

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

**CRM No.17157 of 2019 IN/AND
CRM-M No.33746 of 2018 (O&M)**

Decided on: 09.07.2019

Pardeep Kaur

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Navkiran Singh, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. A.P.S. Rajput, Advocate for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

CRM No.17157 of 2019

Prayer in this application is for preponing the date of hearing of the main petition from 08.11.2019 to any other date.

Heard.

For the reasons stated in the application, the same is allowed and the main petition i.e. CRM-M No.33746 of 2018, which is fixed for 08.11.2019, is taken up today for hearing.

CRM-M No.33746 of 2018 (O&M)

Prayer in this petition is for quashing of FIR No.55 dated 26.03.2003 (Annexure P-1) registered under Sections 420, 465, 467, 468, 471 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Division No.4, District Jalandhar and challan dated 23.10.2006 (Annexure P-2) and for setting-aside the order dated 24.05.2004, vide

which the petitioner has been declared as proclaimed offender and all other subsequent proceedings arising therefrom.

Brief facts of the case are that respondent No.2/complainant got the aforesaid FIR registered with the allegations that the complainant – Surjit Kaur, widow of Pritam Singh and both of them were residing abroad and she is prosecuting the case through her attorney Parkash Kaur. It is further stated in the FIR that the complainant had a son namely Satnam Singh, who was married to the present petitioner – Pardeep Kaur. Satnam Singh died on 19.01.2001 and thereafter, the relation between the complainant and the petitioner became strained, on account of inheritance of his property. It is also stated in the FIR that the petitioner forged and fabricated the Will dated 21.02.1998 regarding some property of the deceased – Satnam Singh. The FIR has been registered on the ground that the petitioner along with co-accused have committed the offence of cheating and forgery as the Will is stated to be a forged and fabricated one as it ousted the right of the complainant.

It is worth noticing here that thereafter, the challan was presented on 23.10.2006, whereas, prior to submission of the challan, the petitioner was declared as proclaimed offender on 24.05.2004.

Counsel for the petitioner has submitted that in the meantime, 03 other co-accused, who were alleged witnesses of the Will, faced the full length trial and the Chief Judicial Magistrate, Jalandhar vide its judgment dated 04.01.2016 acquitted all the accused persons by making the following observations:-

“24. From appreciation of oral as well as

documentary evidence as discussed above, there is no doubt that the dispute is with regard to the alleged forgery of Will dated 21.02.1998 of Satnam Singh by Pardeep Kaur (since P.O.) in connivance with her mother/Swaran Kaur, her maternal uncle/Gurdial Singh as well as another witness namely Dargah Singh, the Numberdar (since deceased). At the outset, it is abundantly clear and prove that the allegedly forged Will in original, never saw the light of the day in the manner that neither the same was taken into possession by the police nor the same was seen by PW2/Surjit Kaur and PW5/Parkash kaur or any other witness, nor the same was ever produced in the court. The mere placing of reliance in the pleadings by Pardeep kaur on the said allegedly forged Will dated 21.02.1998 does not ipso factor proves the forgery or criminal conspiracy in any manner.

25. *The mere fact that Satnam Singh could not have executed Will qua Shop No.13 which was in the name of Surjit Kaur and not Pritam Singh, does not lead us to the conclusion that the Will of Pritam Singh was forged.*

26. *It is settled proposition of law that the forgery cannot be inferred but has to be proved by independent and credible evidence. It is also settled canon of criminal jurisprudence that the burden to prove the case is on the prosecution which is to prove the case beyond the reasonable shadow of doubt because life and liberty of a person is directly stake. The mere fact that there is every possibility that a document can be forged by the beneficiary, does not close all the doors for those prospective beneficiaries to prove their innocence or otherwise to prove their version by any independent evidence or through cross-examination of the witnesses.*

27. *In view of the aforesaid discussion, the prosecution has not been able to prove that on 26.03.2003,*

in the area of P.S. Div. No.4, Jalandhar accused Swaran kaur and Gurdial Singh alongwith their co-accused Pardeep Kaur (since PO) and Dargah Singh (since died) entered into a criminal conspiracy and forged a Will in the name of Satnam Singh dated 21.02.1998 for grabbing the property of Surjit Kaur wife of Pritam Singh and cheated her with intention to cause injuries to the claim/title of the land owned by Surjit Kaur W/o Pritam Singh and dishonestly used the same as a genuine certain document i.e. a Will in the name of Satnam Singh dated 21.02.1998 and thereby they committed an offence U/s 120-B, 465, 467, 471 of IPC.

28. As a sequel, the prosecution has failed to prove its case and consequently, the present accused namely Swaran Kaur and Gurdial Singh stands acquitted of charges framed against them under Section 120-B, 420, 465, 467, 471 of IPC. Bail bonds of accused and surety bonds of surety of accused stand discharged from their liability under bonds. File be consigned to the record room and shall be revived as and when accused Pardeep Kaur (since P.O.) is arrested or surrendered in the Court.”

Counsel for the petitioner has further submitted that thereafter the State as well as the complainant – Surjit Kaur filed two separate appeals before the Additional Sessions Judge, Jalandhar and both the said appeals were also dismissed by the Additional Sessions Judge, Jalandhar vide judgment dated 10.08.2017. This judgment has attained finality.

Counsel for the petitioner, with reference to the judgment dated 10.08.2017, has argued that the Lower Appellate Court has framed as many as 05 points for its determination regarding the charges under Sections 120-B, 420, 465, 467 and 471 IPC. Counsel for the

petitioner has referred to the finding recorded by the Lower Appellate Court. The operative part of the judgment dated 10.08.2017 is reproduced as under:-

“15. I have heard learned counsel for the parties and have gone through the file carefully. The points for determination framed in this appeal are as under:-

1. Whether prosecution succeeded in proving charge under Section 120-B IPC against the accused to cheat the complainant by forging and fabricating the Will of Satnam Singh dated 21.02.1998?

2. Whether prosecution succeeded in proving the offence of cheating under Section 420 IPC committed by the accused?

3. Whether prosecution succeeded in proving charge under Section 465 IPC against the accused?

4. Whether prosecution succeeded in proving charge under Section 467 IPC against the accused?

5. Whether prosecution succeeded in proving charge under Section 471 IPC against the accused?

Point No.1 for determination:-

1. Whether prosecution succeeded in proving charge under Section 120-B IPC against the accused to cheat the complainant by forging and fabricating the Will of Satnam Singh dated 21.02.1998?

16. The prosecution claims that the accused Pardeep Kaur, her mother Swaran Kaur and the attesting witnesses of the Will of Satnam Singh dated 21.02.1998 namely accused Gurdial Singh son of Shingara Singh and Dargah Singh, Lamberdar, entered into a conspiracy to

forge and fabricate the Will of Satnam Singh for the purpose of grabbing the property of Surjit Kaur. Before Dargah Singh, Lamberdar could be arrested, he expired. Accused Gurdial Singh was arrested. Pardeep Kaur, wife of Satnam Singh being abroad, she was declared Proclaimed Offender. Accused Swaran Kaur, mother of Pardeep Kaur faced trial along with Gurdial Singh. From the evidence led by the prosecution, charge of conspiracy against Swaran Kaur is not proved. It is further not proved that the signatures of Satnam Singh son of Surjit Kaur, complainant on the Will dated 21.02.1998 mark 'A' are forged and fabricated or the same are genuine. No evidence has been led to show that the accused Gurdial Singh and Dargah Singh, Lamberdar were involved in a conspiracy with Pardeep Kaur to forge and fabricate the Will of Satnam Singh. Since, Pardeep Kaur was never arrested and no role in the conspiracy was attributed to Swaran Kaur, mother of Pardeep Kaur, so the alleged conspiracy between Pardeep Kaur, Swaran Kaur and the attesting witnesses of the Will Gurdial Singh and Dargah Singh, Lamberdar is not proved. In these circumstances, the prosecution failed to prove charge under Section 120-B IPC against the accused. So, point No.1 for prosecution is decided against the prosecution and in favour of the defence.

Point No.2 for determination:-

2. Whether prosecution succeeded in proving the offence of cheating under Section 420 IPC committed by the accused?

17. The prosecution claims that the accused committed offence under Section 420 IPC. According to Section 420 IPC, offence is made out against a person who cheats and thereby dishonestly induces the person deceived to deliver any property to any person or to make

alter or destroy the whole or part of any valuable security or anything which is signed or sealed, which is being capable of converted into valuable security. In the instant case, there is no allegation to the effect that the accused caused delivery of any property from the complainant Surjit Kaur. In so far as the question of forgery and fabrication of Will of Satnam Singh dated 21.02.1998 is concerned, no witness was examined in order to show that the accused dishonestly induced Satnam to sign the Will. No evidence was led to show that the signatures of Satnam Singh appearing on the Will dated 21.02.1998 mark 'A' are the actual signatures of Satnam Singh. In these circumstances, merely because the allegedly forged Will was used by the accused party for filing a civil suit for declaration against Surjit Kaur, complainant for claiming the shops No.12 & 13, Nehru Garden Road, Jalandhar, is no ground to make out offence under Section 420 IPC against the accused. In these circumstances, the prosecution clearly failed to prove charge under Section 420 IPC against the accused. So, the point No.2 for determination is decided against the prosecution and in favour of the defence.

Points No.3 & 4:-

3.Whether prosecution succeeded in proving charge under Section 465 IPC against the accused?

4.Whether prosecution succeeded in proving charge under Section 467 IPC against the accused?

18. Points No.3 & 4 for determination being inter-connected, they are taken up together for the purpose of discussion. Since, the Will of Satnam Singh is alleged to be forged, so the graver form of offence of forgery under Section 467 IPC is made out. The learned trial court

rightly observed that the Will of Satnam Singh was never seen by the complainant Surjit Kaur (PW-2) or by her power of attorney Parkash Kaur (PW-5). The Will was never produced in the court. The signatures of Satnam Singh appearing on the Will were never compared with any admitted signatures of Satnam Singh in order to show that the signatures of Satnam Singh appearing on the Will dated 21.02.1998 mark 'A' are forged and fabricated. In these circumstances, the prosecution clearly failed to prove charge under Sections 465, 467 IPC against the accused. So, the points No.3 & 4 for determination are decided against the prosecution and in favour of the defence.

Point No.5 for determination:-

5.Whether prosecution succeeded in proving charge under Section 471 IPC against the accused?

19. It is the claim of the prosecution that the accused by filing a Civil Suit for declaration qua the shops No.12 & 13, Nehru Garden Road, Jalandhar against Surjit Kaur on the basis of the Will of Satnam Singh dated 21.02.1998 committed the offence under Section 471 IPC. Mere filing of the suit for declaration on the basis of the Will, is not sufficient to make out offence under Section 471 IPC. In order to make out offence under Section 471 IPC, the prosecution was required to show that the Will of Satnam Singh was actually produced by the accused before the Civil Court. It was further required to be proved that the Will in question was forged and fabricated. It was further required to be proved that the accused fraudulently and dishonestly used the Will knowing or having reason to believe the same is forged and fabricated. In the present case, the prosecution failed to prove that the Will was ever produced before the Civil court. It also failed to prove that

the Will was forged. No evidence was led to the effect that the accused knew that the Will was forged and fabricated. In these circumstances, offence under Section 471 IPC is also not made out against the accused. So, point No.5 for determination is decided against the prosecution and in favour of the defence.”

Counsel for the petitioner has further argued that the petitioner is residing abroad much before the registration of the FIR and even the complainant was residing abroad as it is evident from the FIR itself that she is prosecuting this case through her attorney Parkash Kaur. Counsel for the petitioner has, thus, submitted that in the absence of a proper valid and legal service on the petitioner on her given address, the declaration of the petitioner as a proclaimed offender is not in accordance with the provisions of Sections 82/83 read with Section 105-A of Cr.P.C., as no substitute service was effected on the petitioner, who was admittedly residing abroad.

Counsel for the petitioner has further submitted that the complainant has lead the best possible evidence available with her, on the basis of which the other co-accused have already been acquitted by the trial Court especially in view of the fact that the Will has never been produced before the trial Court and even before the Civil Court, the original Will was never produced and, therefore, no purpose will be served if the petitioner is directed to face afresh trial as no new evidence can be brought on record and the prosecution of the petitioner, if any, would amount of abuse and misuse of process of law.

Counsel for the petitioner has also stated at bar that the petitioner has not taken any benefit on the basis of the alleged Will

dated 21.02.1998 as even the civil suit filed on the basis of the said Will, stands withdrawn and even the limitation to file any fresh suit on the basis of the said Will has also expired and the petitioner undertakes that she will not take any benefit arising out of the said Will dated 21.02.1998 either before the Civil Court or the Revenue record.

Counsel for the petitioner has relied upon the Division Bench judgment of this Court ***“Sudo Mandal @ Diwarak Mandal vs State of Punjab”***, 2011(2) RCR (Criminal) 453, *wherein it has been held that even in case of proclaimed offender if the prosecution of the other accused has resulted into acquittal, no purpose will be served in directing the person, who is declared as proclaimed offender to face the trial if the chances of conviction are bleak.*

In reply, counsel for the State on instructions from ASI Amarjit Singh, has not disputed the fact that the co-accused of the petitioner have already been acquitted by the trial Court and the appeal filed by the State was dismissed by the Lower Appellate Court. It is also not disputed that the Will, in question, was never produced before the trial Court.

Counsel for the complainant has, however, submitted that the petitioner has tried to take benefit of the Will by filing a civil suit, however, the same was dismissed as withdrawn on 19.09.2012 and thereafter, no fresh suit was filed. Counsel for the complainant has also not disputed the fact that the judgments passed by both the Courts below have attained finality and no revision has been filed as per the reply filed by him.

After hearing the counsel for the parties, I find merit in the

present petition considering the findings recorded by both the Courts below that in the absence of the original Will on record, no offence is made out, in my opinion even if the petitioner is directed to face the trial afresh, no purpose will be served in directing her to face the prosecution in view of the *Sudo Mandal's case (supra)*. Accordingly, this petition is allowed, the order dated 24.05.2004, vide which the petitioner has been declared as proclaimed offender is set-aside and the impugned FIR No.55 dated 26.03.2003 (Annexure P-1) registered under Sections 420, 465, 467, 468, 471 IPC at Police Station Division No.4, District Jalandhar and challan dated 23.10.2006 (Annexure P-2) all other subsequent proceedings arising therefrom are ordered to be quashed.

This will, however, be subject to deposit of costs of Rs.2 lacs in the Government Treasury under a head to be nominated by the trial Court within a period of 02 months from today.

In case the costs is not deposited, the present petition shall be deemed to be dismissed without any further orders.

Considering the fact that the petitioner is an NRI, the trial Court will make endeavour to deposit the amount through Demand Draft on an application moved by any authorized person or counsel on behalf of the petitioner.

(ARVIND SINGH SANGWAN)
JUDGE

09.07.2019

yakub

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No