dated 25.08.2011, with liberty to raise all the pleas before the trial Court at the appropriate stage.

Thereafter, the trial Court, vide impugned order dated 31.05.2014, at the stage of framing of charge, after hearing counsel for both the parties, discharged the respondents-accused, holding that no prima facie case is made out for framing of charges. The operative part of the order passed by the trial Court reads as under: -

“I have heard the learned counsels for the parties and have gone through the case file carefully. The only grievance of the complainant in this case is with regard to inclusion of the land bearing Khewat No.7 in Naksha ‘H’ prepared by the accused Nos.14 to 16 as an act consequential to order of partition in respect of the land bearing Khewat No.4. Sanad Taqseem in respect of the land covered by Khewat No.4 has been brought on record as Ex.P5 which specifically refers to the land

measuring 574 Kanal 13 Marlas only and on the other hand the copy of Naqsha 'ॠ' brought on record as Ex.P6 shows that the land measuring 574 Kanal 7 Marlas only has been distributed to the co-sharers with no allotment in favour of the complainant because admittedly she had sold away her share in the said Khewat and which aspect has not at all been disputed by her nor is she raising even a little finger in so far as non-allocation of any sharer to her in respect of the land bearing Khewat No.4 is concerned. No doubt, after allocation of 574 Kanal 7 Marlas of land of Khewat No.4 to the co-sharers found entitled to such allocation, the other land bearing Khewat No.7/31 and 47/97 has also been mentioned at Page no.6 of Naqsha 'ॠ', but there is no allocation of any part of land out of the said Khewat made in Naqsha 'ॠ' placed on record as Ex.P6 and after the total allocation of 574 Kanal 7 Marlas of Khewat No.4, there is no further allocation to any of the co-sharers. Apart from the fact of non-allocation of any land out of this Khewat to any co-owner/co-sharer, even the inclusion of the land bearing Khewat No.7/31 and 47/97 under-neath the allocated total land of 574 Kanal 7 Marlas of Khewat No.4 in Naksha 'ॠ' has since been set right vide orders dated 30.5.2006 and Naksha 'ॠ' copy of which has been placed on record as Ex.P6 has since been set aside vide the same orders passed on 30.5.2006 passed much prior to even passing of summoning orders in the instant case and the proceedings for partition of Khewat No.7 are still in

progress as has been admitted by the complainant herself while facing the cross-examination at the hands of the accused recorded on 18.9.2013 wherein she has clearly stated that the partition proceedings in respect of the land bearing Khewat No.7 are still pending. Not only this, it has also come on record from the mouth of the complainant that she is still continuing in possession of the same land in which she was earlier in possession. This clearly shows that the inclusion of land bearing Khewat No.7 underneath Naksha 'ॠ' was nothing but the result of mistake, inadvertence and oversight as there is no evidence available on record with regard to any conspiracy amongst the accused and such mistake has since already been rectified by setting aside Naksha 'ॠ' Ex.P6 which forms the sole foundation of grievance as raised by the complainant in this complaint. As the partition proceedings in respect of Khewat No.7 are admittedly pending adjudication, there is no question of the complainant being deprived of her share or any part thereof in respect of the said land bearing Khewat No.7 as has been complained by her.

Apart from the noted factual position of the case, it has also to be kept in mind that the Assistant Collector 1st Grade while passing the order of partition and preparing Naksha 'ॠ' in the case, acted in discharge of his official duties as the conduct partition proceedings under the Land Revenue Act is a quasi judicial function for which the accused Nos.14 to 16

being public servants cannot be prosecuted under Section 420/467/468 of IPC without prior sanction under Section 197 of Cr.P.C. as per law laid down by our own Hon'ble High Court in the case of 'Lal Chand Vs.Sukhwinder Singh Dhillon' reported as 2008(1) RCR (Criminal) Page 258. Not only this, accused No.14 while conducting the Partition proceedings in exercise of the powers under the Land Revenue Act acted as a Judge and thus not amenable to prosecution on the ground of wrong inclusion of the land of other Khewat also which was not the subject matter of partition proceedings pending before him and which mistake has since been rectified even prior to passing of summoning order in this complaint. Reference in this regard can be made to the provisions of Section 3(1) of the Judges (Protection) Act, 1985 and a Judgment of Hon'ble High Court of Madhya Pradesh in the case of Balram Har Parsad Choubey Vs.Aswani Kumar Yadav reported as 2002(1) RCR(Criminal) Page 31 and another Judgment by our own Hon'ble High Court in the case of 'Gayatri Jain Vs. State of Punjab' reported as 2006(1) Criminal Court Cases Page 266 wherein it has been held that even in case the order is passed against law by the Authority in exercise of power vested in him, such an authority comes within the definition of 'Judge' under Section 2 of the Judges Protection Act, 1985 and is not amenable to prosecution. The same view has also been reiterated in another Judgment rendered by our own Hon'ble High Court in the case

of ‘Jarnail Singh Vs. Khushbakht Rai Kora and others’ reported as 2009(3) RCR(Criminal) Page 261 wherein also it has been held that an Executive Magistrate even if passing a wrong order, cannot be prosecuted as his action is protected under the Judges Protection Act, 1985.

In the light of above discussed factual position vis-a-viz. law on the subject and in the absence of any evidence with regard to any collusion or conspiracy amongst the accused for including the land of Khewat No.7 in Naksha ‘ॡ’ prepared in partition proceedings of Khewat No.4 and which Naksha ‘ॡ’ has since already been set aside and proceedings qua Khewat No.7 admittedly still pending adjudication, the contention of the complainant that she has been deprived of any of her property cannot be sustained and no worthwhile ground for framing of any charge in the case is made out since the complainant has failed to satisfy the ingredients of Section 420/467/468 of IPC for want of any evidence as to inducement on the part of the accused or anyone of them or preparation of any false document by any of the accused with intent to defraud or cheat the complainant. Accordingly, finding no prima facie case against the accused worth framing of charge, the accused in the case stand discharged and the complaint of the complainant is hereby dismissed.”

Learned counsel for the petitioner has submitted that the action of the respondents, in including the land comprising in khewat No.7, in Map

‘A’, prepared by accused No.14 to 16, is subsequent to the order of partition regarding land comprised in khewat No.4 and therefore, description of the land, as given in Map ‘A’ Ex.P6, is not in consonance with the Sanad Taqseem Ex.P5 and the official respondents, in connivance with the other co-sharers, have committed offence punishable under Sections 420, 421, 423, 424, 427, 465, 467, 468 IPC read with Section 120-B IPC, as they have tried to usurp the land of the petitioner.

In reply, learned counsel for the respondents have submitted that vide order dated 30.05.2006, the mistake was corrected and Map ‘A’ Ex.P6 was set aside vide aforesaid order dated 30.05.2006, much prior to passing of the summoning order, as it was inadvertent mistake committed by the revenue officials. It is further submitted that it is own case of the petitioner that the partition proceedings of Khewat No.7 are still in progress as admitted by her in her cross-examination dated 18.09.2013 that the partition proceedings of Khewat No.7 are pending. It is also admitted by the petitioner that she is in possession of the same land, which was in her possession prior to partition and therefore, inclusion of land bearing khewat No.7 in Map ‘A’ was on account of an inadvertent mistake and the same has been corrected and no prejudice has been caused to the petitioner.

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

The allegations of the petitioner that Map ‘A’ Ex.P6 has been prepared subsequent to Sanad Taqseem Ex.P5 by including the land comprising in khewat/khataun No.7/31 and this action of the respondents amount to commission of offence punishable under Sections 420, 467, 468

IPC read with Section 120-B IPC, however, it is a matter of record that Map 'A' has been set aside by the said Court vide order dated 30.05.2006 and the same was done much prior to passing of the summoning order.

The complainant herself has filed an application for partition of the land comprised in khewat No.7 and therefore, inclusion of land bearing khewat No.7 in Map 'A' was otherwise proved to be an inadvertent mistake, which was later on corrected by the revenue officials/accused. The petitioner could not prove that any prejudice was caused to her regarding this land, as she admitted in her cross-examination that she is continuing in possession over the land prior to partition and therefore, I find no illegality in the findings recorded by the trial Court that inclusion of land bearing khewat No.7 in Map 'A' was nothing but a result of inadvertent mistake or oversight.

Even otherwise, Assistant Collector 1st Grade, while passing the order of partition and preparing Map 'A', had acted in discharge of his official duty, in exercise of powers assigned to him under the Punjab Land Revenue Act, which are quasi-judicial in nature. Therefore, the trial Court has rightly held that accused No.14 to 16, being the public servants, cannot be prosecuted without prior sanction under Section 197 Cr.P.C. in the light of the judgment passed by this Court in **Lal Chand Vs. Sukhwinder Singh Dhillon Tehsildar, 2008 (1) RCR (Crl.) 258.**

I agree with the findings recorded by the trial Court that as per Section 3(1) of the Judges (Protection) Act, 1985, in the light of judgment of this Court in **Jarnail Singh Vs. Khushbakht Rai Kora and others, 2009 (3) RCR (Crl.) 260, Smt. Gayatri Jain Vs. State of Punjab, 2005 (2) RCR**

(CrI.) 535, an Executive Magistrate is also protected under Section 3(2) of the Judicial Officers Protection Act, 1850, as he has discharged the judicial function and therefore, the complaint against accused No.14 to 16 is not maintainable.

In view of the above, it is apparent on record that from the bald statement of CW1, it is not proved that there was any conspiracy amongst the accused persons to include the land of khewat No.7 in Map 'A', which was prepared during the partition proceedings of the land comprised in khewat No.4, as the said Map 'A' has already been set aside and proceedings qua the land comprised in khewat No.7 are still pending adjudication. Prima facie, no case is made out to frame charge against the respondents under Sections 420, 467, 468, IPC read with Section 120-B IPC, therefore, I find no reason to set aside the impugned order passed by the trial Court.

Petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

21.05.2018
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Whether speaking/reasoned Yes/No

Whether reportable: Yes/No