

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7106-2018
Date of decision: 04.04.2018

Shivji Lal

... Petitioner

Vs.

Surjit Rai Walia and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for modifying the order dated 06.08.2016 (Annexure P-2) passed by the trial Court, vide which the trial Court has summoned only accused No.1 Smt. Sampti Devi and dismissed complaint qua accused No.2 to 11, in a criminal complaint No.COMI/32452/2013, instituted on 18.11.2013 titled as Shivji Lal Vs. Sampti Devi and others under Sections 420, 467, 468, 471 of the Indian Penal Code ('IPC' for short) filed by the petitioner and also for setting aside the order dated 13.12.2017 (Annexure P-4) passed by the revisional Court, vide which the revision petition filed by the petitioner was dismissed.

Brief facts of the case are that the petitioner has filed the aforesaid criminal complaint against 11 persons with the allegations that the land measuring 8 kanal in khasra No.11269 to 11279, 13902, 14390 and 10932, is

situated near Doaba Chowk Link Road, Jalandhar. It is stated that there is a Thakur Dwara in this property and Hindu Idols of Lord Krishna and other Hindus Gods are installed in this Thakur Dwara. It is further stated that earlier aforesaid Thakur Dwara was under the control and management of Narotam Pal (husband of accused No.1) and Sita Ram son of Bala Ram in equal shares. After the death of Narotam Pal, who is Mohatmim (Manager) of said Thakur Dwara, accused No.1 being his widow is disposing off the property of Thakur Dwara in illegal manner. It is further stated that accused No.1 is injuring the religious sentiments of the persons, who worship the Thakur Dwara. Accused No.1 is misappropriating the abovesaid property, which belongs to Thakur Dwara and issued some false power of attorney to accused No.2 regarding a part and parcel of the property of Thakur Dwara. On the basis of false and forged power of attorney, accused No.2 Surjit Rai Walia negotiated with the other accused regarding agreement to sell. Accused persons are regularly misappropriating the property of Thakur Dwara. The complainant has further stated that accused are selling the property into small plots and shops in illegal manner and they are executing forged and fabricated agreement to sell. He moved a complaint to Deputy Commissioner, Jalandhar, but no action was taken. It is further stated that he given intimation to SHO, P.S. Division No.3, Jalandhar, Commissioner of Municipal Corporation, Jalandhar and police Commissioner, Jalandhar, but they have not taken any action.

Thereafter, the complainant, in his preliminary evidence, examined himself as CW1 and deposed on the lines of the allegations made in the complaint and also produced on record jamabandi for the year 2009-2010 as Ex.C1, copy of complaint dated 2.13.2012 as Ex.C2, complaint dated 15.5.2013

as Ex.C3, complaint dated 24.6.2013 as Ex.C4, another complaint dated 25.6.2013 as Ex.C5, complaint dated 28.1.2013 as Ex.C6, letter dated 12.12.2012 as Ex.C7, complaint dated 17.1.2013 as Ex.C8 along with statement of Aruna Rani, copy of his statement as Ex.C9, copy of writ petition no.23073/2013 as Ex.C10 and copy of order dated 19.7.2013 as Ex.C11.

The complainant also examined Mohinder Pal as CW2, Naresh Kumar as CW3 and Karnail Singh as CW4, who supported the version of the complainant. CW5 Rajinder Singh, Patwari of the area, proved the revenue record i.e. jamabandi as Ex.CW5/A and Balbir Kaur, an official from the office of Deputy Commissioner, Jalandhar, appeared as CW6 and proved a letter dated 05.12.2012 as Ex.C7. HC Gurmeet Singh appeared as CW7 and proved the complaints given by the complainant as Ex.CW7/A to Ex.CW7/C. Ankush Kumar, Building Inspector from the office of Municipal Corporation, Jalandhar appeared as CW8 and proved a complaint as Ex.CW8/A and certain other documents like notice, challan and order of demolition as Ex.CW8/C to Ex.CW8/I.

Thereafter, the complainant closed his preliminary evidence and the trial Court vide order dated 06.08.2016 summoned only accused No.1 Smt. Sampti Devi to face the trial under Sections 420, 467, 468, 471 IPC and dismissed the complaint qua accused No.2 to 11.

The petitioner filed a revision petition challenging the aforesaid order qua dismissal of the complaint against accused No.2 to 11. The revisional Court issued notice to all the 11 respondents and after hearing both the parties, dismissed the revision petition vide impugned order dated 13.12.2017. The present petition has been filed challenging the orders passed by the Courts

below, vide which the accused No.2 to 11 were not summoned.

Learned counsel for the petitioner submits that on land measuring 8 kanals, Thakur Dwara is situated and earlier one Narotam Pal was the Manager. After the death of Narotam Pal, his widow-accused No.1 Smt. Sampti Devi became owner by way of a Will executed by him and started selling the property to different persons and she has even executed the power of attorney in favour of accused No.2 and thereafter, all the accused persons, in conspiracy with each other, have tried to usurp the property of the Thakur Dwara by alienating the same and have committed the offence punishable under Sections 420, 467, 468, 471 IPC and the Courts below, without appreciating the preliminary evidence available on record, have wrongly dismissed the complaint against accused No.2 to 11.

After hearing learned counsel for the petitioner and going through the impugned orders passed by the Courts below, I find no merit in the present petition, for the following reasons: -

(a) Admittedly, on the land in dispute, there is a Thakur Dwara and there is no registered trust of said Thakur Dwara, as claimed by the petitioner. As per jamabandi Ex.C1, Smt. Sampti Devi is the owner of the land, which she has acquired by way of a Will executed by her late husband Narotam Pal. Both the Courts below have recorded a finding that in fact, it is a private property, which is now managed by Smt. Sampti Devi.

(b) The complaint has been filed on the premise that Smt. Sampti Devi has started selling property of the Thakur Dwara, but no sale deed has been produced on record to prove this fact. The allegation of the petitioner that accused No.2 to 8 are the relatives of accused No.1 Smt. Sampti Devi, is not

proved on record. Even otherwise, if it is taken that these persons are in relation of Smt. Sampti Devi, there is no prima facie evidence to prove that they have committed any offence, as there is no sale deed on record.

(c) The evidence, which has come on record in the shape of oral statement of CW1-complainant and three other witnesses CW2 Mohinder Pal, CW3 Naresh Kumar and CW4 Karnail Singh, who have deposed that Smt. Sampti Devi is transferring the property in the name of other respondents, however, these agreements are not proved on record as per provisions of the Evidence Act.

(d) Both the Courts below have concurrently held that the documents/complaints produced on record as Ex.CW1 to CW11 do not prove that accused No.1 Smt. Sampti Devi has sold any property in favour of accused No.2 to 8. Moreover, the petitioner-complainant has failed to prove the version given in the complaint that the Thakur Dwara is a registered trust and nothing is proved on record in this regard.

In view of the above, I find no illegality or irregularity in the impugned orders passed by the Courts below, dismissing the complaint against accused No.2 to 11 and hence, the present petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

04.04.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No