

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

CRM-M-24691-2009 (O&M)

Date of decision : 22.1.2019

Jasbir Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vikas Bahl, Sr. Advocate with
Mr. Nikhil Sabharwal, Advocate for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

Mr. H.S. Baath, Advocate for respondent No. 1.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Heard.

This is a petition filed under Section 482 of the Code of Criminal Procedure for quashing the FIR No. 74 dated 13.4.2008, under Sections 420, 467, 468, 471 of the Indian Penal Code, registered at Police Station Patti, District Tarn Taran (Annexure P-8) and all subsequent proceedings arising therefrom.

The facts of the case are that the Deputy Commissioner-cum Chief Sales Commissioner, Tarn Taran while hearing the appeal titled as '*Tarjit Kaur versus The Tehsildar (Sales) Patti, District Tarn Taran*' regarding transfer of land/property while dealing with the question as to whether the orders passed by the Collector exercising the powers of Sales Commissioner Patti, on 27.3.2008, allowing the conveyance deed to be

name of Jasbir Singh-respondent and his mother in equal share, is illegal null and void or not, came to the conclusion that Jasbir Singh has forged and fabricated document and got entered his name in the application in the application filed by his mother Karamjit Kaur for allotment of the property in dispute by tampering the file in connivance with the tehsil office staff. Therefore, while setting aside the order of the Sales Commissioner, Patti dated 29.8.2007 and upholding the orders of Tehsildar Sales, Patti dated 28.6.2002 issued the direction to Sub Divisional Magistrate, Patti to immediately get the FIR registered against Jasbir Singh, who in connivance with the tehsil staff, tampered the documents for his benefits. In pursuance to the said order, Sub Divisional Magistrate, Patti, addressed a communication dated 11.4.2008 to the SHO, Police Station, Patti, on the basis of which FIR in question was registered against the petitioner. Challan in this case has been presented and trial is going on.

Learned counsel for the petitioner contends that in this case FIR could not be lodged as is sought to be done. He refers to the provisions of Section 195 and 340 of the Code of Criminal Procedure. For the purpose of convenience, the said provisions are reproduced below: -

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. (1) No Court shall take cognizance-

- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
- (ii) of any abetment of, or attempt to commit, such offence, or
- (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under Section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

"340. Procedure in cases mentioned in section 195. (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary-

- (a) record a finding to that effect;
 - (b) make a complaint thereof in writing;
 - (c) send it to a Magistrate of the first class having jurisdiction;
 - (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate;
 - (e) and bind over any person to appear and give evidence before such Magistrate.
- (2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.
- (3) A complaint made under this section shall be signed-
- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
 - (b) in any other case, by the presiding officer of the Court.
 - (c) In this section," Court" has the same meaning as in section 195."

The offences are under Sections 420, 467, 468 and 471 of the Indian Penal Code which are covered under Clause (1) (b) (ii) of Section 195 of the Code of Criminal Procedure. The procedure is provided in Section 340 of the Code of Criminal Procedure. A perusal of the Section 340 of the Code of Criminal Procedure shows that *'when upon an application made to it in this behalf or otherwise the Court is of the opinion*

that it is expedient in the interests of justice that an inquiry should be made into the offence referred to Clause (b) of Sub Section (1) of Section 195 of the Code of Criminal Procedure which appears to have been committed in or in relation to the provision in that Court or as the case may be in respect of the document produced or given or in evidence in that Court or as the case may be in respect of a document produced or given in evidence in a proceedings in that Court, such Court may after such preliminary inquiry, if any, record the findings and make a complaint to the Magistrate Ist Class who is having the jurisdiction.'

In the present case, matter was initially decided by Tehsildar Sales, Patti and thereafter the matter went up in appeal before the Sales Commissioner, (Sub Divisional Magistrate) Patti who decided the matter in favour of the petitioner. Matter further went in appeal before the Deputy Commissioner, Tarn Taran, exercising the powers of the Chief Sales Commissioner. Apparently, the Deputy Commissioner while hearing the appeal was exercising the powers of a Court. While allowing the appeal, Deputy Commissioner, Tarn Taran cum Chief Sales Commissioner made the observation regarding the tampering of the documents but he has nowhere stated that '*it is expedient in the interest of justice that an inquiry should be held into the matter*'. Needless to say that he neither himself held any inquiry nor he directed his subordinate authority to hold inquiry. Therefore, the lodging of the FIR in question in such circumstances, without holding any inquiry or without giving opportunity to the opposite party, is hit by the provisions of Section 195 read with Section 340 of the Code of Criminal Procedure. Further, so far as, the merits of the case are concerned, both the parties have disputed the facts.

Learned counsel for the petitioner states that house was sought to be got allotted by his mother Karamjit Kaur on the basis of long possession. However, the person in actual possession has to be co-applicant, therefore, before presenting the application, Jasbir Singh-petitioner inserted his name in the application. Reference has been made to the application and the treasury challan dated 27.12.2001, which shows that the amount was deposited in the name of both Jasbir Singh and Karamjit Kaur.

On the other hand, learned counsel for respondent No.1 has stated that tampering is visible with naked eye on the application whereas the name of Jasbir Singh has been asserted. He has also referred to the language in the application to press that in fact only Karamjit Kaur has filed the application for allotment and name of Jasbir Singh was inserted later on.

In any case, in view of the contradictory stand taken by both the parties, it was much more necessary to hold any inquiry and record the findings whether crime of forgery and cheating was committed by Jasbir Singh or not and if so, in whose connivance, it was committed. In this case, no opportunity was given to Jasbir Singh-petitioner.

In view of the matter, FIR could not have been lodged as it was done by the Deputy Commissioner-cum-Chief Sales Commissioner, Tarn Taran by directing the Sub Divisional Magistrate, Patti to lodge an FIR.

As such, present petition is allowed and FIR No. 74 dated 13.4.2008, under Sections 420, 467, 468, 471 of the Indian Penal Code, registered at Police Station Patti, District Tarn Taran (Annexure P-8) along

with consequential proceedings qua petitioner stands quashed.

Petition stands allowed.

(KULDIP SINGH)
JUDGE

22.1.2019
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Whether speaking / reasoned	Yes
Whether Reportable:	No