

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 04.04.2019

1. CRM-M-13581-2013 (O&M)

Nirmal Kaur

... Petitioner

Vs.

State of Punjab

... Respondent

2. CRR-3072-2015 (O&M)

Jagjit Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. P.S. Sullar, Advocate
for the petitioner (in both cases).

Mr. M.S. Nagra, AAG, Punjab.

Mr. Rakesh Kumar, Advocate
for respondent No.2 (in CRR-3072-2015).

ARVIND SINGH SANGWAN, J. (ORAL)

This order shall dispose of aforementioned two petitions i.e. CRM-M-13581-2013 and CRR-3072-2015.

Prayer in CRM-M-13581-2013, filed by Nirmal Kaur, is for quashing of FIR No.109 dated 23.09.2008 under Sections 420, 406, 465, 467, 468, 471, 120-B of the Indian Penal Code (for short 'IPC'), registered at Police Station Division No.VII, Jalandhar and all the subsequent proceedings arising therefrom.

Prayer in CRR-3072-2015, filed by Jagjit Singh, son of Nirmal Kaur, is for setting aside the order dated 04.06.2015 (Annexure P-6) passed by the trial Court, vide which the petitioner was summoned as accused in aforesaid FIR, while allowing application under Section 319 Cr.P.C.

Brief facts of the case are that the aforesaid FIR was registered on the complaint of one Surinder Singh, being Special Attorney of Amrik Singh and Sukhwant Singh, both sons of Chet Singh, who are presently residing in England, in which it is stated as under: -

“That Amrik Singh and Sukhwant Singh are my near relatives and they own 4 kanal 5 marlas of land bearing 1/2 share of land measuring 8 kanal 10 marlas in village Meethapur, Jalandhar and Amrik Singh etc. are settled in England for the last nearly 30-35 years. In May, 2008 when they came to India, it was revealed that their nephew Jagjit Singh who was also taken by them to England and his sister-in-law i.e. Nirmal Kaur, mother of Jagjit Singh aforesaid and Jit Kaur wife of Pritam Singh and mother of Nirmal Kaur got that property transferred in the name of Jagjit Singh in connivance with each other by forging false documents and necessary forgery was committed by them by conspiring each

other and on the basis of that transfer by false documents, they have sold away the disputed property when Amrik Singh and Sukhwant Singh had relied upon Nirmal Kaur and had asked her to look after their property.

That Amrik Singh and Sukhwant Singh made the necessary enquiry and in that enquiry, it was revealed that Nirmal Kaur had filed a civil suit in the Court of Civil Judge, Junior Division, Jalandhar and that suit was titled as Nirmal Kaur Vs. Amrik Singh etc. and the plaintiff in that case could not prove their case and the same was dismissed by the trial Court vide order dated 21.08.1996. Thereafter, Nirmal Kaur filed an appeal against the same in the Court of Additional District Judge, Sh. Baldev Singh of Jalandhar Court and the same was also dismissed by the Court on 18.08.1998. Thereafter, when the aforesaid person failed to get the disputed property transferred in their name, they forged a false bill purporting to have been made by Chet Singh, grandfather of Jagjit Singh in his name (however Chet Singh had by that time died) and the will was forged in the back date which was the result of collusion between the aforesaid persons and that will was made in the back date i.e. 15.06.1975 and on the basis of that forged will, they filed another suit in the Court of Sh. A.S. Grewal, Civil Judge, Senior Division, Jalandhar and in that suit, they gave the address of Amrik Singh etc. of village Meethapur by concealing the real facts and the decree was obtained in the name of Jit Kaur

by putting up false persons in place of Amrik Singh and Sukhwant Singh and forged a false power of attorney by getting the same attested from the Notary Public when Amrik Singh and Sukhdev Singh were at that time residing in England. The copies of relevant entry in the passport in this regard were already submitted by Amrik Singh and Sukhwant Singh to SSP Jalandhar on 13.05.2008 vide PC No.28/NRI Jalandhar and a copy of the same is submitted and on the basis of that false power of attorney, Jit Kaur mother of Nirmal Kaur appeared on behalf of Amrik Singh and Sukhwant Singh and suffered a collusive decree in favour of Jagjit Singh through Nirmal Kaur and on the basis of that collusive decree dated 27.03.2002, mutation of the landed property was transferred in the name of Jagjit Singh in the revenue record and the aforesaid persons colluded with the vendees and sold away the disputed property in favour of vendees. Further that at the time of the execution of the forged will purporting to have been executed by Chet Singh in June, 1975, Jagjit Singh legatee was aged about 1 1/4 years which goes to show that the Will purporting to have been executed in this case was the result of fraud to deprive Amrik Singh and Sukhwant Singh of their landed property and in this way, they tried to usurp their property worth crores of rupees and all this was done under a plan and by forging documents and the aforesaid persons committed fraud with Amrik Singh and Sukhwant Singh. Earlier an application bearing No.28 dated

13.05.2008 was also made in this regard. Through a period of nearly two months has elapsed since then, no action has been taken against the culprits. The culprits are very influential persons and they are an art of a gang. It is accordingly again requested that a case be registered against the aforesaid persons and necessary justice be done to us. Signed in English Surinder Singh son of Charan Singh resident of Village Tibba, District Kapurthala Special Attorney of Amrik Singh and Sukhwant Singh sons of Chet Singh resident of Meethapur presently residing in England dated 5.7.2008. An enquiry in this regard was conducted by Economic Offences Wing and in that enquiry, Nirmal Kaur and Jagjit Singh put up some false persons in place Sukhwant Singh, Amrik Singh and got the property measuring 7K belong to Sukhwant Singh, Amrik Singh, Simar Kaur and Kulwant Kaur NRI and further sold away the same and in that connection the case was recommended to be registered. Signed in English, Manjit Singh, Incharge EOW, Jalandhar and on the basis of the same, Sh. Pawan Kaur Rai, IPS, SSP wrote as under: -

Seen. A case may be registered and investigated. SHO PS NRI. Signed in English, PK Rai IPS SSP, Jalandhar.”

Thereafter, the police submitted the report under Section 173 Cr.P.C. and during the investigation, it was found that dispute is regarding sale of land by petitioner Nirmal Kaur, mother of Jagjit Singh, who, in pursuance to a Special Power of Attorney, executed by Jagjit Singh, had sold the land by

preparing some false documents. In the report, it was opined that the petitioner is also arrayed as an accused in the FIR, as he is beneficiary of the documents and therefore, he is the real culprit. Challan was presented on 22.07.2010 and thereafter, the petitioner filed the present petition in the year 2013, which is pending since then.

Notice of motion was issued on 22.07.2013 and thereafter, on 18.08.2015, present petition was admitted and further proceedings before the trial Court were stayed.

Since the proceedings before the trial Court were stayed, this case was listed in urgent list for final arguments.

Learned counsel for the petitioners has argued that there is no evidence against the petitioner, as it is a civil dispute. It is further submitted that originally, one Chet Singh was owner of agricultural land situated in Village Meethapur, District Jalandhar, who died in the year 1977 in UK and mutation of inheritance was sanctioned in favour of his sons Amrik Singh, Sukhwant Singh and daughters Simar Kaur and Kulwant Kaur. The petitioner Jagjit Singh challenged the Will dated 15.06.1975, allegedly executed by his grandfather Chet Singh and he informed this fact to his mother Nirmal Kaur and requested the defendants to admit his claim on the basis of Will. Thereafter, petitioner Jagjit Singh filed Civil Suit No.529 of 2000 through his mother Nirmal Kaur, as attorney, claiming himself to be owner of disputed land. The said suit was decreed on 27.03.2002. Later on, Amrik Singh and Sukhwant Singh started interfering with the rights of petitioner Jagjit Singh, therefore, he filed another suit through his mother and attorney Nirmal Kaur against them, in which an

injunction order was passed and on the basis of same, a report was submitted by the SHO, Police Station NRI, Jalandhar that the matter has already been settled between the parties and the complaint was later on filed by SSP, Jalandhar.

Learned counsel for the petitioners has submitted that thereafter, complainant Surinder Singh, being the Special Power of Attorney of Amrik Singh and Sukhwant Singh, managed in registering the impugned FIR, despite there being opinion of the District Attorney that it is a civil dispute and later on, the police submitted the supplementary challan under Section 173 (8) Cr.P.C., wherein petitioner Jagjit Singh was found to be innocent, on the basis of opinion given by the District Attorney. It is thus argued that the impugned FIR is nothing but misuse of process of law.

Before referring to the arguments raised by learned counsels for the State and the complainant, it is relevant to note here that in the meantime, the trial Court proceeded further in the case, framed charge against Nirmal Kaur and after recording some evidence, an application was moved under Section 319 Cr.P.C. for summoning petitioner Jagjit Singh, as additional accused, as he was kept in column No.2 in the report under Section 173 (8) Cr.P.C. The trial Court, vide order dated 04.06.2015, summoned him as additional accused, while allowing the aforesaid application. The petitioner Jagjit Singh has challenged the said order by way of filing CRR-3072-2015, which is also tagged with the present case and arguments in both the cases were heard together.

Learned counsel for the petitioner has further submitted that while summoning petitioner Jagjit Singh as additional accused, the trial Court has not

taken into consideration opinion of the District Attorney, on the basis of which he was kept in column No.2. It is further submitted that the petitioner is owner by way of a civil Court decree and therefore, summoning of the petitioner under Section 319 Cr.P.C. is not maintainable.

In reply, learned State counsel, assisted by learned counsel for the complainant, has however argued that petitioner Nirmal Kaur has prayed for quashing of the impugned FIR, only on the basis of disputed facts. It is submitted that petitioner Jagjit Singh was declared a proclaimed offender in this FIR and report under Section 173 (8) Cr.P.C. was presented against petitioner Nirmal Kaur, who is mother of petitioner Jagjit Singh. Thereafter, the charges were framed, the case was fixed for prosecution evidence and some evidence was recorded. Learned State counsel has further submitted that the trial Court has rightly summoned petitioner Jagjit Singh under Section 319 Cr.P.C., as in fact he is the beneficiary of the decree dated 27.03.2002 and also the sale proceeds, by which he had sold the disputed land through his attorney and mother Nirmal Kaur.

Learned counsel for the complainant has argued that the petitioner has manipulated the report from the police. It is submitted that a bare perusal of the FIR shows that the Will was setup by petitioner Jagjit Singh, after the mutation of inheritance was already sanctioned in favour of natural heirs of deceased Chet Singh and this Will was forged by mentioning a back date. It is further submitted that the complainants have challenged the Will dated 15.06.1975 and the collusive decree dated 27.03.2002, in a civil suit, which are outcome of fraud and the same is pending. Learned counsel has further

submitted that not only the Will and decree are outcome of fraud, but the power of attorney on behalf of Amrik Singh and Sukhwant Singh in the name of one Jit Kaur, who appeared on their behalf during pendency of the suit, in which collusive decree was passed in favour of petitioner Jagjit Singh, was a fake document, as the same was attested by Notary Public in India and at that time, Amrik Singh and Sukhwant Singh were residing in England. Learned counsel has referred to the written statement filed by Jit Kaur in the civil suit, wherein she admitted that petitioner Jagjit Singh had forged and fabricated the Will and she was never appointed as GPA by Amrik Singh and Sukhwant Singh.

Learned counsel for the complainant has further argued that during inquiry by the police, Amrik Singh and Sukhwant Singh had given affidavits that they were not present in India and even the special power of attorney, in favour of Jit Kaur, which was used against them, while procuring the collusive decree, was a fake document. It is further argued that even otherwise, execution of Will regarding the disputed land in June, 1975 in favour of Jagjit Singh excluding the sons and daughters, is suspicious. Learned counsel has lastly argued that on the basis of decree, subsequently, both petitioners Jagjit Singh and his mother Nirmal Kaur had sold the entire property and usurped the amount worth crores of rupees. It is thus argued that the grounds taken by petitioner Nirmal Kaur praying for quashing of impugned FIR do not fall in the criteria laid down by the Hon'ble Supreme Court in **State of Haryana Vs. Bhajan Lal, 1991 (1) RCR (Crl.) 383**, therefore, he prays for dismissal of both the petitions.

After hearing learned counsel for the parties, I find no merit in both

the petitions.

Admittedly, at one point of time, the mutation of inheritance was sanctioned in favour of all the natural heirs of deceased Chet Singh and only thereafter, petitioner Jagjit Singh had setup a Will, on the basis of which, he had filed a civil suit for setting aside the mutation and declaring him to be owner in possession of the entire land. Amrik Singh and Sukhwant Singh were arrayed as defendants in that suit and one Jit Kaur appeared on their behalf, being special power of attorney and this power of attorney was attested by Notary Public when they were abroad and even Jit Kaur in her written statement in civil suit has stated that this GPA is forged.

As per the investigation, on the date when Amrik Singh and Sukhwant Singh were not in India and their special power of attorney was attested in India, when the aforesaid collusive decree was procured by the petitioners.

Learned counsel for the petitioners could not dispute that civil suit filed by the complainants challenging the Will and collusive decree is pending, therefore, there are disputed questions of facts and the documents, relied upon by the petitioners in the shape of evidence, cannot be appreciated at this stage for quashing of the impugned FIR while exercising jurisdiction under Section 482 Cr.P.C.

So far as the impugned order, allowing the application under Section 319 Cr.P.C. is concerned, I find that the trial Court has rightly held that since petitioner Jagjit Singh is the beneficiary of the Will and collusive decree and there are allegations that GPA of Amrik Singh and Sukhwant Singh, in

favour of Jit Kaur, who represented them in a civil suit filed by petitioner Jagjit Singh, was an outcome of fraud, which resulted into passing of the collusive decree and later on, the petitioner hurriedly had sold the entire land. The trial Court has further held that there is more than sufficient evidence to summon petitioner Jagjit Singh, being the direct beneficiary, in view of judgment of the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab, 2014 (1) RCR (CrI.) 623.**

For the reasons recorded above, both these petitions are dismissed.

Since this case is pending from the year 2013 and the proceedings before the trial Court were stayed, the trial Court is directed to proceed further and conclude the trial expeditiously preferably within a period of one year from today.

[ARVIND SINGH SANGWAN]
JUDGE

04.04.2019
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No