

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

CRR-3634-2016

Date of decision:-14.5.2018

Ajaib Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present: Mr.B.S. Baath, Advocate
for the petitioner.

H.S. MADAAN, J.

Accused Baldev Singh, Kulwant Singh, Kirpal Singh, Harvinder Singh, Gurnam Singh and Satnam Singh having been booked in FIR No.179 dated 2.12.2005, under Sections 420, 467, 468, 471 and 120-B IPC, registered with Police Station Sri Hargobindpur faced trial by Judicial Magistrate Ist Class, Batala. However, they were acquitted by the trial Court giving them benefit of doubt. The complainant had preferred an appeal against the said judgment passed by the trial Magistrate, which was assigned to learned Additional Sessions Judge, Gurdaspur, who vide judgment dated 3.6.2016 learned Additional Sessions Judge, Gurdaspur affirmed the judgment passed by Judicial Magistrate ist Class, Batala and

dismissed the appeal.

Feeling aggrieved, the complainant has approached this Court by way of filing the present revision petition.

Briefly stated, facts of the case as per prosecution story are that Naib Tehsildar, Sri Hargobindpur had sent a complaint to the police stating therein that one Ajaib Singh son of Balwant Singh, resident of village Cheema Khudi had submitted an application in his office to the effect that said Ajaib Singh along with his brothers Bachan Singh and Ajit Singh had taken a chunk of land measuring 76 Kanals 8 Marlas situated at village Cheema Khudi from one Gurbax Singh son of Nihal Singh by way of mortgage and their names are being reflected in the khasra girdawari being in possession of that land since then; that Gurbax Singh had expired and his estate devolved upon Ajaib Singh, Kirpal Singh, Baldev Singh and Jagdev Singh; that mutation was accordingly sanctioned in their favour, however, Baldev Singh and Kirpal Singh got registered false mortgage deeds by forging jamabandies in connivance with marginal witnesses.

The Naib Tehsildar had forwarded the copies of the relevant to the police with a request to register formal FIR stating that he was doing so under the instructions from Deputy Commissioner, Gurdaspur.

After registration of the FIR, the matter was investigated. The accused were arrested in this case. After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Batala.

On presentation of challan in the Court of Judicial Magistrate

Ist Class, Batala, he supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Batala finding that charge for offences under Sections 120-B, 420, 467, 468 and 471 IPC was disclosed against all the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of its evidence, the prosecution had examined as many as six witnesses.

The first witness examined by the prosecution happened to be Ajaib Singh as PW1, who supported the prosecution story on material aspects.

PW2 Nirmal Singh, Registration Clerk, Tehsil Sri Hargobindpur identified signatures of Naib Tehsildar on the communication No.566 dated 27.9.2005 addressed to SSP, Batala for the purpose of registration of the case. He had identified signatures of Naib Tehsildar on another letter dated 22.9.2005 adding that he had brought the original record of mortgage deed dated 17.3.2005 executed in favour of State Bank of India, Branch Qadian by Kirpal Singh son of Gurbax Singh. He also proved the second mortgage deed No.2082 dated 14.2.2005.

PW3 Jugraj Singh supported the prosecution story on material aspects.

PW4 Hardev Singh, Sub-Inspector (Retd.), who had carried out the investigation in this case deposed in that regard.

PW5 Naib Tehsildar, Ajit Singh appearing as PW5, the

complainant in this case deposed as per the prosecution story.

PW6 Manjit Singh, Clerk, BDPO Office, Gurdaspur deposed regarding issuance of letter by Deputy Commissioner to Sub-Divisional Magistrate, Batala.

Thereafter, the prosecution evidence was closed by Court order.

Statements of accused were recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against them submitted that they were innocent and had been falsely involved in the case.

In defence evidence, accused tendered into evidence copy of order dated 7.1.1997 passed by Financial Commissioner, Punjab, Chandigarh as Ex.D2.

After hearing arguments, the learned trial Court had acquitted the accused of the charge framed against them. The concluding para of discussion by the trial Court is as under:

Furthermore, it is the case of prosecution that mutation entry No.371 was entered in favour of Ajaib Singh, on the basis of mortgage deeds executed by Gurbax Singh in favour of Ajaib Singh and that mutation entry does not find mention on the jamabandi produced by accused persons at the time of registration of mortgage deeds. During the course of defence evidence, learned defence counsel has placed on record certified copy of order dated 7.1.1997 passed by Financial Commissioner (Relief and Resettlement)

Punjab, Chandigarh in revision preferred by accused Kirpal Singh and Baldev Singh challenging the mutation entry No.371. Perusal of order reveals that Financial Commissioner has set aside the mutation No.371, on the basis of which accused persons are being prosecuted. Further perusal of jamabandi Ex.PW5/C reveals that entry in favour of complainant Ajit Singh and Ajaib Singh showing them to be mortgage of the land in dispute has been interpolated. It is not to be forgotten over here that jamabandi Ex.PW5/C has been placed on record by concerned Naib Tehsildar (PW-5) claiming it to be a genuine, copy of jamabandi register being maintained in the offence. Therefore, it stands clearly substantiated that when mutation entry No.371 had already been set aside by Financial Commissioner way back in the year 1997, then even if the same does not find any mention in the jamabandi produced by accused persons (Ex.D-1) in the year 2005, it does not make the jamabandi to be a forged document and furthermore interpolation on the jamabandi produced from the official record also substantiates the fact that it is the Halqa Patwari, who might have issued the jamabandi Ex.D1 to the accused persons and by no stretch of imagination, accused persons could be supposed to be aware of the interpolation in the official record being maintained in the office of Naib Tehsildar himself.

Being aggrieved by the said order, the complainant has filed an appeal in the Court of Sessions, however, the same was dismissed, which left the complainant aggrieved and he has approached this Court by filing the present revision petition.

I have heard the learned counsel for the petitioner besides going through the records.

Learned Additional Sessions Judge, Gurdaspur while disposing of the appeal observed as under:

It was incumbent upon the prosecution to prove as to who had forged Jamabandi Ex.D1 to obtain the loan. Even it had not come in evidence whether said Jamabandi Ex.D1 was issued by the revenue authorities wrongly or it was forged by accused themselves. It would also not be out of place to mention here that prosecution had not produced any forged Jamabandi on the record and rather same was produced on record by accused as Ex.D1. Perusal of said jamabandi Ex.D1 shows that same was prepared by Patwari Kirpal Singh on 2.2.2005. Now in case Jamabandi was prepared by Patwari Kirpal Singh against the revenue record, Patwari Kirpal Singh himself was guilty and was required to be nominated as an accused in this case. On the other hand, in case, Patwari Kirpal Singh had not issued Jamabandi Ex.D1 and same was forged by accused themselves, then Patwari Kirpal Singh was required to be joined as a witness in the present case to prove that

Jamabandi in question was not issued by him and was rather forged by the accused. It was admitted by PW5 Ajit Singh Malhi, then then Naib Tehsildar in his cross-examination that Patwari Kirpal Singh was in service and was posted as Patwari of village Khudi at the time of registration of this case. Said Patwari should have been either joined as a witness in the present case or he should have been nominated as an accused to prove that Jamabandi Ex.D1 was got fabricated by the accused.

It is also the case of the prosecution that fabricated Jamabandi was used by the accused persons to obtain loan from State Bank of India, Branch Qadian. However, no official of said bank was joined as a witness to prove that accused had used fabricated record to obtain loan from the bank or that they had an intention to cheat the bank and loan amount was never returned by them. Rather it was stated by Id. Counsel for the accused at bar that entire loan amount had already been cleared by respondents/accused Baldev Singh and Kirpal Singh. Moreover, if any one was cheated by fabricating the record, it was the bank which had granted loan in favour of the accused as charge in favour of complainant Ajaib Singh, if any was still subsisting even after mortgaging the land tot he bank as land was first mortgaged to him. However, no one was examined from the bank to prove that any such cheating was done by the

accused persons. Possibility cannot be ruled out that all the facts were brought to the notice of concerned bank official at the time of producing jamabandi in the bank. It was also admitted by PW5 Ajit Singh Malhi that bank officials verify all the documents before granting loan to any person. In case, land in question had been mortgaged with complainant Ajaib Singh as alleged, said fact must have come to the notice of bank official during inquiry.

The Appellate Court further observed that accused had also produced on record order passed by Financial Commissioner, Punjab, Chandigarh on 7.1.1997 as Ex.D1 showing that mutation No.371 regarding mortgage of land to complainant Ajaib Singh was set aside vide that order and if entries regarding mortgage in favour of the complainant had been set aside in the year 1997 itself, there was no question of said entries in jamabandi for the year 2000-2001 Ex.D1 being on record, which was allegedly fabricated by the accused, therefore, it cannot be said that jamabandi Ex.D1 was fabricated by the accused as alleged. Learned Additional Sessions Judge, Gurdaspur has further noted that as admitted by PW1 Ajaib Singh in his cross-examination that he is not in possession of the land in question, rather the possession is that of accused, thus falsifying contention of complainant Ajaib Singh that he had taken the land in question on mortgage for a period of 99 years.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed

by a Court below or the same is perverse and not otherwise.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, the same are upheld and the revision is found to be without any merit and is dismissed accordingly.

Necessary information be sent to the quarter concerned.

14.5.2018

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No