

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

CRM-M No.18241 of 2016 (O&M)

Reserved on: 09.01.2019

Decided on: 11.01.2019

Naranjan Singh and others

....Petitioners

Versus

Jaswant Singh

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Harsh Bunger, Advocate
for the petitioners.

Mr. S.P. Soi, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of criminal complaint case No.86/1/11 dated 18.05.2011 (Annexure P4) and for setting-aside the summoning order dated 21.09.2015 (Annexure P6) and revisional order dated 26.02.2016 (Annexure P8) and all other subsequent proceedings arising therefrom.

Brief facts of the case are that the respondent – Jaswant Singh filed a criminal complaint No.86 dated 18.05.2011 with the allegations that he is owner of the land comprised in Khasra No.37//13(8-0), ¼ (8-0), 17/1 (3-0), 18(8-0), 23/1 (4-0), 24 (8-0), 25 (8-0), 38//19/3 (1-7), 20/1 (5-14), 21 (7-6), 22 (6-0), 50//5 (4-8) and K/K. No.577/786 bearing Khasra No.37//7/2 (2-4), 8/2 (2-4) situated in the area of village Sindhar, Tehsil Shahkot, District Jalandhar. It is further stated in the complaint that accused Nos.1 to 3 i.e. the present

petitioners prepared a false agreement to sell and on the basis of the same, accused No.2 – Bahadur Singh filed a suit for specific performance, which is pending before the Civil Court, however, no such agreement was executed and it was only a money transaction. It is further stated in the complaint that the complainant was sowing different types of crops over the land, however, on 06.05.2011, the accused by forming an unlawful assembly came at the spot and with the help of tractor-trolley harvested the wheat crop and took away the same by abusing the complainant. For a ready reference, the operative part of the complaint reads as follows:-

“2. That the complainant is owner of the land covered by K/K. No.576/785 and comprised in Khasra No.37//13(8-0), ¼ (8-0), 17/1 (3-0), 18(8-0), 23/1 (4-0), 24 (8-0), 25 (8-0), 38//19/3 (1-7), 20/1 (5-14), 21 (7-6), 22 (6-0), 50//5 (4-8) and K/K. No.577/786 bearing Khasra No.37//7/2 (2-4), 8/2 (2-4) situated in the area of village Sindhar, Tehsil Shahkot, District Jalandhar. Name of the complainant has been recorded in the Jamabandi and Khasra Girdawari, which is Annexure-A.

3. That accused No.1 to 3, in connivance with other accused prepared a false agreement to sell regarding my land and accused Bahadar Singh filed a suit of possession by way of specific performance regarding my land in court of law. In fact no agreement was ever executed, and it was only money transaction. The copy of the suit filed by accused No.2, Bahadar Singh is Annexure-B.

4. That the complainant has been sowing different crops over this piece of land and at present wheat crop has been sown and it was ready to harvest, all accused threatened the complainant that they will not

allow the complainant to harvest the wheat crop and the complainant immediately filed complaint to S.H.O., Lohian Khas, vide receipt No.6 dated 29.04.2011. Copy of the complaint is Annexure-C and copy of receipt is Annexure-D.

5. *That on 06.05.2011 at about 7.30 P.M., all the accused formed unlawful assembly, in furtherance forcibly entered in my land with combine and tractor forcibly trespassed and all the accused were armed with deadly weapons. Accused No.1 Naranjan Singh was armed with Kirpan, accused No.2 Bahadar Singh with Double Barrel Gun, remaining accused were also armed with dangs and datars. Naranjan Singh accused, started abusing complainant with very filthy language “Kanjara, Kuta, Haramzada, Bhain-Chot. etc.” and raised lalkara that if the complainant will come to stop us from harvesting the wheat crop, then he will be done to death. Puran Singh and Rajinder Singh accused were driving the tractor and Kulwant Singh was driving scorpio. The complainant was helpless, as there was danger to his life, if he dare to stop them from harvesting the crop. All the accused cut the wheat crop and stolen the wheat and took on the vehicles/tractor-trolleys and left the spot and while leaving the accused threatened that if the complainant dare to report the matter to police, then they will kill the complainant and will not allow the complainant to cultivate the land. The accused committed offence punishable under Sections 323, 336, 341, 349, 427, 447, 504, 506, 148 and 149 IPC and Section 25/54/59 of Arms Act. The accused also fired shots in the air to stare the public and put the life of complainant in danger.”*

Thereafter, the complainant led his preliminary evidence and appeared as CW1 before the trial Court and supported his version

and also examined 02 witnesses i.e. CW2 – Bikkar Singh and CW3 – Gurmail Singh and also tendered certain documents like *Jamabandi* for the year 2005-06 as C1, copy of application moved before SHO, Police Station Lohian as Ex.C2, its receipt as Ex.C3, copy of plaint titled as '*Bahadur Singh vs Jaswant Singh and others*' as Ex.C4 and closed his preliminary evidence on 28.05.2014.

Thereafter, the trial Court vide impugned order dated 21.09.2015 summoned the accused persons for offence punishable under Sections 341, 427, 447, 506, 148, 149 IPC and 27/54/59 of the Arms Act.

The petitioners, thereafter, preferred a revision before the Court of Sessions challenging the aforesaid summoning order and the Revisional Court without looking into the merits of the case, dismissed the same on a limited ground that the merits of the case cannot be looked into while exercising revisional jurisdiction. The operative part of the order passed by the Revisional Court, reads as under:-

“8. I have heard the contentions of learned. counsel for both the lawyers and have gone through the trial court file carefully.

9. Before proceeding further to record finding with regarding to the submission made by the counsel for the petitioners, it is necessary to mention here that the jurisdiction of Revisional court under section 397 Cr.PC is only to satisfy itself that justice is done in accordance with recognized rules of Criminal Jurisprudence and that a subordinate court has not acceded its jurisdiction or abused the powers vested in it, while hearing and determining the case. The merits of the case are to be established through evidence and same cannot be looked

into while exercising revisional jurisdiction.

10. It is settled principle of law that the revisional court can set aside the summoning order on limited grounds. The Hon'ble Allahabad High Court in Thakur Singh Vs. State of UP, 2002, Crl. Law Journal, 131 has observed that

“Summoning order can be quashed in revision only on limited grounds. Defence plea cannot be looked into at the stage of summoning order nor order issuing process can be set aside on that ground.”

11. Similarly the Hon'ble Supreme Court in Shivjee Singh Versus Nagindera Tiwary and others 2010(3), RCR (Criminal) 466 has held as under:-

“Where there was prima-facie evidence, the Magistrate was bound to issue the process and even though the person charged of an offence in the complaint might have a defence, the matter has to be left to be decided by the appropriate forum at an appropriate stage”.

12. Being guided through the settled position of law, the arguments of the counsel for the petitioners are considered. It is clear that through his arguments, the learned counsel for the petitioners has merely touched the merits of the case and has pleaded his defence through this revision petition. These arguments of the counsel for the petitioners can not be considered by this Court to set aside the order under revision while substituting its own findings on merits. It is not the spirit of law that a revisional court should substitute its own reasoning while interfering into an order under revision. The petitioners shall have every opportunity to plead their defence before the trial court at appropriate stage. The defence if any, of the petitioners can certainly be considered by the learned trial court to justify the further trial of the case, as per the law.

13. In view of the discussions made above, it is clear that none of the arguments advanced by the learned

counsel for the petitioners are pointing out any apparent illegality or irregularity in the order under revision leading this court to an inference that no justifiable ground exists to allow this revision.

14. *Resultantly, the present revision petition stands dismissed being devoid of any merits. Revision file be consigned to record room. Trial court file be returned back immediately alongwith copy of this judgment.”*

Feeling aggrieved against the aforesaid orders, the petitioners have preferred the present petition.

In pursuance to the notice of motion, the respondent has appeared and filed the written statement.

Counsel for the petitioners has submitted that the respondent/complainant, at the stage when the impugned summoning order was passed on 21.09.2015, has failed to bring it to the notice of the trial Court that the civil suit filed by the petitioner – Bahadur Singh was decreed on 30.03.2013 i.e. much prior to passing of the impugned summoning order and this judgment was not brought to the notice of the trial Court. The operative part of the judgment passed by the Civil Court in Civil Suit No.33 dated 15.06.2009 (Annexure P2) reads as follows:-

“14. *I have carefully heard and well considered the respective submissions made by learned counsels for the parties before me and have gone through the case file carefully. As regards execution of the agreement is concerned, the plain version put forth by the defendant in his written statement is that he was made to sign blank papers by the plaintiff when he allegedly raised a loan of Rs.1000000/- from the plaintiff meaning thereby he does admit his signatures on blank stamp papers. As already*

noted above, the plaintiff has examined the scribe of the agreement named Sh. Raj Kumar Gupta who has not only testified about the aspect of scribing of agreement by him at the instance of defendant Jaswant Singh and the receipt of earnest money of Rs.1300000/- by the defendant from the plaintiff but also made a specific statement that entry with regard to said agreement was also made in his deed writing register at Sr. No.941 which too was signed by the parties and the attesting witnesses. The said PW happened to be cross-examined at length but throughout the course of grilling this PW, the defendant did not controvert the version of the PW with regard to entry of the agreement in the deed writing register with signatures of the parties and attesting witnesses against such entry. In this way, the defendant does admit the entry in the deed writing register also which is sufficient enough to smash his case that he was made to sign blank papers by the plaintiff when the plaintiff allegedly lend an amount of Rs.1000000/- to him from which version he again backtracked during the course of his own testimony when he introduced an altogether different version that he does not even know the plaintiff and had in fact raised the loan from Naranjan Singh quite unmindful of the fact that in all the civil litigations, the pleadings of the parties from the basic foundation of case and a party to the case cannot be permitted to travel beyond his/her pleaded version. Not only this, without questioning the said entry in the deed writing register, the suggesting thrown upon this PW by the defendant is that the amount of earnest money was not paid in his presence thereby forgetting his pleaded version whereby he himself has admitted the receipt of Rs.1000000/- though claimed to be by way of loan, from the plaintiff. Both the attesting witnesses of the agreement have also been examined by the plaintiff and while corr-

examining these PWs also, the defendant kept on hunting here and there in the dark that the plaintiff is related to Naranjan Singh but could not extract anything concrete to his benefit from the mouth of these PWs except the variation in the version of PW Naranjan Singh that the agreement was got scribed from Mangat Ram Manga, Deed Writer. This in itself cannot be held to be a solitary ground in itself to discard the agreement to sell altogether considering that the said PW is shown to be aged about 65 years and even in the case of a truthful witness, some discrepancies are bound to occur with passage of time and due to different powers of observation and memory and in the light of the fact that the agreement to sell is duly scribed by a licenced deed writer and an entry with regard thereto is duly incorporated in the deed writer's register maintained in usual and ordinary course of business, such minor discrepancies does not carry much weight to throw away the agreement altogether. Yet another circumstance to be taken into consideration is that in the event of it being a case of loan transaction between the plaintiff and defendant, where was the necessity for the defendant to introduce the names of defendant Nos.2 and 3 and to introduce himself as attorney of the said two defendants. Likewise, there would have been no occasion with the plaintiff to be aware of the fact that defendant No.1 was holding any power of attorney for defendants No.2 and 3 as such a fact is expected to be only within the special knowledge of the attorney holder and the principal. This in turn means that the particulars of the Power of attorneys held by him on behalf of defendants No.2 and 3, copies of which have also been produced on the record as Ex.P3 and P4, were disclosed by none else but the defendant No.1 himself which could have been the case only in the event of his entering into an agreement for sale of the land

*on behalf of the said defendants also. These facts when taken into consideration, falsify the entire version of the defendant which in itself is quite inconsistent as discussed hereinabove. The financial incapacity of the plaintiff as attempted to be projected on behalf of the defendant also cannot be said to be of any help to the defendant since according to the defendant himself he has pleaded in his written statement that he had taken a loan of Rs.1000000/- from the plaintiff and the financial capacity of a person who is in a position to lend Rs.1000000/- to the defendant as alleged by him, can well be adjudged that such a person is a man of means. **Another important fact calling for attention of this Court is that as per the case set up by the plaintiff, the possession of the land agreed to be sold also happened to be delivered by the defendant to the plaintiff which aspect has not at all been disputed or controverted by the defendant either in his written statement or while cross-examining the plaintiff. Thus, the question of delivery of possession of the suit land by the defendant to the plaintiff would have been there only in the event of there being a deal for sale of land by the defendant to the plaintiff and not in the case of a loan transaction between the parties. Thus, summing up the entire evidence available on the record, all that can be concluded is that the plaintiff has successfully proved the due and valid execution of the agreement to sell dated 17.11.2008 by the defendant in his favour and the defendant has failed to controvert such execution or to prove his contention with regard to such agreement being a result of any fraud, misrepresentation or due to mis-use of any blank signed paper. As a consequence, all these issues are decided in favour of the plaintiff and against the defendant.***

Counsel for the petitioners has further submitted that after

filing of the present petition, the appeal filed by the respondent – Jaswant Singh i.e. Civil Appeal No.55971 of 2013 was dismissed by the First Appellate Court/Additional District Judge, Jalandhar on 24.08.2016 upholding the agreement to sell as well as delivery of possession in favour of Bahadur Singh. A copy of the judgment is placed on record and the same is taken on record as Annexure 'X'.

Counsel for the petitioners has also submitted that even RSA No.5124 of 2016 filed by the complainant – Jaswant Singh was dismissed by this Court vide order dated 17.07.2018. The operative part of the said judgment (copy of which is also taken on record as Annexure 'Y') reads as under:-

“This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit for specific performance filed by the respondents.

The case of respondent No.1 was that he had entered into an agreement to purchase property of the appellant by agreement to sell dated 17.11.2008 at which time earnest money of 13,00,000/- was paid. The total deal was settled @ Rs.12,00,000/- per acre. On the appointed date respondent No.1 appeared before the Sub Registrar, Shahkot with the balance consideration as the expenses for registration but the appellant did not appear there and consequently, the present suit was filed. The case of the appellant on the other hand was that he had taken a loan from respondent No.1 and at that time the respondent No.1 had got signed from him on certain blank papers which were later on illegally converted into an agreement to sell.

Both the Courts below however held that plaintiff-respondent No.1 had been able to prove the due execution of agreement to sell while the appellant was not able to prove his case and consequently decreed the suit.

Learned senior counsel has argued that in fact the appellant was in need of money during the said period. He had obtained another loan from one Baljit Kaur who had also similarly got executed his signatures on blank papers and had similarly filed a suit for specific performance with respect to the land (out of the property mentioned in instant suit). But in that case both the Courts below accepted the plea of the appellant that it was actually a loan transaction which had been converted into an agreement to sell. In my considered opinion, that fact by itself would have no relevance considering that both the plaintiffs are different and have no connection with each other.

Learned senior counsel has further argued that there is discrepancy between the testimony of the witnesses. One witness says that the agreement to sell was typed by Mangat Ram while the other one states that it was typed by somebody else. The third argument is that if those witnesses had been present at the spot their names would also have been typed like the name of purchaser and seller. Learned senior counsel for the appellant states that there is signature of one Baljinder Singh on the last page of the agreement to sell but it has not been disclosed as to who is this Baljinder Singh and why his signatures appeared on the paper. As per the learned senior counsel this also shows that it was a blank paper which was later on filled up. In my considered opinion these arguments would not shift preponderance of probability so decisively as to turn it in favour of the appellant. No doubt a good deed writer would type the names of the witness also but it can not be deemed to be a legal essential. As regards the discrepancy in the statements of the witnesses, the same are minor in nature. The fact that some Baljinder Singh had signed the document but had not appeared cannot

also be taken to be a determinant.

Keeping in view the entire conspectus of facts, I am not persuaded that the finding of the Courts below are based on no evidence or on such a perverted mis-reading as to render them liable for interference in second appeal.

Appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.”

It is, thus, submitted on behalf of the petitioners that not only the complainant concealed the finding recorded by the Civil Court that the agreement to sell forming basis of the impugned complaint as well as the summoning order and delivery of possession, was upheld by the Civil Court in the civil suit *inter se* party and, therefore, there was no occasion for the trial Court to summon the petitioners to face the trial.

Counsel for the respondent, in reply, has submitted that both the Courts below have concurrently held that *prima facie* evidence for summoning the petitioner has come on record and, therefore, the present petition is liable to be dismissed. It is further submitted that as per the *Jamabandi* for the year 2015-16 (Annexure R1), Jaswant Singh is shown to be in possession of the land and, therefore, the Courts below have rightly held that the complainant is in possession of the property and the summoning order has been passed, in accordance with law.

Counsel for the respondent has further argued that from the statement of CW1 to CW3, it has come on record that the petitioners had forcibly cut the wheat crop and took away the same in an illegal

manner.

Counsel for the respondent has relied upon the judgment **“Syed Askari Hadi Ali Augustine Imam and another vs State (Delhi Admn.) and another”**, 2009(2) RCR (Criminal) 520, wherein the Hon'ble Supreme Court has held as under:-

“13. Herein, however, criminal case had already been instituted. Whether the same would be allowed to be continued or not is the question.

We have noticed hereinbefore the decision in K.G. Premshanker (supra). Mr. Dwivedi, however, would submit that the court therein was concerned with a case involving [Section 42](#) of the Evidence Act. The learned counsel may be correct as it was held that [Section 41](#) is an exception to [Sections 40, 42 and 43](#) of the Act providing as to which judgment would be conclusive proof of what is stated therein.

To the same effect are the decisions of some of the High Courts.

*In **Mt. Daropti vs. Mt. Santi [1929 Lahore 483]**, it was held:*

*"The learned District Judge has held that the will was either a forgery or had been executed under "undue influence". As regards "undue influence" here was neither any plea, nor evidence on the record to support the learned Judge's finding. Moreover, these questions could not be raised in the present suit until and unless the letters of administration granted to Mela Ram was revoked. It was held in **[Komollochun Dutt v. Nilruten Mandal \(1897\) 4 Cal. 360](#)**, in somewhat similar circumstances under the [Succession Act](#) of 1865, that where it is alleged that a probate has been wrongly granted, the proper course is to apply to the Court which granted the probate to revoke the same. The grant of letters of administration in the present case stands on the same footing. The grant of letters of administration so long as it subsists is*

conclusive evidence as regards the proper execution of the Will and the legal character conferred on the administrator : vide Ss. 12 and 59, Probate and Administration Act, 1881, corresponding to Ss.227 and 273, Succession Act, 1925, which now incorporates that Act, S.41, Evidence Act etc: Babu Lal v. Hari Bakhsh (1918) 13 P.R. 1918; Venkataratnam v. Ram Mohana Rao (1916) 31 M.L.J. 277; Kishore Bhai Rewa Das v. Ranchodia (1916) 38 Bom. 427..."

In Darbara Singh vs. Karminster Singh & ors. [AIR 1979 Punjab & Haryana 215], it was held:

"5. The provision of sub-section (1) of Section 8 of the Act makes it expressly clear in unqualified terms that no personal covenant of the guardian shall be binding on the minor. It means only this that, when looked from the stand point that the aforesaid interdiction is added at the fag-end of Section 8(1) by way of proviso to the clause that preceded it, a guardian though well within his right to enter into a contract for the benefit of the minor, but the said contract would not be enforceable against the minor even when it was entered for his benefit and would be voidable at his instance."

A Constitution Bench of this Court in Iqbal Singh Marwah & anr. (supra) also does not appear to have dealt with this aspect of the matter.

The question, however, would be as to whether despite the same should we interfere with the impugned judgment. We do not think that we should. Firstly, because the criminal case was instituted much prior to the initiation of the probate proceeding and secondly because of the conduct of the appellant and the stage in which the probate proceedings are pending.

For the aforementioned purpose, it may not be relevant for us to enter into the disputed question as to whether the Will is surrounded by suspicious circumstances as the same would appropriately call for

decision in the testamentary proceeding. Pendency of two proceedings whether civil or criminal, however, by itself would not attract the provisions of Section 41 of the Evidence Act. A judgment has to be pronounced. The genuineness of the Will must be gone into. Law envisages not only genuineness of the Will but also explanation to all the suspicious circumstances surrounding thereto besides proof thereof in terms of Section 63(c) of the Indian Succession Act, and Section 68 of the Evidence Act. [See Lalitaben Jayantilal Popat vs. Pragnaben Jamnadas Kataria & ors. 2009 (1) SCALE 328].

14. The FIR was lodged not only in regard to forgery by the Will but also on the cause of action of a trespass. Appellant admittedly is facing trial under Section 420, 468 and 448 of the IPC. It is, thus, possible that even if the Will is found to be genuine and that no case under Section 468 of the IPC is found to have been made out, appellant may be convicted for commission of other offences for which he has been charged against, namely, trespass into the property and cheating. If it is found that the appellant is guilty of trespass, he may be asked to handover possession of the premises in question to the complainant.

15. Exercise of such a jurisdiction furthermore is discretionary. As noticed by several decisions of this Court, including two Constitution Bench decisions, primacy has to be given to a criminal case. The FIR was lodged on 19.9.2002. Not only another civil suit is pending, as noticed hereinbefore, but a lis in relation to mutation is also pending.

Whereas the criminal case is pending before the Delhi court, the testamentary suit has been filed before the Jharkhand High Court. Since 2003 not much progress has been made therein. The Will has not been sent to the

handwriting expert for his opinion, which is essential for determination of the question in regard to the genuineness of the Will. It is alleged that the Will was registered at Hazaribagh after the death of the testatrix. For the last seven years in view of the pendency of the matters before the High Courts in different proceedings initiated by the appellant, the criminal case has not proceeded, although as noticed hereinbefore charge-sheet has been filed and cognizance of the offence has been taken.

We, therefore, are of the opinion that it is not a fit case where we should exercise our discretionary jurisdiction under [Article 136](#) of the Constitution of India having regard to the facts and circumstances of the present case.

16. For the aforementioned reasons, we find no merit in this appeal. The appeal is dismissed. No costs.

Appeal dismissed.”

Counsel for the respondent has, thus, submitted that the impugned complaint and the summoning order cannot be quashed merely on the ground that the petitioners have succeeded before the Civil Court.

However, the factum of dismissal of the appeal filed by the complainant – Jaswant Singh before the Lower Appellate Court as well as the Regular Second Appeal by this Court, are not denied being matter of record.

In reply, counsel for the petitioners has submitted that, though, in the grounds of revision, taken before the Revisional Court, a specific ground was taken that the complainant has misrepresented and concealed the factum of the judgment and decree dated 30.03.2013, but still the Revisional Court has not recorded any finding on merits of the

case and has dismissed the same summarily without appreciating the factual position.

After hearing the counsel for the parties, I find merit in the present petition for the following reasons:-

(a) A perusal of the impugned complaint (Annexure P4) reveal that it is set up by the complainant that the agreement to sell executed by him in favour of Bahadur Singh, in fact, is not an agreement to sell and was a money transaction and he never handed over the possession to Bahadur Singh. It is further alleged in the complaint that on 06.05.2011, the accused persons by forcibly entering the land of the complainant had cut the wheat crop and took away the same by using criminal force.

While leading the evidence, though, the complainant has exhibited the copy of the civil suit as Ex.C4 and closed his preliminary evidence on 28.05.2014, however, prior to this date i.e. on 30.03.2013, the Civil Court had already decreed the suit and this fact was intentionally concealed from the trial Court that the civil suit, plaint of which is exhibited as Ex.C4, prior to closing the preliminary evidence stood decreed on 30.03.2013 and, therefore, the trial Court has no occasion to go through the finding recorded by the Civil Court that the agreement to sell was, in fact, upheld by the Civil Court and a finding has been recorded that the possession was handed over to Bahadur Singh, which demolish the entire case of the complainant.

(b) Even before the Revisional Court, though the petitioners have taken a specific stand that prior to passing of the summoning order, the Civil Court had already decreed the suit on 30.03.2013 upholding the agreement to sell as well as delivery of possession in favour of Bahadur Singh, however, the Revisional Court

without applying its mind that the said judgment, which is inter se party, has a direct bearing on the merits of the case, has refused to look into the same by wrongly observing that it is beyond the scope of the Revisional Court to look into the merits of the case. Though, there is no dispute about the judgment of the Hon'ble Supreme Court in "Shivjee Singh vs Nagindera Tiwary and others", 2010(3) RCR (Criminal) 466, however, the Revisional Court adopted a wrong approach in not appreciating the evidence of inter se party in the shape of judgment and decree especially in view of the fact that the same has come much prior to passing of the impugned summoning order and was intentionally and deliberately concealed by the complainant from the notice of the trial Court.

(c) Though, in the reply, it is stated that the finding of the Civil Court is not final and conclusive, however, considering the fact that the first appeal as well as the regular second appeal filed by the complainant stands dismissed vide judgments dated 25.05.2013 and 17.07.2018, the same is binding on the trial Court with regard to the finding recorded that the agreement to sell dated 17.11.2008, is a valid document and the possession was delivered in favour of Naranjan Singh, therefore, in view of the judgment passed by the Civil Court, which has been upheld upto this Court in RSA No.5124 of 2016 vide order dated 17.07.2018, the present petition deserves to be allowed.

(d) In view of the judgment of the Hon'ble Supreme Court Syed Askari Hadi Ali Augustine Imam's case (supra), the matter needs to be remanded back to the trial Court for passing afresh order after taking into consideration the judgment passed by the Civil Court as upheld by this Court in RSA No.5124 of 2016 decided on 17.07.2018 as the trial Court after appreciating the

findings on the validity of agreement to sell as well as possession of petitioners/accused, will pass a fresh order in the light of judgment of Hon'ble Supreme Court, if the petitioners have prima facie committed the offence under Sections 341, 427, 447, 506, 148, 149 IPC read with Section 27/54/59 of the Arms Act, if the petitioners were in legal possession of the land in pursuance of a valid agreement to sell in their favour.

Accordingly, in view of what has been discussed hereinbefore, the present petition is ***allowed***, the summoning order dated 21.09.2015 (Annexure P6) and the revisional order dated 26.02.2016 (Annexure P8) are ***set-aside*** and ***the matter is remanded back to the trial Court for passing afresh order after taking into consideration the judgment passed by the Civil Court as upheld by this Court vide order dated 17.07.2018 in RSA No.5124 of 2016.***

(ARVIND SINGH SANGWAN)
JUDGE

11.01.2019
yakub

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