

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

CRM-A-1748-MA-2016 (O&M)

Date of decision: October 14, 2019

Jaswant Singh		Applicant
	Versus	
Harbans Singh		Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Onkar Rai, Advocate
 for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this application is for setting aside the judgment dated 7.8.2014 passed by the trial Court vide which the application filed by the applicant under Section 340 Cr.P.C. was dismissed.

Brief facts of the case are that respondent-Harbans Singh filed a suit for permanent injunction against applicant-Jaswant Singh, on the basis of an agreement which did not bear signatures of Harbans Singh and on that ground the suit filed by the plaintiff was dismissed as withdrawn and subsequently, he filed a suit for specific performance against the applicant. Thereafter, the applicant moved an application under Section 340 Cr.P.C. praying that legal action be taken against respondent-Harbans Singh and the marginal witnesses on the agreement to sell, as it did not bear the signatures of Harbans Singh in the earlier suit. The trial Court, after framing an issue in this regard allowed the parties to lead their respective evidence. The applicant-plaintiff (in the said suit) appeared as PW1, whereas the respondent

appeared as RW2 and examined one Gurdarshan Singh. Thereafter, the trial Court vide impugned judgment dated 7.8.2014 dismissed the application by making the following observations on issues No.1 and 2:-

“Issue No.1.

Onus to prove issue No.1 was on the applicant. To prove the same applicant-Jaswant Singh examined himself as AW1 who deposed that Harbans Singh filed a suit for permanent injunction against him in the year 2000. That suit was entrusted to the Court of Sh. J.S. Marok in which he appeared as a defendant. That suit was filed by Harbans Singh on the basis of agreement. In that Civil suit photocopy of the agreement was filed by Harbans Singh. In that photocopy of the agreement there were no signatures of Harbans Singh. He appeared in that suit and filed the written statement. Thereafter, Harbans Singh also filed replication to his written statement in that suit. At that time Harbans Singh engaged his counsel. Sh. Darshan Singh, Advocate. At the stage of evidence Harbans Singh changed his counsel Sh. A.K. Verma, Advocate and, thereafter, he filed an affidavit in support of his evidence. He also gave the statement in the Court and later on withdraw the suit. On the statement of Harbans Singh an order for withdrawal was passed by the Court of Sh. J.S. Marok, Civil Judge, Junior Division, Ludhiana. He obtained certified copies of that suit and has filed those certified copies in support of his application. Later on, Harbans Singh signed that original agreement and on the basis of that alleged agreement he filed a suit for specific performance against him. Thus, he has filed the suit for specific performance after signing the agreement and has created manipulated

document and has misrepresented the Court. He placed on copy of plaint of earlier suit as Ex.A1, certified copy of *fathirist dastavej* Ex.A2, certified copy of photocopy of alleged agreement to sell as Ex.A3, certified copy of affidavit of Harbans Singh Ex.A4, certified copy of statement of Harbans Singh Ex.A5 and Ex.A6, certified copy of *Vakalatnama* (Power of Attorney) Ex.A7, certified copy of replication Ex.A8, certified copy of order of withdrawal Ex.A9.

He further deposed that after obtaining the certified copy of power of attorney he came to know that respondent has attached another power of attorney and pasted with the original attorney in the earlier case in the judicial file. And thus, liable for proceedings under Section 340 Cr.P.C. Now, in order to rebut the contentions respondent examined as RW1 Gurdarshan Singh who deposed vide his affidavit Ex.RA. Respondent also examined Harbans Singh who deposed vide his affidavit Ex.RB. He deposed that the present application is false and not maintainable. He deposed the earlier civil suit was withdrawn by him as cause of action for filing suit for specific performance had arisen. The suit earlier suit could not have been filed before 4.8.2004 because the time for performing the contract was fixed as 4.8.2004. Therefore, the suit was withdrawn due to this reason and not for any technical fault as alleged by Jaswant Singh. The said civil suit filed after 4.8.2004 has been decreed in his favour vide order dated 12.3.2013. He placed on record certified copy of the said judgment and decree as Ex.RW2/1 and Ex.RW2/2. He also placed on record certified copy of judgment and decree passed by appellate Court as Ex.RW2/3 and Ex.RW2/4.

Now in the present case, it is the allegation leveled against the respondent in the pleadings that when firstly the suit for injunction had been withdrawn by the respondent Harbans Singh there were no sign of respondent Harbans Singh on the document agreement to sell. But later on said agreement has been signed by Harbans Singh and he, thereafter, he filed subsequent suit for specific performance in connivance with the marginal witnesses. This Court is of the view that firstly the lower Court in which the subsequent suit had been filed as well as appellate Court vide judgment and decrees Ex.RW2/1 to RW2/4 have categorically held that the agreement in question is not result of forgery. In Ex.RW2/3 which is certified copy of judgment dated 28.2.2014 passed by the learned Court of Harjit Singh Khalsa the learned Appellate Court had categorically held that Jaswant Singh in his cross-examination in that civil suit identified his signatures on the agreement and admitted the same as true and correct. It was further observed by the learned Court that by admitting his signatures on the document i.e. agreement, Jaswant Singh in fact admitted the document in question and it was further observed that the said admission on the part of the defendant has virtually demolished his case. Thus, the learned Court of Sh. Munish Arora the then CJ (Sr. Divn.), Ludhiana vide judgment Ex.RW2/1 as well as the learned Court of Sh. H.S. Khalsa vide judgment Ex.RW2/3, have categorically held that the agreement is not result of forgery. Thus, the matter has been settled. Therefore, in view of the categorical finding of the civil Courts, this contention of the applicant has virtually lost its ground. Therefore, the

contention that respondent manipulated document and filed second civil suit is without force.

Secondly, in the present petition after consideration of all the evidence the question before this Court is whether initiating proceedings under Section 340 Cr.P.C. are in interest of administration of justice. The necessary is negative. The contention of the application is that agreement to sell has been manipulated. Earlier, it did not contain the signatures of Harbans Singh respondent. But at the time of filing the second civil suit the same were there. Now it is itself the version of applicant that in the Harbans Singh Vs. Jaswant Singh earlier civil suit only photocopy of agreement to sell was placed on record. Meaning thereby, no original agreement was placed on record. Therefore, even if for the sake of arguments it is considered that Harbans Singh put his signatures on the alleged document, the same has not been done while the document was in the custody of the Court.

In Sachida Nand's case 1998(1) Recent Criminal Reports 823, the Hon'ble Supreme Court after analyses of the relevant provisions and noticing the number of earlier decisions concluded in para Nos.11, 12 and 13, which are reproduced as below :-

“11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed

during the time when the document was in
custodia legis

12. It would be strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records.
13. The sequitor of the above discussion is that the bar contained in Section 195(i) (ii) of the Code is not applicable to a case where forgery of document was committed before the document was produced in a Court.”

Thus, as per **Sachinda Nand’s case (*supra*)**, it has been held that for the Harbans Singh Vs. Jaswant Singh initiation of the proceedings under Section 340 Cr.P.C. tampering should have been done while the document was in the custody of Court. But admittedly in the earlier suit which was withdraw by respondent Harbans Singh, the same was not placed on record. Further, as discussed above applicant has in fact failed to establish that the agreement in question is in fact result of forgery. It has already been settled by the civil Courts that the said agreement is not result of forgery which further dismantles the case of the applicant. Therefore, provisions of Section 340 Cr.P.C. are not applicable in the present case.

Further, the proceedings under Section 340 Cr.P.C. are to be initiated if the Court is of the view

that the same is in the interest of justice. It has been held by Hon'ble Supreme Court of India in case **Iqbal Singh Marwah Vs. Meenakshi Marwah, 2005(2), Recent Criminal Reports 178** that the Court is not bound to make complaint regarding admission of an offence referred to in Section 195(1)(b) as the said Section is conditioned by words "Court is of opinion that it is expedient in the interest of justice". It shows that said course will be adopted only if the interest of justice requires and not in every case. The Court further held that this expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the persons affected by such forgery or forged document but having regard to the effect or impact, such commission of offence has upon administration of justice. Clause 195(b)(i) Cr.P.C. relates to offences in Chapter (XI) of the IPC which is headed as Harbans Singh Vs. Jaswant Singh – "Of False Evidence and offence against Public Justice". It has been so observed by Hon'ble Supreme Court in aforesaid case that the offence mentioned in this clause clearly relates to giving or fabricating false evidence or making a false declaration in any judicial proceedings or before a Court of justice or before a public servant who is bound or authorized to receive such declaration and also to some other offences which have direct correlation with the proceedings in a Court of justice. The Hon'ble Supreme Court further observed that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties or a public servant or has direct co-relation with the proceedings in the Court of justice. It has been further held by Hon'ble Supreme Court in aforesaid case at

the same time further that it is possible that such forged document or forgery may cause very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice. In the present case the document is alleged to have been written by the respondent. However, the same has not been proved on record. And further the said document cannot be said that it has caused serious affects on the administration of justice.

Now, second contention of the applicant is that the applicant has forged the power of attorney. He deposed that he had obtained the certified copy of the power of attorney from which he came to know that earlier respondent had not signed the power of attorney but later on signed another power of attorney and pasted the same below the original. This Court is of the view that this fact is a second main allegation levelled against the respondent Harbans Singh but the same has not formed part of pleadings. The pleadings were never amended even after the said facts came to the knowledge of the applicant. Even if for the sake of arguments said contention is considered, this Court is of the view that even then the applicant has not been able to prove on record that tempering of the power of attorney was done by the respondent. Applicant alleges

that he came to know about the said fact when he obtained certified copy of the power of attorney. But, no copyist or Ahlmad has been examined to establish that at the time of issuing the copy of the said power of attorney, the said original power of attorney which is pasted underneath the power of attorney given by respondent Harbans Singh in the civil suit titled as Harbans Singh Vs. Jaswant Singh, was not there. Moreover, the original judicial file has been attached with this file which shows that the second attorney upon which Harbans Singh has signed and has been pasted is kept folded from below. This Court is further of the view that when the original file is there which shows that the second power of attorney signed by respondents has been there but folded from below, therefore, it cannot be said that it has been pasted later on. Moreover, no objection was taken in the earlier suit. Therefore, on this score also this application cannot succeed.

9. Issue No.2– Relief

So, given all this above discussion Court is of the view that it is not expedient in the interest of justice that complaint under Section 340 Cr.P.C. should be initiated by this Court. Consequently, the application is, hereby, dismissed. File be consigned to record room.”

Counsel for the appellant has assailed the findings of the trial Court on the ground that the respondent-plaintiff has committed forgery with the Court and after obtaining the certified copy of the power of attorney (Vakatnama), he came to know that, in fact, another power of attorney was pasted on the same in the earlier case of the judicial file and, therefore, the

trial Court has wrongly dismissed the application, whereas the respondents are liable to be punished, in accordance with law.

After hearing counsel for the applicant, I find no ground to interference in the well reasoned findings recorded by the trial Court.

The trial Court has recorded the findings that the earlier suit for permanent injunction was withdrawn as at that stage, the cause of action of filing a suit for specific performance has arisen in favour of the respondent-plaintiff, and, therefore, he has withdrawn it to file a suit for specific performance as the stipulated date was 4.8.2014 and, thereafter, the suit for permanent injunction has virtually become infructuous. The trial Court has also recorded a finding that in the subsequent suit, this issue was dealt with by the civil Court as well as the appellate Court in the judgment and decree Ex.RW2/1 and RW2/4 that the respondent has not committed forgery. Therefore, in view of the well reasoned findings recorded by the trial Court, I find no merit in the present petition.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

October 14, 2019
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Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No