

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

CRM-M-52521-2018 (O&M)

Date of decision:10.04.2019

Manohar Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. R.S.Bajaj, Advocate
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab
for respondent No.1.

Mr. N.S.Lucky, Advocate
for respondent No.2-Gurdatar Singh.

Mr. Nippun Sharma, Advocate, for the complainant.

RAJBIR SEHRAWAT, J. (ORAL)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in FIR No.212 dated 26.10.2018 under Sections 420, 465, 467, 468, 471 of IPC, registered at Police Station Kartarpur, District Jalandhar.

The allegations, as contained in the FIR are that the petitioner had sold agriculture land measuring 11 acres and 08 marlas, to father of the complainant situated at village Ali Khela, Sub-Tehsil Kartarpur, District Jalandhar, on the basis of a Will, statedly executed by one Bhagat Singh in his favour. Believing the petitioner, the father of the complainant had purchased the said property by paying an amount of Rs. 46 lakhs. It is further alleged that for getting the above said sale deed executed, an amount of approximately Rs.2.5 lakhs had to be incurred as registration expenses.

However, later on, the said land was subjected to litigation by legal heirs of above said Bhagat Singh, claiming that the said Will, claimed by the petitioner, was a fabricated document. In fact, the said Bhagat Singh already stood expired way back in the year 1986, whereas, the Will was stated by the petitioner to be dated 10.03.1998. Hence, the petitioner had duped the complainant/his father by putting up a fake Will of a person who already stood expired. As the facts, further unfold, the legal representatives of Bhagat Singh also filed a complaint against the present petitioner. However, that complaint was dismissed. Another fact involved in the case is that, on the basis of said alleged Will, the petitioner had got an ex-parte decree, declaring him to be the owner of the property. That ex-parte decree was challenged by the legal heirs of Bhagat Singh. Their suit was decreed by the trial Court and the ex-parte decree in favour of the petitioner was set aside. The petitioner filed an appeal against that decree. However, even the same was dismissed. Ultimately, the petitioner lost even in regular second appeal before the High Court. As a result, the legal heirs of Bhagat Singh, have got the right over the said property. The mutation of inheritance was entered in their favour. In the meantime, father of the complainant had also expired. Hence, the property rights of the complainant, who inherited his father were put under threat. Therefore, he lodged the complaint with the police submitting that he has been defrauded by the petitioner for an amount of Rs.47 Lakhs.

Arguing the case, learned counsel for the petitioner has submitted that the dispute involved in the case is purely of a civil nature. The complainant has already filed on 09.05.2018 a suit for recovery of his amount, stated to have been paid for purchasing this property as per the sale

deed. Thereafter, the complainant has submitted the complaint to the police on 25.06.2018, which resulted in registration of the FIR. Therefore, it is submitted, that once the matter is already in civil Court, no criminal overtones can be attributed to the case. It is further argued by the learned counsel for the petitioner that the alleged legal representative of Bhagat Singh, namely Gurdatar Singh had filed a complaint against the petitioner in the year 2001, wherein, even the father of the complainant was arrayed as an co-accused. However, that complaint had been dismissed by the Competent Court, finally on 17.03.2014. It is submitted that while dismissing the complaint, the trial Court has recorded that the complainant has failed to prove fabrication of the Will. It is further submitted that the custodial interrogation of the petitioner is not required in this case. The documents are already part of the record. Therefore, the petitioner deserves to be granted concession of anticipatory bail.

On the other hand, learned counsel for the complainant submits that the grievance of the complainant is an independent grievance, that his father has been cheated by petitioner by presenting a document, stated to be the Will of a person, who already stood expired on the day; when the said Will has been stated to have been executed. Still further, it is submitted that when the complainant went to take possession of the land, it was found that the possession of part of this land is already delivered to some other person, because the legal heirs of Bhagat Singh had already sold some part of land to some other persons. Learned counsel for the complainant further submits that the very fact that the petitioner has failed to prove any Will in his favour in the civil proceedings, right upto the High Court, shows that he has defrauded the complainant by using the fake document. Counsel has

also submitted that the petitioner cannot take the plea that its a civil dispute because he has already failed on the civil side; right upto the High Court, where he failed to show execution of the said Will in his favour. Still further, it is submitted that the criminal and civil liabilities are two different things and both the proceedings can go side-by-side. For success of the criminal proceedings, the police would be required to collect the sufficient material to prosecute the petitioner. Hence, the custody of the petitioner is required. In the end, it is submitted that the petitioner is holding the alleged Will close to his chest. The alleged Will has not come on record of any Court proceeding, in original, so far. Hence, even the original of that Will is to be recovered from the petitioner.

Learned counsel for the added respondent No.2, who is the legal representative of Bhagat Singh, submits that the petitioner is nowhere related to the alleged executant of the Will, namely, Bhagat Singh. In fact, Bhagat Singh was his real uncle, who was issueless. Therefore, respondent No.2 is the lawful legal heir of the property. Accordingly, the same has duly come in his favour and he has rightly sold some part of the same as per his entitlement. So far as, the complaint filed by him is concerned, counsel for respondent No.2 submits that the same was dismissed, primarily, on technical reasons because he could not place on record the original of the said Will. Secondly, the Court had gone by the fact that there was an ex-parte decree in favour of the petitioner at that time. However, now the aspect of ex-parte decree has finally been settled by the High Court, whereby even the regular second appeal filed by the petitioner stands dismissed.

Learned counsel for the State, being instructed by ASI Kabal

Singh, submits that the police has not been able to get the original of the said Will. The original of the said Will is to be recovered from the petitioner. However, the counsel has verified the fact that as per the investigation conducted by the police so far, the mutation of inheritance of Bhagat Singh was entered in favour of respondent No.2 and some part of the property has already been sold by him to third person. It has also been found during the investigation that the complainant is not in possession of the property, which the petitioner sold to him.

Having heard learned counsel for the parties and having perused the file, this court does not find any substance in the arguments of the learned counsel for the petitioner.

Of course, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled

with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Coming to the facts of the present case, it is clear that there is direct allegation against the petitioner that he has forged the Will of the testator Bhagat Singh, who was not even alive on the date of execution of the alleged Will. On the basis of that Will, the petitioner is alleged to have committed fraud for an amount of Rs.46 Lakhs. Even the original Will has not come on record of the case in any proceedings; despite the fact that the petitioner has been party in all those proceedings. This shows that he is keeping the Will quite close to his chest and has not let the same come out. Even the police have not been able to get hold of the said Will so far; despite the petitioner's joining investigation.

In view of these facts, this Court does not find any mitigating circumstance, showing, ex-facie innocence of the accused; qua the allegations levelled against him. Hence, this Court finds itself unable to exercise its powers under Section 438 Cr.P.C. to grant the petitioner anticipatory bail. The argument of the learned counsel for the petitioner that the matter essentially is a civil dispute and that the complainant had already filed a suit for recovery, does not find favour with this Court. So far as the civil side is concerned, the petitioner has already lost upto the High Court. During all these proceedings, though relying upon the same Will, he has not placed on record the original of the Will anywhere nor he proved the same in any proceedings; in accordance with law. Therefore, no court has so far recorded any finding of genuineness of the Will and therefore, there is not any finding of validity in favour of the Will, claimed by the petitioner.

Needless to say that merely because the complainant has filed a suit for

recovery would not have absolve the petitioner of his criminal liability. He has to face the consequences of his conduct, which has already constituted the offence, and which has put the complainant to a loss of more than Rs.46 Lakhs.

This Court also finds sufficient substance in the argument of learned State counsel that despite having joined the investigation, the petitioner has not so far handed over the original Will, which is the bone of contention in this case.

In view of this, the court finds that if the petitioner is granted any protection, at this stage, the same would preclude even the free and fair investigation of the case by the police.

In view of the above, finding no ground to interfere, the present petition is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

10.04.2019
Hemlata

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No