

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

Sr. No.231

CRR-3021-2014 (O&M)
Date of decision : 01.05.2018

Harmeet Singh

..... Petitioner

VERSUS

Dhian Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. R.K. Handa, Advocate, for the petitioner.

SUDHIR MITTAL, J.

The petitioner-complainant allegedly purchased 1 kanal land out of khasra No.68/12/1 (3 kanals and 11 marlas of land) in the revenue estate of Manimajra, Chandigarh, vide registered sale deed dated 10.09.1992. According to him, a specific parcel of land was purchased by him out of land measuring 3 kanals and 11 marlas and possession was also handed over on the date of sale. The sale deed was executed by respondent No.2 as guardian of his sons, namely, Rahul Khanna, Manav Khanna and Atul Khanna. Subsequently, respondent No.2 sold 5 marlas of land to one Prakash Kaur wife of Sukhdev Singh vide registered sale deed dated 10.12.1992. An allegation has also been made that the land purchased by the complainant was further sold to some other persons and the said persons tried to interfere in his possession, which necessitated the filing of a civil suit for injunction. The suit was however, dismissed because respondent No.2 and respondent No.1 made false statements on

oath before the civil Court. Thus, an application under Section 340 Cr.P.C was filed for prosecution of the respondents.

The trial Court examined the preliminary evidence adduced by the petitioner and held that the record did not suggest any false statement was made by the respondents and rejected the application. The appeal has also been dismissed. Hence, the present revision petition.

Learned counsel for the petitioner contends that respondent No.1 was a Patwari and did not have the authority to conduct a demarcation. Thus, the demarcation report submitted on the record of the civil Court as Exhibit-D2 was one submitted and prepared by a person incompetent to do so. Respondent No.1 also appeared as a witness to prove the said demarcation report. This, according to him amounted to intentionally giving false evidence on oath. Thus, proceedings under Section 340 Cr.P.C should have been initiated against him. Since respondent No.1 appeared as a witness at the instance of respondent No.2, he was also equally liable. The Courts below were in error in rejecting the application moved by the petitioner under Section 340 Cr.P.C. Further, the statement of the petitioner by way of preliminary evidence was sufficient to summon the respondents. This aspect of the matter has been completely ignored by the Courts below and therefore, their judgments are erroneous.

Section 340 Cr.P.C is reproduced hereinbelow:-

“Section 340:- Procedure in cases mentioned in section 195:- (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b)

of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- [\(a\)](#) record a finding to that effect;
- [\(b\)](#) make a complaint thereof in writing;
- [\(c\)](#) send it to a Magistrate of the first class having jurisdiction;
- [\(d\)](#) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- [\(e\)](#) bind over any person to appear and give evidence before such Magistrate.

[\(2\)](#) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

[\(3\)](#) A complaint made under this section shall be signed,-

- [\(a\)](#) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
- [\(b\)](#) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorize in writing in this behalf.

[\(4\)](#) In this section, "Court" has the same meaning as in section 195."

A perusal thereof shows that the Court could send a case to a Magistrate of the First Class after recording a finding that an offence under Section 195(1)(b) Cr.P.C appears to have been committed and the same needs to be inquired into. For recording such a finding, it is necessary to conduct a preliminary inquiry. If the preliminary inquiry

does not lead to a conclusion that any such offence appears to have been committed then the concerned Court will not take any further action.

In the present case, the trial Court permitted the petitioner to lead his preliminary evidence and passed an order after taking the said evidence into consideration in totality. Thus, it is wrong to contend that the oral statement of the petitioner alone was sufficient and should have been relied upon by the trial Court to record a finding that it appeared that an offence referred to in Section 195(1)(b) Cr.P.C. had been committed.

It is not in dispute that respondent No.1 was a Kanungo at the time he submitted the demarcation report Exhibit D2 and appeared as a witness to prove the same. This is clear from the grounds of revision, where it is so mentioned. Thus, the argument raised that respondent No.1 was a Patwari at the relevant time, is contrary to the record and deserves to be rejected. Consequently, it cannot be said that an incompetent person had conducted the demarcation.

Both the Courts below have examined the evidence on record and have returned a finding that there is no proof of the respondents having deposed falsely on oath in civil suit. Learned counsel for the petitioner has failed to show that this finding is perverse.

In view of the above, no ground is made out to interfere with the impugned order dated 17.08.2010, passed by the JMIC, Chandigarh and the judgment dated 13.05.2014, passed by the Addl. Sessions Judge, Chandigarh, in exercise of revisional jurisdiction.

Accordingly, revision petition is dismissed.

(SUDHIR MITTAL)
JUDGE

01.05.2018

Ramandeep Singh

Whether speaking / reasoned

Whether Reportable

Yes / No

Yes/ No