In the High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-48718-2018 (O&M)
Date of Decision:- 21.8.2019

Dalbir Bhardwaj … Petitioner

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. K.S.Goel, Advocate, for the petitioner.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

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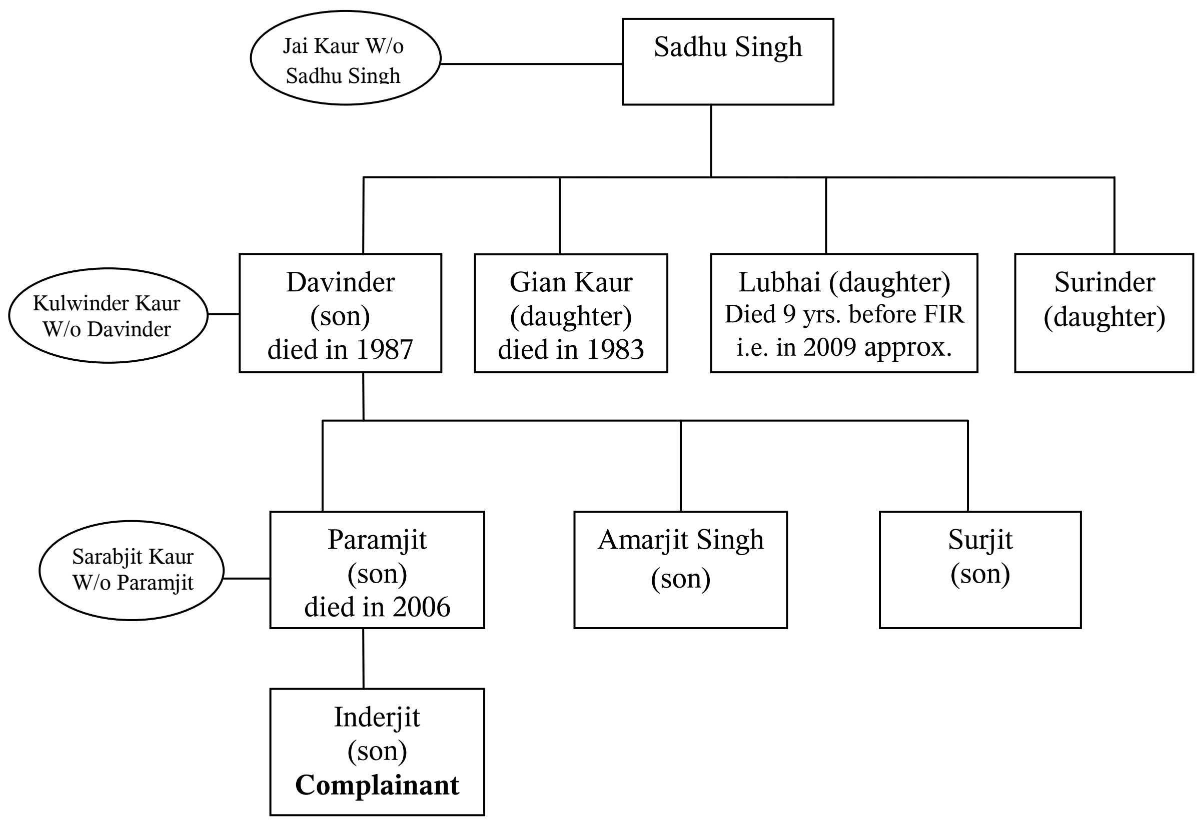
GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking quashing of FIR No.10, dated 12.1.2018, registered at Police Station Fattu Dhinga, District Kapurthala, under Sections 419, 420, 465, 467, 468, 471, 120-B IPC.

2. The FIR was registered at the instance of Inderjit Singh son of Paramjit Singh, wherein it has been alleged that his great grand-father Sadhu Singh owned land in Village Mand Surkhpur and Village Peerewal who had died leaving behind his widow Jai Kaur, son Davinder Singh and three daughters

Gian Kaur, Lubhai and Surinder Kaur. Davinder Singh was grand father of the complainant and had expired in the year 1987 leaving behind his wife Kulwinderjit Kaur and sons Paramjit Singh, Surjit Singh and Amarjit. It is alleged that although Gian Kaur had expired on 20.11.1983 and Lubhai had also expired about 9 years back but Surinder Kaur, another sister of Gian Kaur and Lubhai in connivance with Kulwinderjit Kaur fabricated three sale deeds dated 8.5.2015 pertaining to land measuring 15 kanals situated in village Mand Surkhpur and 10 kanals 19 marlas situated in Village Peerewal and got them executed through Gurmej Kaur w/o Jagdev Singh and Gian Kaur w/o Tara Singh who impersonated as Gian Kaur and Lubhai, daughters of Sadhu Singh although the said Gian Kaur and Lubhai daughters of Sadhu Singh had already expired. It is thus alleged that Kulwinderjit Kaur, Surinder Kaur, Gurmej Kaur, Gian Kaur w/o Tara Singh, Gurmail Singh, Lambardar Avtar Singh and Satish Kumar Deed Writer had all connived and conspired together for the purpose of getting the sale-deeds dated 8.5.2015 executed by way of impersonation so as to cause wrongful loss to complainant whose father Paramjit Singh had expired in 2006 and to cause wrongful gain to themselves. It is further alleged that the complainant had recently come to know that Kulwinderjit Kaur was further wanting to alienate the property in question on the basis of the aforesaid forged sale deeds.

3. Before noticing the contentions put forth on behalf of the petitioner seeking quashing of the FIR, it will be a helpful to bear in mind the pedigree table as may be discerned from the FIR which may be noticed as follows:



4. The learned counsel for petitioner has submitted that the FIR in question is an abuse of process of law, wherein the petitioner who was a Sub Registrar is sought to be involved on flimsy grounds. Learned counsel, while seeking quashing of the FIR in question has broadly made the following submissions:

i. that the petitioner is not named in the FIR.

ii. that the petitioner had registered the sale deeds being Sub Registrar in his official capacity and he was not required to verify about the genuineness of the sale deeds or regarding the title of the property in question.

iii. that the matter in any case stands compromised amongst the parties.

iv. that the petitioner is entitled to protection under Section 86 of the Indian Registration Act, which reads as follows:

> "Section 86 in the Registration Act, 1908
> Registering officer not liable for thing bona fide done or refused in his official capacity.—No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity."

v. that the petitioner in the absence of a sanction in terms of Section 197 Cr.P.C. cannot be prosecuted for any act done by him in discharge of his official duty and that since registration of sale deed was a part of the official duty of the petitioner, he cannot be prosecuted in the absence of any sanction from the competent authority.

5. Learned counsel for the petitioner in order to hammer forth his aforesaid contentions has placed reliance upon judgment of this Court in *Hari Singh Vs. Sub Registrar 1999(1) RCR (Civil) 362, (DB)* and *Gurmeet Singh Vs. State of Punjab and another 2012(6) RCR (Criminal) 1801*. The learned counsel also relies upon a judgment of Hon'ble the Supreme Court reported as *2005(2) RCR (Criminal) 463 K. Kalimuthu Vs. State by D.S.P.*

6. Opposing the petition, learned State counsel has submitted that although the petitioner is not named in the FIR but during investigation it has surfaced

that the petitioner was conniving with the beneficiaries and had intentionally overlooked the material aspect of identification of the "vendors" who were in fact impersonating for dead persons.

7. I have considered rival submissions addressed before this Court. As far as the contention of the petitioner that the petitioner is not named in the FIR, a perusal of the FIR would indeed show that the allegations have mainly been levelled against the two impersonators namely Gurmail Kaur and Gian Kaur w/o Tara Singh who had impersonated in place of Gian Kaur and Lubhai daughters of Sadhu Singh when in fact Gian Kaur had already expired in the year 1983 and Lubhai had expired in the year 2009 approximately i.e. much prior to execution of the sale deeds on 8.5.2015. Apart from the said impersonators, the other accused are the beneficiary Kulwinderjit Kaur in whose favour the sale deeds were executed and the attesting witnesses Gurmail Singh, Lambardar Avtar Singh and Deed Writer Satish Kumar. However, a perusal of the reply filed by the State in the shape of affidavit of Sh. Karamvir Singh, Deputy Superintendent of Police, Vigilance Bureau Unit, Kapurthala shows that during investigation, the involvement of petitioner has also been found. In the reply it has specifically been stated to the following effect:

> "............ The said complaint was allocated No.1415 and was enquired into by DSP, Sub Division, Sultanpur Lodhi, who submitted his enquiry report to effect that accused Gian Kaur wife of Tara Singh and accused Gurmej Kaur wife of Jagdev Singh impersonated themselves as actual owners i.e. Gian

Kaur daughter of Sandhu Singh and Lubhai daughter of Sandhu Singh and in connivance with the petitioner and other accused had executed the aforesaid three sale deeds in favour of Kulwinderjit Kaur, who further sold the property in question to accused Daljit Kaur and Surjit Kaur. It was further held in the enquiry that at the time of execution of the aforesaid sale deeds, accused Gian Kaur wife of Tara Singh and Gurmej Kaur wife of Jagdev Singh had attached the copies of their own Adhar Cards as proof of their identity. It was also submitted in the enquiry report that petitioner Dalbir Bhardwaj connived with the other accused and intentionally did not check the documents pertaining to the identity of the executants of the aforesaid sale deeds to facilitate the execution of the fraudulent sale deeds mentioned above in favour of Kulwinderjit Kaur.................................

.... That since the present FIR involved a public servant i.e. the petitioner and other official of the Revenue department, the matter was taken up by the Vigilance Bureau, Punjab and the same was enquired into by Inspector Surinder Singh Vigilance Bureau Unit, Kapurthala, who also submitted his enquiry report dated 5.9.2017, to effect that the present petitioner Dalbir Bhardwaj, being the Registering Authority at the relevant period alongwith Registration clerk/Junior Assistant Veena Rani were duty bound to check the copies of the identity cards appended with the sale deeds at the time of their execution but both of them did not do so.........”

8. The aforesaid reply shows that involvement of the petitioner *prima facie* surfaced during the course of investigation wherein it has been found that he did not conduct verification regarding identification of the vendors.

Although, it may be said that the Sub Registrar before whom the sale deed is executed/registered may not be expected to verify about the correctness/genuineness of the title of the vendor who is appearing before him, but some kind of duty is cast upon him to assure himself regarding the identity of the vendors. Although it would also be correct that in order to satisfy himself, he would depend upon the local identifier who is normally a Lambardar etc. of the locality but the Sub Registrar would also be expected to look into the documents of identification produced by the vendors. Section 34(3) of the Registration Act, 1908, which casts a duty upon Registrar/Sub Registrar to satisfy himself regarding identity of executants, reads as follows:

> "Section 34(3) of the Registration Act, 1908
>
> 34. Enquiry before registration by registering officer:
>
> (1) xxx xxxx xxxx
>
> (2) xxx xxxx xxxx
>
> (3) The registering officer shall thereupon—
>
> (a) Enquire whether or not such document was executed by the persons by whom it purports to have been executed;
>
> (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and
>
> (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear."

9. In the present case during inquiry it has been found that impersonators Gurmail Kaur and Gian Kaur had in fact attached their own Aadhar Cards when they appeared before Sub Registrar. In other words, it is not the case that the imposters had produced forged documents as regards their identity to deceive the Sub Registrar and when *prima facie* during inquiry it has been found that the imposters were carrying their own documents of identity then it certainly remains unexplained as to why the act of impersonation could not be detected by the Sub Registrar.

10. Even in the judgment relied upon by the learned counsel for the petitioner i.e. *Hari Singh's case (Supra)*, it has been held that the Registrar/Sub Registrar is to satisfy himself as regards identity of the person appearing before him. The relevant extract from the said judgment reads as follows:

> "10. When a document is presented for registration, the Registrar/Sub Registrar has the power to look into and satisfy himself that the requisites of the provisions contained in Section 21, 23, 28 and 35 have been fulfilled. After appearance of the persons under sub-section (1) of Section 34 the Act, the law mandates the Registering Officer to enquire whether or not such document was executed by the persons by whom it purports to have been executed and to satisfy himself as to the identify of the persons appearing before him and alleging that they have executed the document and in the case of any person as a representative, assignee or agent, satisfy himself of the right of such person so to appear. If in any case any of the requirement of the said provision is not satisfied, the Sub Registrar has the power to refuse the

registration of a document on the ground that the ownership of the property is in dispute. Therefore, under the Act, neither the Sub Registrar has any power to refuse the registration of the sale deed on the ground of disputed ownership of the property nor the Registrar had any authority to remand the case to the Sub Registrar directing him to provide full opportunity to both the parties to lead evidence about the ownership of the disputed land. Therefore, the orders dated 1.10.1996, Annexure P1 and dated 19.11.1996 Annexure P-2, are liable to be set aside."

11. As far as the other judgment relied upon by the learned counsel for the petitioner i.e. *Gurmeet Singh's case (Supra),* is concerned, the facts of the said case are different inasmuch as in the cited case there was nothing on record to suggest the complicity of the Sub Registrar whereas in the present case despite the fact that the impersonators were carrying their own I-Cards which would have clearly established that they are not the real owners, the Sub Registrar chose to register the sale deed without conducting verification of their identification. The cited judgment thus would not advance the case of the petitioner in the present case.

12. As far as the contention of the petitioner that the matter had been compromised amongst the parties and that the petition for quashing of the FIR had been filed by co-accused Kulwinderjit Kaur and others i.e. CRM-M-18241-2018, wherein vide order dated 10.10.2018 (Annexure P-3), the parties were directed to appear before the Illaqa Magistrate so as to get their statements recorded, it has been pointed out by learned State counsel that in

fact the aforesaid petition stands dismissed as having been withdrawn on 26.3.2019. The order dated 26.3.2019 reads as follows:

> "At the very outset, learned counsel for the petitioners submits that he may be permitted to withdraw this petition with liberty to file a fresh one seeking quashing on merits.
>
> In view of the aforesaid submission, the petition is dismissed as withdrawn with liberty aforesaid. "

13. A perusal of the aforesaid order shows that the petition filed for quashing of FIR by the co-accused on the ground of compromise was specifically withdrawn so as to enable the co-accused to file a fresh petition seeking quashing on merits. In other words apparently there was no valid compromise amongst the parties.

14. As far as the protection under Section 86 of Indian Registration Act is concerned, the said protection would only be available in case the accused is able to prove that he acted in a bona fide manner. In the present case however, the facts *prima facie* suggest that it is a case of execution of sale deed by means of impersonation wherein the Sub Registrar while registering the sale deed did not even do the basic identification which he was expected to conduct or to satisfy himself. In any case such plea of having acted in a *bona fide* manner despite the fact that the facts point to the contrary is a matter which the petitioner may establish by way of leading evidence during the course of trial and is not a matter to be looked into at this stage. The question as to whether over-looking identification was

intentional or was due to carelessness is a matter to decided on the basis of evidence and other circumstances and no finding in this regard can be returned in exercise of jurisdiction under Section 482 Cr.P.C. Hon'ble the Supreme Court in a recent judgment delivered on 31.7.2019 in *Chilakamarthi Venkateswarlu and another Vs. State of Andhra Pradesh and another, Criminal Appeal no.1082 of 2019,* while reiterating the position of law as settled in *State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335*, held as follows:

> "i. The plenary inherent jurisdiction of the Court under Section 482 of Cr.P.C. may be exercised to give effect to an order under the Code; to pevent abuse of the process of the Court; and to otherwise secure the ends of justice.
>
> ii. The inherent jurisdiction, though wide and expansive, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself, that is, to make orders as may be necessary to give effect to any order under the Code, to prevent the abuse of the process of any Court or to otherwise secure the ends of justice. For interference under Section 482, three conditions are to be fulfilled. The injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision of law by which the party aggrieved could have sought relief.
>
> iii. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about

existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

iv. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge.

v. The High Court may have an obligation to intervene under Section 482 of the Code in cases where manifest error has been committed by the Magistrate in issuing process despite the fact that the alleged acts did not at all constitute offences.

vi. The power under Section 482 of Cr.P.C. should not be exercised to stifle legitimate prosecution. At the same time, if the basic ingredients of the offence alleged are altogether absent, the criminal proceedings may be quashed under Section 482 of Cr.P.C.

vii. Where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is open to the High Court, exercising its inherent jurisdiction under Section 482 of the Code, to quash the order passed by the Magistrate taking cognizance of the offence.

viii. The inherent power under Section 482 is intended to prevent the abuse of the process of the Court and to secure the ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code."

15. As far as the contention regarding Section 197 of Cr.P.C. is concerned, the said bar could be attracted at the stage of taking of cognizance and not at the initial stage of the FIR. The judgment relied upon by the learned counsel for the petitioner i.e. *2005(2) RCR (Criminal) 463 K. Kalimuthu Vs. State by D.S.P.* is of no avail to the petitioner inasmuch as the said judgment has not laid that in the absence of sanction in terms of Section 197 Cr.P.C., the FIR cannot be lodged or if lodged is to be quashed. Rather in the said judgment the position as regards grant of sanction and the stage at which it would be really material has been explained in the following words:

> "15. The question relating to the need of sanction under Section 197 of the Code is not necessarily be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned the effect of Section 19, dealing with question of prejudice has also to be noted."

16. This Court finds that the facts do *prima facie* suggest the involvement of the petitioner as he has overlooked the essential part of identification of the fake "vendors" although under Section 34(3)(b) of Indian Registration Act, he was duty bound to satisfy himself about the identity of the persons appearing before him, for executing/registration of documents.

17. As an upshot of discussion made above, this Court does not find any ground for quashing of the present FIR. There is no merit in the present petition and the same is dismissed.

August 21, 2019 **(GURVINDER SINGH GILL)**
mohan **JUDGE**

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No