

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42764-2017
DECIDED ON: 09.04.2019

TEJWINDER SINGH SEKHON

...PETITIONER..

VERSUS

STATE OF PUNJAB

...RESPONDENT..

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Joginder Singh Toor, Advocate,
for the petitioner.

Ms. Sudeepti Sharma, Addl. A.G., Punjab.

Mr. G.S. Sandhu, Advocate,
for the complainant.

RAMENDRA JAIN, J. (ORAL)

Prayer in this petition under Section 482 Cr.P.C., has been made for quashing FIR No.41 dated 25.01.2005, registered under Sections 420, 447, 506, 120-B read with Section 34 IPC, Police Station Sadar, Patiala, order dated 08.01.2011, declaring the petitioner as proclaimed offender and all subsequent proceedings arising therefrom.

Briefly, complainant-Madan Kharbanda purchased a plot measuring 93.33 sq. yards vide registered sale deed dated 12.05.2000. According to him, said plot was sandwiched in two roads of 40 feet and 20 feet wide on its eastern and western side respectively. However, petitioner, his sister and mother with an intention to encroach upon 40

feet wide road prepared a forged sale deed No.1110 dated 09.09.2004 including the area of said road. Petitioner along with other further got registered gift deed dated 22.06.2004 in favour of his wife including the area of the road to usurp the same.

On these broad allegations, aforesaid FIR was registered against the petitioner, under Sections 420, 447, 506, 120-B read with Section 34 IPC, in his absence, being NRI and was not in India. The police after completion of investigation, filed final report under Section 173(2) Cr.P.C. against the petitioner, his sister-Baljinder Kaur and mother-Harvinder Kaur. Resultantly, the court issued notice to petitioner and his aforesaid sister and mother to face trial. Consequently, Baljinder Kaur and Harvinder Kaur appeared, but the petitioner did not appear, as he never came across about the aforesaid FIR, inasmuch as, no court notice was ever served upon him on his address of his permanent abode at Canada.

After holding trial, co-accused i.e. sister and mother of the petitioner, were acquitted vide judgment dated 27.02.2015 (P-8), with the following observations :-

"From this testimony also, there is nothing through which, it could be asserted that complainant in any manner was induced to deliver his property to the accused persons, neither it has been established that there was any kind of criminal conspiracy or liability towards all three accused. Further, none of the witnesses has stated the fact that the accused persons

had threatened the complainant for life. Not even the complainant had stated the same. Further, witnesses Jagat Singh and Mohinder Singh have not supported the case of the prosecution and were declared hostile.

In these circumstances, it cannot be said that there is anything incriminating against the accused persons which can lead to conviction of the accused persons".

Simultaneously, complainant-Madan Kharbanda also filed suit for permanent injunction against the petitioner and his mother from restraining them to encroach upon the alleged 40 feet wide road adjacent to his plot, which too, was dismissed on 27.10.2014 (P-6) by making the following observations:-

"No other evidence has been led by the plaintiff. I am of the considered opinion that the plaintiff has miserably failed to prove any cause of action for claiming the relief for permanent injunction. The proof of existence of a passage and the proof of use of the same does not ipso facto entitle the user for the relief of injunction against the other."

Sister and mother of the petitioner have been acquitted on the same allegations vide aforesaid judgment of acquittal. There is nothing on the record, which shows that the petitioner was ever served court notice or investigating officer ever served him under the provisions of Section 105-B Cr.P.C. before filing final report under Section 173(2) Cr.P.C.

Therefore, taking the aid of judgment titled as **"Darshan**

Singh vs. State of Punjab and another", passed in CRM-M-18875-2018 on 05.10.2018, wherein relying upon judgments of the Division Bench, a Coordinate Bench of this Court in similar circumstances, quashed the FIR, the instant petition is allowed. FIR No.41 dated 25.01.2015 (P-1A), order dated 08.01.2011 and all consequent proceedings arising therefrom are quashed/set aside qua the petitioner.

09.04.2019

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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No