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

CRR-956 of 2016 (O&M)
Date of Decision: 13.08.2018

Ashwani

....Petitioner

Versus

Jagdish Parsad Vaid and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Sanjay Kaushal, Sr. Advocate, with
Mr. Durgesh Aggarwal, Advocate, for the petitioner.
Mr. T.S. Sangha, Sr. Advocate, with
Mr. Narinder Singh, Advocate, for respondents No.3 & 4.

RAMENDRA JAIN, J. (ORAL)

1. Through this petition, complainant has laid challenge to order dated 09.12.2015 of the trial Court, Bhiwani, whereby his complaint against the respondents under Sections 406, 420, 467, 468, 471 and 120-B IPC, was dismissed.

2. Briefly, in the year 1927, ancestors of the respondents created a trust without giving it a particular name vide registered trust deed bearing No.11 dated 16.08.1927, to be managed by their family members as trustees, donating and amalgamating various properties owned by them in it to fulfill various charitable purposes and use the income derived therefrom for philanthropic activities and achieve aims and charitable objects of the trust. However, the properties donated to the trust continued in the individual names of the trustees, out of whom, most had expired in due course.

3. Therefore, in the year 1971, the properties in the individual names of the trustees, with great efforts, were mutated in favour of the trust.

4. Since founder trustees had died, therefore, on 31.05.1985 new

trustees were appointed in their place. Over a period of time, the temple and dharamshala of the trust situated at Bhiwani got dilapidated, requiring massive repairs/renovation for which huge amount was required. Therefore, on 13.07.1991 a fresh trust deed was reduced into writing to continue with the original objects of the trust, besides some newly added charitable objects, like establishment of hospital, dispensary etc. It was also decided that there would be minimum seven trustees and maximum upto ten, out of whom, five trustees can take a decision in the interest of the trust to sell its properties. This time, the trust was given a particular name as "Vaid Family Charitable Trust".

5. However, since by that time, most of the family members of the trustees had shifted out of District Bhiwani and coming generation was not keen to become trustees, therefore, in a meeting held on 27.10.1991, in the presence of six trustees, out of seven, it was decided that minimum number of trustees would be three and maximum would remain seven for passing any resolution to carry out objects of the trust. Subsequently, there remained only four trustees in the trust, out of whom one Om Parkash Vaid also died on 22.03.2000. Therefore, only three trustees continued to manage the trust.

6. Property measuring 1 kanal 2½ marlas comprising khewat No.548 min./482 khatoni No.740, khasra No.150//9(3-0) in the shape of unfertile land was not fetching any income or if any was negligible as the same was under possession of tenants, who were avoiding even giving nominal rent to the trust and dragging it into unnecessary litigation for securing the payment of rent and its possession involving huge expenditure by the trust. Therefore, it was decided to sell the property aforesaid and the money derived therefrom to be invested to achieve the objects of the trust.

Consequently, resolution dated 05.04.2002 (Annexure 3/4) was passed in extra-ordinary meeting of the trust to sell the said property and pursuant thereto the same was sold.

7. Petitioner is completely a stranger to the trust. He, claiming himself to be a donor of the trust, filed complaint under Sections 406, 420, 467, 468, 471 and 120-B IPC against private respondents. After recording preliminary evidence in the same, the respondents were summoned vide order dated 18.05.2011. However, they laid challenge to the aforesaid summoning order before the Revisional Court, which, after hearing both the sides was set aside. Resultantly, the Revisional Court remanded the case to the trial Court for fresh decision. Consequently, learned Magistrate vide order dated 09.12.2015, on re-appreciation of evidence, dismissed the complaint, which is impugned herein.

8. Learned counsel for the petitioner contends that the sale deed (Annexure P-5) was executed by the respondents in a meager amount of Rs. 1,37,000/- in favour of wife of trustee, namely, Smt. Bimla wife of Om Parkash (Trustee), for personal gains though the value of the property was around Rs. 1.5 Crores in violation of the Trust deed. Initially, on referring the complaint of the petitioner by the Magistrate under Section 202 Cr.P.C. to the police for investigation, the SHO, Police Station, Sadar Bhiwani, after due investigation, vide his report dated 26.10.2015 (Anneuxre P-3), apprised the Court that the allegations of the complainant-petitioner in his complaint against the respondents were found correct. Despite foolproof investigation declaring the respondents guilty for the commission of offences mentioned above, the trial Court erroneously dismissed the complaint, ignoring the fact that the respondents in utter disregard to the terms and conditions in the trust deed, had withered away the valuable trust

property for their own personal interests. The trial Magistrate has exceeded his jurisdiction in misinterpreting the recital of the trust deed, which was not within his domain inasmuch as the subsequent trust deed of the year 1991 did not authorise trustees to sell the trust property for their own benefit.

9. On the other hand, learned counsel for the respondents refuting the above submissions of learned counsel for the petitioner, contended that subsequent trust deed superseding the earlier trust deed never restricted the right of the trustees to sell trust properties to any particular person. Three civil suits were filed at different times to get the property in question vacated from the tenants, but the trust throughout remained unsuccessful. Since the trust was getting meager income of Rs. 50/- per month from the property in question, even by spending huge expenses, therefore, in the interest of trust, the trustees decided to sell the property in question and utilize the sale proceeds for the benefit of the trust. The report of the SHO (Annexure P-3) without associating the respondents (trustees) and taking into consideration the recital in the subsequent trust deed of the year 1991, was illegal and thus, has rightly been ignored by the Magistrate. The trial Magistrate, in his wisdom, initially had recorded the statements of the petitioner and his witnesses before referring to the complaint to the police under Section 202 Cr.P.C. The report of the SHO, if any, (Annexur-P3) was not binding upon the learned Magistrate, who legally and validly applied his mind while dismissing the complaint. Sale deed (Annexure P-5) was executed on the basis of Collector's rate. Therefore, it does not lie in the mouth of the petitioner that the same was sold on a meager price than the prevailing one at the relevant time.

10. Having considered the thoughtful submissions of learned counsel for the parties, I find the instant petition completely devoid of any

merit for the reasons to follow.

11. The predecessor-in-interest, who had created a trust, had shifted to various places like Kanpur, Delhi and Calcutta. Therefore, the entire trust property after creating trust in 1927, remained unattended till the year 1991 or atleast till the year 1971, when the mutation was got sanctioned in favour of the trust after almost 44 years. Considering all these factors, in the year 1991, 6 trustees out of 7 trustees (one has expired) decided that since trustees have become very old and their younger generation was not keen to become trustees, therefore, the number of the trustees should be reduced from 7 to 3.

12. After execution of latest trust deed in the year 1991, earlier trust deed of the year 1927 had lost its existence.

13. In the latest trust deed, the trustees were authorised to sell the trust properties which were not in the benefit of the trust to keep. Therefore, it cannot be said that the property in question was sold by the trustees in violation of the terms and conditions of the trust deed.

14. Undisputedly, the SHO, who conducted the investigation after the receipt of the complaint under Section 202 Cr.P.C. from the Magistrate never joined the respondent (trustees) in the investigation. Therefore his report (Annexure P-3) cannot be termed as valid one, being not based on legal and genuine investigation.

15. The whole controversy in this case revolves around the question as to whether the property in question sold by respondents No.1 to 3-trustees to respondent No.4 was not in the beneficial interest of the trust. Petitioner has not produced any record showing the value of the property worth Rs. 1.05 crores as alleged by him in his complaint. He has also not been able to refute the contentions of the respondents that property in

question was sold at prevailing market price/Collector rate.

16. Therefore, in the absence of any valuation report or documentary evidence in this respect, simple averment of the petitioner in his complaint in this respect and his bald statement has rightly been ignored by the trial Court, while passing the impugned order, dismissing complaint (Annexure P-1). More-so, disclosing the value of the property in question as Rs.1.05 crores without any evidence by the petitioner is completely imaginary and hypothetical. Therefore, this Court is not inclined to differ with any of the findings of the trial Court.

17. Perusal of the resolution (Annexure R-3/4) of the trust dated 05.04.2002 shows that the trustees, in their extraordinary meeting of the trust considered all the aspects qua the property in question regarding expenditure on its maintenance, as to whether it would be beneficial in the interest of the trust to retain or to sell it and found that return from the agricultural land, house, dharamshala, etc. of the trust which were under the possession of tenants was negligible as the tenants used to avoid giving even nominal rent. Resultantly, the trust had to unnecessarily indulge in litigation to secure the payment/rent and get possession, involving a lot of expenditure. Considering this aspect of the matter, it was proposed that such property in question be sold and money derived therefrom be invested, for achieving objects of the trust and raising construction on other trust properties. Therefore, by any stretch of imagination, it cannot be said that the sale deed (Annexure P-5) executed by trustees-respondents was illegal, rather was legal, executed and registered on the basis of resolution (Annexure R-3/4) authorising the respondents to execute the same.

18. The petitioner is, admittedly, not related even distantly to any of the trustees, who are descendants of their common trustees closely related

to each other. The petitioner, though has asserted himself to be a donor of the trust, but has not produced any receipt of his alleged donation for the reasons best known to him. Therefore, the petitioner had no *locus standi* to challenge any action of the trustees, whose ancestors had created the trust, parting with/donating their own personal properties.

19. The petitioner seems to be a land shark or a member of land mafia, who has no concern even remotely with the affairs of the trust and must have filed instant complaint to put undue pressure and influence upon the trustees to sell other properties of the trust to him in a through away prices by entangling them into frivolous litigation.

20. In view of the discussion above, instant petition fails and the same is dismissed.

(RAMENDRA JAIN)
JUDGE

August 13, 2018
shabha/R.S.

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No