

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

**CRM-M No.15042 of 2017
Date of decision: 27.02.2019**

Ramesh (since deceased) through his LRs

....Petitioners

Versus

Jagbir and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. D.K. Tuteja, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for setting-aside the order dated 10.12.2015 (Annexure P2) passed by the trial Court vide which the complaint filed by the petitioner under Section 420, 467, 468, 471, 166, 167 read with Section 120-B of the Indian Penal Code (in short 'IPC') was dismissed as well as the order dated 29.04.2016 (Annexure P1) passed by the Additional Sessions Judge, Rohtak, vide which the revision filed by the petitioner was dismissed.

Brief facts of the case are that the petitioner filed a complaint before the trial Court under Section 156(3) Cr.P.C., which was sent to the police for investigation and taking further action. Thereafter, the police registered an FIR No.448 dated 10.06.2009 under Sections 420, 467, 468, 471, 166, 167, 120-B IPC at Police Station City Rohtak, and after completing the investigation, the police submitted a cancellation report. On notice, the petitioner filed a protest petition and

in the protest petition, it is submitted that the petitioner/complainant is the adopted son of one Randhir Singh, who died in the year 1980. Randhir Singh has 02 wives namely Smt. Kitabo and Smt. Piari @ Ram Piari. Randhir Singh has executed a Will in favour of the complainant and has 02 wives, with a rider that both the ladies are given life interest and have no right to alienate the property and after their death, the property was to revert back to the petitioner/complainant. It is further stated that after the death of Randhir Singh, a mutation of testamentary inheritance bearing No.8829 was sanctioned in favour of the complainant and his two adoptive mothers. It is also stated that the accused persons namely Jagroop Singh and his brother Jagbir (since deceased) dishonestly and fraudulently induced the aforesaid two ladies and got their share of land alienated in their favour by way of sale deed. This action of the accused persons was to cheat the complainant qua his right over the property held by Randhir Singh because as per the rider put in the Will, the two ladies had no legal right to alienate the land. It is further stated that later on, the accused persons got mutation No.9249-A entered in the revenue record in collusion with the Patwari and revenue officials but the same was not sanctioned. It is also stated in the protest petition that in the year 2006 some portion of the land was acquitted by the State Government and the accused persons got prepared the affidavit of the complainant with fake thumb impressions and fake identification by one Ramesh, in order to get the compensation of the acquired land. Thereafter, they got entered Mutation No.12732-A sanctioned in their favour, on the basis of a fake sale deed executed by Smt. Kitabo and Ram Piari and thus, all the four accused persons have

cheated the complainant and are liable to be summoned to face the trial under Sections 420, 467, 471, 166, 167 and 120-B IPC and the police has wrongly submitted the cancellation report.

The trial Court, thereafter, recorded the preliminary evidence of the complainant, vide order dated 10.12.2015, dismissed the complaint by passing the following order:-

“9. After perusing the case file minutely and after hearing the arguments of learned counsel for the complainant, this Court is of the view that the complainant has failed to show a prima facie case in his favour to summon the accused persons. Perusal of the case file shows that complainant Ramesh Kumar, Kitabo and Ram Piari became owner of the entire property of deceased Randhir Singh upto the extent of 1/3rd share each through a Will which was executed by the deceased Randhir Singh. The complainant has stated that according to that Will, both Kitabo and Ram Piari were having life time interest and they had no right to alienate or sell the properties. The name of Ramesh Kumar, Kitabo and Ram Piari got entered in the revenue records according to the Will in the year 1974 after the death of the deceased Randhir Singh. On 5.6.1980, Kitabo and Ram Piari sold their share by way of sale deed to Jagbir Singh and Jagroop. The only averment of the complainant is that Kitabo and Ram Piari were having life time interest and they were not having any right to sell out the property but Jagbir Singh and Jagroop induced them to sell the property inspite of the fact that they were having the knowledge that both these ladies were having no right to sell out the properties.

10. It is not disputed that the land was sold by Kitabo and Ram Piari to Kanwal Singh and Jagroop in the year 1980. Kitabo died on 18.06.2003 and Ram Piari died

on 4.7.2007 but complainant Ramesh Kumar did not file any complaint against Kitabo and Ram Piari that they were having no right to sell the property and they have illegally sold the property. The complainant has nowhere averred that during their life time, he was having no knowledge of this fact. The complainant has also nowhere averred that till today, he has filed any civil suit for setting-aside the sale deeds which were got executed by Kitabo and Ram Piari. If he was having any grievance with the sale deeds, he should have filed a civil case against Kitabo and Ram Piari and if he was having any grievance that Kitabo and Ram Piari illegally and intentionally sold the land without having no right, he should have filed criminal complaint against these two persons but no such step was taken by the complainant during their life time. It means that he was not having any grievance against Kitabo and Ram Piari.

11. The complainant has also averred that in the year 2006, some portion of the land was acquired by the Govt. and 2/3rd share of the amount was taken by Kanwal Singh and Jagroop. Perusal of the case file shows that Kanwal Singh and Jagroop purchased the land from Kitabo and Ram Piari. The sale deeds were neither challenged by the complainant nor were set aside by any civil court till today. In these circumstances, this Court is not able to understand what type of cheating has been done against the complainant. There is no document on file by which it can be concluded that Jagroop and Jagbir forged any document or made any cheating against the complainant or Naib Tehsildar and Halqa Patwari were also involved in this process. Merely on the saying of the complainant that these four persons chated him, this Court does not find it appropriate to summon the accused persons.

12. Hence, this Court is of the view that no case is made out against the accused persons. Thus, finding no merits in the complaint, the same stands dismissed. File be consigned to the record room after due compliance.”

Thereafter, the petitioner filed a revision before the Court of Sessions and the same was also dismissed by the Revisional Court vide judgment dated 29.04.2016. The operative part of the judgment is reproduced as under:-

“...9. I have heard learned counsel for the revisionist and perused the main case file carefully.

10. In the present case both Kitabo and Ram Piari have life interest in the property of deceased Ranbir Singh. But how the respondents-accused could have been said that they are in collusion with Kitabo and Ram Piari being committed cheating upon the complainant or whether both the Kitabo and Ram Piari would be competent to sell the land to the respondent Jagroop and Jagbir that would be a point to decide or whether Jagroop and Jagbir could be seen the better title than to Kitabo and Ram Piari that all will be the subject matter of civil dispute. Moreover how their criminal intention with both Kitabo and Ram Piari are there have not been explained in the complaint. It has nowhere in the complaint as well as in the protest petition been explained that the complainant has no knowledge regarding selling of the property by Kitabo and Ram Piari. Moreover till date no civil suit has been filed for setting aside the sale deed which was got executed by Kitabo and Ram Piari. The police has filed the cancellation report in this case to the effect that the forgery and cheating case is not there. However, the police has in his report has admitted that both Ram Piari and Kitabo were having only life term interest. However, if they had sold despite that criminality of the respondent-accused cannot be inferred.

Then complaint could have been filed against both Ram Piari and Kitabo but no such complaint has been file. It has been brought on record that both of them had died. So how the connection with Jagroop and Jagbir are there have nowhere been given in the complaint. Had there been any conspiracy between both Ram Piari and Kitabo with Jagbir to cheat complainant have not been specified. Moreover there are no provision in the land revenue Act which mandated to get recorded the entry at the time of mutation that the seller was having only life term interest. Had there been any such limitation then it is for the seller and if he has not been brought to the notice of the revenue authorities they cannot be held responsible. Moreover if any such entry was incorporated in revenue record then whether it was illegal or not, the civil court can decide the matter. But the said sale deed was never been challenged by the complainant nor it has been set aside by any civil court. Therefore, finding no illegality, impropriety in the present revision, same is hereby dismissed.

11. Trial court record along with copy of this judgment be sent back. File be consigned to the record room after due compliance.”

Thereafter, the present petition has been filed by the petitioner challenging the aforesaid order as well as the judgment.

Counsel for the petitioner has argued that the petitioner came to know about the illegal act of the accused persons in the year 2006, when they tried to obtain the compensation of the acquired land on the basis of the sale deed, which they got executed by inducing Smt. Kitabo and Ram Piari despite the fact that they were given a limited right in the Will executed by Randhir Singh thereby, granting them life interest with a rider that the property will revert back to the

complainant after their death. It is further submitted that the petitioner could not come to know about the fraud committed by the accused persons during the lifetime of Smt. Kitabo and Ram Piari and, therefore, he could not file the complaint on an earlier occasion. Counsel for the petitioner has further argued that though the petitioner has filed a civil suit challenging the alienation by the two ladies in favour of Jagbir and Jagroop Singh, however, he has admitted that the said civil suit was dismissed by the Civil Court and the first appeal was also dismissed by the Additional District Judge, however, a Regular Second Appeal is pending before this Court.

Counsel for the petitioner has also submitted that the Courts below have wrongly dismissed the complaint filed by the petitioner despite the fact that prima facie evidence has come on record. For reference, it is worth noticing that in the preliminary evidence, the complainant – Ramesh examined himself as CW1 and reiterated the facts given in his protest petition. CW2 Ramesh also deposed on the same line. Apart from this, the complainant has proved the certified copy of the Will as Ex.CW2/A, death certificate of Randhir, Ram Piari and Kitabo as Ex.CW2/B to Ex.CW2/D, respectively, affidavit as Ex.CW2/C, mutation No.8829 as Ex.CW2/F1, mutation No.8888 as Ex.CW2/F2, mutation No.12732 Ex.CW2/G, mutation no 9428 as Ex CW2/H, mutation no 13708 as Ex CW2/J, mutation no 13708 as Ex CW2/K and documents of land acquisition Ex CW2/L1 to Ex CW2/L3. Raj Singh Patwari appeared as CW3 who proved mutations Ex CW3/A to Ex CW3/F.

After hearing the counsel for the petitioner, I find no merit

in the present petition. Firstly, the petitioner has failed to produce on record any document to show that after the execution of the sale deed, Ram Piari or Kitabo remained in possession of the property to demonstrate that he had no knowledge about the sale deed, which was executed by the two ladies.

I have gone through the photocopies of statements and the record as well as the exhibited documents, with the assistance of counsel for the petitioner and find that nothing is on record to substantiate the claim of the petitioner. Even otherwise, by the same Will, which was executed by Randhir Singh in favour of the complainant and his two adoptive mothers, the property was inherited by them in three shares and it is own case of the complainant that later on, the two ladies alienated their share in favour of Jagroop and Jagbir Singh. The only argument raised by the petitioner in this regard is that despite there being a rider in the Will that they were given the lifetime interest in the property with a rider that after their death, the property will revert back to the complainant, no prima facie offence is made out if the ladies have sold the land in favour of two accused persons. Moreover, the petitioner has never challenged the alienation or action of the two ladies, during their lifetime as Kitabo died on 18.06.2003 and Ram Piari died on 04.07.2007 though the sale deed was executed in favour of Jagroop Singh and Jagbir in the year 1982 whereas Randhir Singh died on 1980.

It is own case of the petitioner that the civil suit filed by him challenging the alienation made by Smt. Kitabo and Ram Piari stands dismissed by the trial Court as well as by the Lower Appellate

Court and a Regular Second appeal is pending before this Court and, therefore, even on the civil side, primarily, the petitioner has lost his civil rights before two Courts. From the bare perusal of the complaint and the evidence led by the petitioner, prima facie no offence is made out and therefore, I find no reason to differ with the concurrent findings recorded by both the Courts below.

The petition is *dismissed* accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

27.02.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No