IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.1169 of 2019 (O&M)
Date of decision: 26.07.2019

Harpal Singh and others **...... Petitioners**

Versus

State of Punjab **...... Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Veneet Sharma, Advocate
for the petitioners.

Ms. Rajni Gupta, Sr. DAG, Punjab.

Mr. A.N. Walia, Advocate
for the complainant.

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<u>ANIL KSHETARPAL, J.</u>

This revision petition has been preferred against the judgments passed by Chief Judicial Magistrate dated 18.07.2013 convicting petitioners and Onkar Singh for the offence committed under Sections 419, 467, 468, read with Section 120-B of the Indian Penal Code, affirmed in appeal by the learned Additional Sessions Judge, Amritsar vide judgment dated 30.04.2019.

At the outset, it must be noticed that Onkar Singh, one of the accused had filed a separate revision petition which was dismissed by this Court while reducing the sentence to a period of 2 years from 3 years.

The facts of the case has been noticed in detail by the learned Additional Sessions Judge which are extracted as under:-

"3. The brief facts of the prosecution case are that on the

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basis of a written complaint of complainant Manmohan Kaur, the present FIR was registered. Complainant Manmohan Kaur stated in her complaint that she is daughter of Bachan Singh resident of Chatiwind Lahal. After death of her father, Harpal Singh, Onkar Singh, Balkar Singh and Avtar Singh sons of Sohan Singh, residents of Chatiwind Lehal, in connivance with Mukhtar Singh, Numberdar, Amrik Singh s/o Sohan Singh, with help of Resham Singh, Draftsman, got executed a forged sale deed regarding her share in land measuring 16 kanals bearing khasra no.34/3 (8-0), 4/1 (4-16), 7/2 (2-9), 10/2 min (0-15), khata khatoni No.24/72, 37/93 in their favour. Inquiry was conducted by Anti-fraud Staff and D.S.P., and the facts in the application were found to be true. Accordingly, the present FIR was registered. Investigation was conducted by ASI Baldev Singh, who arrested Onkar Singh and Satwant Kaur wife of Sohan Singh on 17.7.2002 and the forged sale deed was recovered at the instance of Satwant Kaur. Their thumb impressions were obtained in the Court and on receipt of report, it was found that Satwant Kaur has thumb marked the said sale deed in place of Manmohan Kaur. Satwant Kaur also confessed the said fact. Accused Harpal Singh, Balkar Singh, Avtar Singh were arrested and released on bail in view of their interim bails. Thereafter remaining investigation was conducted by SI Surinderjit Singh and Harwinder Singh, Inspector/SHO Civil Lines, who joined Amrik Singh and Mukhtar Singh in the investigation and Amrik Singh son of Gajjan Singh was found to be innocent and numberdar Mukhtar Singh was found guilty, deed writer was also found to be innocent. Accused Mukhtar Singh was arrested and released as per bail order dated 22.8.2003. Statements of witnesses were recorded u/s.161 Cr.P.C. On completion of entire investigation, the challan against the accused was prepared and presented in the court for trial.

4. All the accused appeared in the court and they were supplied the copies of report under section 173 Cr.P.C., along with accompanied documents, free of cost, as envisaged under section 207 of Cr.P.C. The accused were charge sheeted

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u/s.419,467,468,471,120-B of IPC to which they pleaded not guilty and claimed trial. During trial one of the accused Mukhtar Singh died and proceedings against him abated by the trial court.

5. In evidence, the prosecution has examined as many as nine witnesses i.e. PW1 HC Hardial Singh, PW2 MHC Sukhpal Singh, PW3 Amrik Singh, who is marginal witness of the sale deed dated 12.7.1999, PW4 SI Mangal Singh, PW5 Neena Kumari, Clerk, D.C. Office, PW6 SI Surinderjit Singh, PW7 ASI Baldev Singh, investigating officer, PW8 Manmohan Kaur complainant, PW9 SI Jaswinder Kaur from Finger Print Bureau, Phillau. Thereafter the learned Addl.P.P tendered copy of jamabandi Ex.PX, Ex.PY and then closed its evidence.

6. Statements of all the accused were recorded under section 313 of Code of Criminal Procedure and the incriminating evidence led by the prosecution was put to them, but they denied all the incriminating circumstances and pleaded that they are innocent and have been falsely implicated in this case. The accused led no evidence in defence and then closed the same."

It is not in dispute that in the civil proceedings, the sale deed in question has already been set aside.

This Court has heard learned counsel for the petitioners including counsel for the State as well as counsel for the victim/first informant and gone through the judgments passed by the Courts below and the record.

Learned counsel appearing for the petitioners has submitted two fold arguments:-

1. He has submitted that there is no evidence of criminal conspiracy as defined in Section 120-A of IPC against petitioners No.1, 2 and 3. Hence, their conviction with the aid of Section 120-B of IPC is not sustainable.

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2. He has also submitted that Satwant Kaur-petitioner No.4 is an old lady of 75 years, first time offender and therefore, qua petitioner No.4, the Court should take a lenient view and released her on probation.

On the other hand, learned counsel appearing for the State assisted by learned counsel for the victim-first informant has submitted that petitioners No.1 to 3 are beneficiary of the sale deed which was result of impersonation and therefore, they were very much part of the criminal conspiracy hatched by petitioner No.4 along with his son-Onkar Singh (non-petitioner). He further relied upon a judgment passed in Criminal Revision No.3694 of 2014 in this very case, dated 27.03.2018 when this Court remanded the case back to the learned First Appellate Court. It will be noted here that First Appellate Court at initial stage had held that petitioners No.1 to 3 cannot be held guilty for forging document by entering into a criminal conspiracy whereas Satwant Kaur was ordered to be released on probation. However, the aforesaid judgment was set aside and the case was remitted back.

Learned First Appellate Court, thereafter, by way of impugned judgment had upheld the judgment of conviction passed by the trial Court while affirming the findings with regard to petitioners No.1 to 4 being guilty of the offence committed.

In the present case, it is apparent that the sale deed dated 12.07.1999 was executed by Satwant Kaur impersonating as Manmohan Kaur in favour of her four sons. It is also apparent that at the time of execution of the sale deed, petitioners No.1 to 3 namely, Harpal Singh, Balkar Singh and Avtar Singh were not present nor they are signatories to the aforesaid sale deed. Both the Courts below have convicted petitioners

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No.1 and 3 without recording any finding or discussing the evidence with regard to availability of sufficient evidence to prove criminal conspiracy on the part of petitioners No.1 to 3. In fact, learned trial Court while discussing the oral evidence of the witnesses produced by the prosecution has not recorded that any of the witness had categorically stated that petitioners No.1 to 3 were part of the criminal conspiracy in execution of a forged sale deed dated 12.07.1999, result of impersonation. Even during arguments, learned State counsel could not draw attention of the Court to the evidence led by the prosecution to prove or even allege as to what was the nature of criminal conspiracy and how petitioners No.1 to 3 were part thereof. In this regard, it will be noticed that the victim-first informant Manmohan Kaur had appeared in evidence as PW-8 whereas marginal witness of the sale deed has appeared as PW-3. Counsel for the State has failed to point out as to how these witnesses have stated or deposed that petitioners No.1 to 3 were also involved in the conspiracy.

Argument of learned State counsel to the effect that petitioners No.1 to 3 are beneficiaries of a sale deed which is result of impersonation, is to be appreciated in the proper perspective. Section 120-A and 120-B of Indian Penal Code do not lay down/provide that beneficiary would be assumed to be a criminal conspirator. What has been provided is that if two or more persons agreed to do or cause to be done an illegal act and the act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. Section 120-A defines criminal conspiracy is extracted as under:-

> *"**120A. Definition of criminal conspiracy**. -- When two or more persons agree to do, or cause to be done,*
> *(1) an illegal act, or*

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> *(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*
> *Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."*

There is well known phrase which is used for criminal conspiracy and that is 'criminal conspiracy is a partnership in crime'. However, it is well settled that mere association with the conspirator/conspirators would not make an accuse, member of the conspiracy. No doubt, most of the time direct evidence to prove conspiracy is not available and the criminal conspiracy has to be proved through circumstantial evidence, however, the circumstantial evidence should prove beyond shadow of reasonable doubt that the accused were involved in criminal conspiracy with each other. The evidence led by the prosecution should be of such nature that there is no other conclusion possible. Chain of circumstantial evidence has to complete with no loose ends.

Hon'ble Supreme Court has delineated certain guiding principles to prove criminal conspiracy in the famous case of *State of Tamil Nadu Vs. Nalini and others, (1999) Criminal Law Journal 3124*. Para 574 of the judgment delivered by Hon'ble Mr. Justice D.P. Wadhwa is extracted as under:-

> *"Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.*
> *1. Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone*

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does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may, for example, be enrolled in a chain A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the centre doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of

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conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its

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accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while

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the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

It is also settled that conspiracy means something more than joint action of two or more accused. A merely passive attitude towards an existing conspiracy cannot taken as evidence for convicting an accuse for criminal conspiracy. The conspiracy has also to be proved in accordance with Section 10 of the Evidence Act.

Merely because some individual have received benefit of a document which is result of impersonation, in itself not sufficient to hold the beneficiary is guilty of offence committed with the aid of Section 120-A IPC particularly in absence of sufficient evidence. There may be strong presumption of their involvement but strong presumption cannot be a substitute for evidence to prove guilt.

If this Court examines the evidence available on the touch stone of the requirement of evidence of criminal conspiracy, the inescapable conclusion is that the prosecution in the present case has failed to prove sufficient evidence to prove involvement of petitioners No.1 to 3, namely, Harpal Singh, Balkar Singh and Avtar Singh in criminal conspiracy. The offence in question was committed in 1999. As per memo of parties, Avtar Singh is now 35 years of age. He was barely 15 years at that time. Balkar Singh is now 34 years old and he was barely 24 years old at the time of crime. Harpal Singh is 47 years, therefore, he was 27 years at the time of crime. In other words, petitioners No.1 to 3 were young boys at that time.

In view of the aforesaid, petitioners No.1 to 3 are given benefit of doubt and therefore, acquitted while setting aside the judgment of conviction passed against them.

Now let us deal with the case of Satwant Kaur.

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Learned counsel for the petitioner as noticed above has contended that petitioner No.4-Satwant Kaur is aged about 75 years and therefore, she should be released on probation keeping in view her age and being first offender.

Smt. Satwant Kaur is established to have impersonated as Smt. Manmohan Kaur, the victim/first informant and executed a registered sale deed qua the property owned by the victim in favour of her own sons. The transfer of immovable property through impersonation has been established beyond shadow of any reasonable doubt. No doubt, petitioner No.4 has faced protracted trial for a period of 15 years, however, that itself would not be sufficient to release the petitioner on probation. However, keeping in view the age of petitioner No.4, the sentence awarded to petitioner No.4 is reduced to 2 years whereas order of payment of fine and further sentence in case of default is maintained. All the sentences awarded to petitioner No.4 under different provisions of Indian Penal Code shall run concurrently.

Hence, the revision petition is partly allowed.

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned Yes / No

Whether Reportable Yes / No

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