

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRR-1278-2014

Date of Decision: October 22, 2019

Darshan Singh

.....Petitioner

Versus

Raj Singh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. D.N. Ganeriwala, Advocate with  
Mr. S.S. Killianwali, Advocate, for the petitioner.

Mr. Surinder Garg, Advocate, for the respondent.

**Harnaresh Singh Gill, J.**

The petitioner along with co-accused Sardool Singh, was tried for committing the offence punishable under Section 167 read with Section 34 IPC. During the proceedings before the trial Court, accused-Sardool Singh, died and as such the proceedings against him stood abated. Vide judgment and order dated 5.11.2011, learned Chief Judicial Magistrate, Sri Muktsar Sahib, held the petitioner guilty under Section 167 IPC and sentenced him to undergo RI three years and to pay a fine of Rs.3000/- and, in default of payment of fine, to further undergo RI for three months.

Aggrieved there-against, the petitioner filed an appeal before the learned Sessions Judge, Sri Muktsar Sahib. Vide judgment dated 04.04.2014, the learned Additional Sessions Judge, Sri Muktsar Sahib, dismissed the appeal filed by the petitioner, thereby affirming the judgment and order passed by

the learned trial Magistrate. Still aggrieved, the petitioner has preferred the present revision petition.

The prosecution in the present case was set in motion on a complaint filed by complainant-Raj Singh, with the allegations that the petitioner while working as Halqa Patwari, Kakhwanwali, had conspired with Sardool Singh and changed the entries in the revenue record as regards the land measuring 116 kanal 12 marla comprised in Musteel No. 153, Killa No. 11/1(2-2), Musteel No. 154 Killa No. 4/3(3-16), 6 (7-4), 9(8-0), 10(7-12), 12(7-7), 13(7-7), 14(7-7), 15(7-6), 17/2(3-12), 18(8-0), Musteel No. 131 Killa No. 21 (7-19), Musteel No. 154 Killa No. 1(7-12), 2(8-0), 3/2(0-13), 7(7-19), 8(8-0), 11(6-16), situated in village Kakhanwali. In Khasra No. 5 in the Jamabandi, Sardool Singh was shown as son of Hakam Singh in the relevant column, which came within the purview of self cultivation. The said entry was against the facts and the law. Hakam Singh in family partition distributed the land measuring 116 kanal 12 marla in favour of Lakhwinder Singh, Avtar Singh, complainant-Raj Singh and accused – Sardool Singh with specific khasra numbers. Physical possession of the land was also delivered by Hakam Singh to his sons and it was agreed by Hakam Singh that he would also get the mutation sanctioned of change of ownership. However, on Hakam Singh's having failed to do so, Lakhwinder Singh, Avtar Singh and Raj Singh filed a suit against Hakam Singh for declaration regarding the land measuring 86 kanal 13 marla of specific khasra number wherein Hakam Singh had appeared and filed written statement. The said suit was

decreed in favour of the complainant Raj Singh, Lakhwinder Singh and Avtar Singh and they were declared as owners in possession of the land measuring 86 kanal 13 marla and mutation was also sanctioned in their favour. However, the accused in order to cause wrongful loss to Raj Singh, Lakhwinder Singh and Avtar Singh and in order to extend benefit to Sardool Singh, illegally made an entry in the revenue record without any order of the competent authority and forged the entries by erasing and hence the accused had committed the offences punishable under Sections 467/468/471/34 IPC. When the said fact came to the notice of the complainant, he apprised his other brothers about it and thereafter, they approached accused-Darshan Singh for correction in the entries, which he assured to so do upon having been paid the money.

The accused were summoned to face the trial under Section 167 read with Section 34 IPC.

The learned trial Court framed the following point for consideration and adjudication thereof:-

“Whether accused made mala-fide entry in the revenue record to help accused Sardool Singh in conspiracy?”

After taking into consideration the evidence led by the parties and the rival contentions, the learned trial Court recorded the finding of guilt to the following effect:-

“...Though entry was made in column number 13 with the change in ownership column in compliance to order of Shri Budh Ram Garg, PCS, Gidderbaha,

but as far as the column of cultivation was concerned it was mentioned Badstoor. Meaning thereby Sardool Singh remained in physical possession of the suit property as per the word mentioned by Halqa Patwari. It is not the question that who is in actual possession of the suit property, it is only a question of bona-fide of a public servant while preparing, translating, creating the record in its possession. If he had mentioned word khudkashat after mentioning the names of Raj Singh, Lakhwinder Singh and Avtar Singh inadvertently, he could have easily mentioned as Lakhwinder Singh, Raj Singh and Avtar Singh are not in physical possession and the possession is continuing with Sardool Singh. Hence Khudkashat was inadvertently mentioned. Had it been so, the accused was not guilty for making such entry. But from the totality of the circumstances, it revealed that he had earlier mentioned khudkashat which he removed by erasing the word and mentioned word Badstoor, which also reveals from the bare perusal of the transcript Ex. CW3/C, in which he had admitted that he had received the amount from the complainant for helping them. Meaning thereby he had admitting having made the cutting in the record after mentioning word khudkashat. I, therefore, find accused guilty for making incorrect record for dishonest purpose and by dishonest means by

entering into conspiracy with Sardool Singh. Had he mentioned the word khudkashat it would have benefited Raj Singh, Lakhwinder Singh and Avtar Singh and after having done so, he arbitrarily removed it and mentioned the word Badastoor to benefit Sardool Singh. For the sake of repetition it would be apt to mention that the use of words Khudkashat and Badstoor have great significance, the accused could have easily mentioned that in the judgment and decree of Shri Budh Ram Garg, the plaintiff/complainant would be entitled to have the entry in the column of ownership, but the possession column will remain intact in favour of Sardool Singh. Having not done so and making the alteration/meaning of the word and thereafter justifying further change by seeking money from the complainant justified the allegation of the complainant against accused Darshan Singh. Therefore, I find accused guilty for the offence under Section 167 of IPC.....”

After recording such finding, the learned trial Magistrate convicted and sentenced the petitioner as noticed above. The appeal filed by the petitioner was dismissed.

Learned counsel appearing for the petitioner has contended that the findings recorded by the Courts below regarding mala-fide on the part of the petitioner are not tenable for the reason that on account of the alleged entry, no loss had been caused to

the complainant as the title of the land had been changed in the name of the complainant and his other brothers. It is further contended that it could not be shown as to by maintaining the entry of Badstoor, Sardool Singh, stood any benefit of.

Still further, it has been contended that before prosecution of the petitioner, who was a public servant, no sanction as contemplated under Section 197 of the Code of Criminal Procedure, was obtained. Hence, the very prosecution of the petitioner is bad in law.

Alternatively, it is submitted that if this Hon'ble Court comes to the conclusion that the conviction of the petitioner need not be interfered with, then the petitioner may be granted benefit of probation, as he is the only bread winner in his family and sending him behind the bars would cause serious hardship to the family members of the petitioner.

On the other hand, learned counsel appearing for the respondent-complainant while defending the judgments and order passed by the Courts below, has contended that the petitioner being a public servant had indulged himself into the acts, which are unbecoming of a public servant. Still further, it is contended that since the offence committed by the petitioner does not constitute a part of his official duties, no sanction was required for the prosecution of the petitioner.

I have heard learned counsel for the parties and with their able assistance have also gone through the record of the case.

As far as the contention of the learned counsel for the petitioner regarding not obtaining of the sanction is concerned, the said issue is not res-integra. The Hon'ble Supreme Court in a plethora of judgments has held that when the offence committed by a public servant does not form part of his official duties, no sanction is required. In the instant case, the entry of Badstoor made by the petitioner was not part of his official duties, especially when the revenue entries were to be effected as per and in terms of the judgment and decree passed by the Civil Court. Thus, in any case, it stands established that the entry of 'Badstoor' made in the revenue record by the petitioner was against the judgment and decree passed by the Civil Courts. Both the Courts have rightly appreciated the evidence in right perspective in holding the petitioner guilty of the offence under Section 167 IPC.

Hence, I do not find any ground to interfere with the findings recorded by the Courts below and accordingly, I uphold the conviction of the petitioner.

Coming to the sentence part, the complaint in this case was filed on 27.3.2001. Out of the total substantive sentence imposed upon the petitioner, he has already undergone 5 months and 18 days. Thus, the petitioner has been facing the agony of trial for the last 18 years. As per the custody certificate, he is not reflected to be involved in any other case nor any other proceedings are pending against him. Though the petitioner has made the entry of Badstoor in the revenue record, which admittedly, was not part of his official duties, yet the fact

remains that the dispute was between the real brothers and still further, it appears that no loss of any kind was caused to the complainant party by the said entry, as admittedly, they had been entered as owners in the ownership column of the revenue record. Therefore, the prayer of the learned counsel for extending the petitioner the benefit of probation can be accepted.

Section 360 Cr.P.C., leaves no manner of doubt that a Court must consider the age, character or antecedents of the offender and the circumstances in which the offence was committed and then decide whether he is entitled to be released on probation of good conduct or not. Section 3 of Probation of Offenders Act, 1958, further entitles a convict to release after due admonition if the case falls within the parameters prescribed therein. Section 12 of the said Act provides that no disqualification shall attach to a conviction in case a convict has been dealt with under the provisions of Section 3 or Section 4 of the said Act.

The Hon'ble Supreme Court in Chandreshwar Sharma Vs. State of Bihar, (2000) 9 SCC 245, while considering such mandate, has held to the following effect:-

*“3. The appellant herein was convicted under Sections 379 and 411 Indian Penal Code and was sentenced to rigorous imprisonment for one year as 3.5 kg of nonferrous metal was recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the Tiffin carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been*

*negatived and rightly so. When the matter was listed before this Court, a limited notice was issued as to why the provisions of Section 360 of the Criminal Procedure Code should not be made applicable. Pursuance to the said notice, Mr. Singh, the learned standing counsel for the State of Bihar has entered appearance. From the perusal of the judgment of the learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forum below had considered the question of applicability of Section 360 of the Criminal Procedure Code. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then shall record in its judgment the specific reasons for not having done so. (Emphasis Supplied). This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the Criminal Procedure Code. As such, the mandatory duty cast on the Magistrate has not been performed. Looking to the facts and circumstances of the present case, we see no reasons not to apply the provisions of Section 360 of the CrPC. We accordingly, while maintain the conviction of the appellant, direct that he will be dealt with under section 360, and as such, we direct that the appellant be released on probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for a year shall be executed before the learned Chief Judicial Magistrate, Ranchi, within 3 weeks from today. The appeal is disposed of accordingly.”*

Resultantly, while upholding the conviction of the petitioner under Section 167 IPC, his substantive sentence of imprisonment modified. Instead, he is ordered to be released on probation for a period of one year subject to his executing bonds to the satisfaction of the Chief Judicial Magistrate concerned,

undertaking to keep peace and be of good behaviour for the said period and to appear and receive the sentence as and when called upon to do so in case of violation of any of the conditions of the bonds. Petitioner is also directed to pay a sum of Rs. 25,000/- as costs of litigation to be paid to the State.

Revision petition stands disposed of in the above terms.

Disposed of in the above terms.

**(HARNARESH SINGH GILL)**  
**JUDGE**

October 22, 2019  
ds

Whether Speaking/ Reasoned:  
Whether Reportable:

Yes/ No  
Yes/ No