

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 2783 of 2016
Date of Decision: 24.10.2019**

Subash Chander

.....Petitioner

Versus

Hans Raj and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

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

Mr. M.S.Basra, Advocate
for respondent No. 1.

Ms. Bhavna Gupta, DAG, Punjab.

HARNARESH SINGH GILL, J.

The petitioner has preferred this petition being aggrieved of the judgment dated 13.7.2016, passed by Additional Sessions Judge, Gurdaspur, vide which the appeal filed by him, challenging the judgment of conviction and order of sentence dated 25.2.2014, passed by Additional Chief Judicial Magistrate, Gurdaspur in criminal complaint No. 146 of 28.5.2008 filed by respondent No. 1-Hans Raj under Sections 420, 467, 468, 471, 120-B IPC, was dismissed.

The brief facts of the present case are that the complaint in question was filed by respondent No. 1-Hans Raj against petitioner-Subash Chander and accused Harwant Singh, Girdawar, alleging therein that an

application for partition of land titled 'Daulat Ram versus Hans Raj' was decided by Tehsildar-cum-Assistant Collector, Ist Grade Gurdaspur, vide order dated 22.9.2004. Accused Harwant Singh was to execute warrants to deliver the possession to the complainant, as per order of partition but on 10.5.2006, the petitioner produced a copy of revision dated 5.3.2006 to Harwant Singh, Girdawar, when he along with Rattan Lal, Patwari Halqa, had come to deliver possession of the land to respondent No. 1-complainant in compliance with the order of Tehsildar-cum-Assistant Collector, First Grade and, therefore, proceedings qua delivery of possession were stopped. Later, the complainant enquired about the filing and pendency of the alleged revision petition from the office of Commissioner, Jalandhar Division, Jalandhar and it had transpired that no such revision was filed by the petitioner and, thus, it was alleged that the petitioner had prepared forged and fabricated documents in connivance with Harwant Singh and committed fraud not only with the complainant, but also with the Revenue Courts.

In preliminary evidence, the complainant had examined four witnesses, including himself.

After recording of the preliminary evidence, accused-Subash Chander was summoned to face the trial under Sections 420, 467, 468, 471 IPC vide order dated 26.3.2013. However, the complaint against Harwant Singh, Girdawar was dismissed.

In pre-charge evidence, the complainant stepped into witness box as CW-1 and examined Manjit Ram, Record Clerk as CW-2 and Rattan Lal as CW-3.

After closure of pre-charge evidence, charge was framed against the accused under Section 420 IPC to which he pleaded not guilty

and claimed trial.

In his statement recorded under Section 313 Cr.P.C., the accused denied the allegations and pleaded false implication.

After taking into consideration the evidence, the trial Court vide judgement and order dated 25.2.2014 convicted the petitioner under Section 420 IPC and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.3,000/- and, in default of payment of fine, to further undergo rigorous imprisonment for three months.

The appeal preferred by the accused was dismissed by the Appellate Court vide judgment dated 13.7.2016. Hence, the present revision petition.

I have heard the learned counsel for the parties and with their able assistance, have gone through the record of the Courts below.

I am conscious of the fact that I am dealing with the revision petition and there are concurrent findings of conviction by the Courts below against the petitioner but still I find that the same are based on inadmissible evidence and are liable to be set aside.

When the official from the office of Tehsildar-cum-Assistant Collector reached the spot for delivery of possession to the complainant-respondent No. 1 on 10.5.2006, a copy of the alleged revision petition was produced by the petitioner stating that the matter was fixed for 9.6.2006. Accepting the copy of the revision petition, proceedings qua delivery of possession were stopped. It was a case of the respondent-complainant that at that time, no such revision petition was pending in the Court of Commissioner, Jalandhar Division, Jalandhar and, thus, the petitioner had produced forged and fabricated documents and had committed fraud not

only with the respondent-complainant but also with the Revenue Courts.

To my mind, supplying of copy of revision petition and stating that the matter was pending for 9.6.2006, did not, at all, restrain the revenue officials from going ahead with the proceedings of delivery of possession to the respondent-complainant.

Learned counsel for the petitioner has drawn the attention of this Court towards the cross-examination of the respondent-complainant wherein he had admitted that possession had been handed over to him on 4.7.2006.

This argument of the learned counsel for the petitioner has been refuted by the learned counsel for respondent No. 1 by stating that in fact, the possession of the land was delivered to respondent No. 1 on 30.7.2010. However, no such document was placed on record by respondent No. 1 to support the said argument, except for a copy of the application addressed to the Senior Superintendent of Police (Mark-A).

The copy of revision petition dated 5.3.2006 Ex. CW-1/A bears the signatures of Sh. Harish Mahajan, Advocate. The said revision petition was argued by Sh. Harish Mahajan, Advocate, and ultimately it was heard by the Commissioner, Jalandhar Division, Jalandhar and decided on 3.10.2006 (Ex. D-3).

Paras 5 and 6 of the order passed by the Commissioner, Jalandhar Division, Jalandhar, dated 3.10.2006 (Ex. D-3) are reproduced hereunder for ready reference:-

“5. The counsel for the respondent No. 1 has asserted in written arguments that at the time of earlier partition order, respondent No. 1 was mentally sick and was in the Mental Hospital, therefore, he could not watch his interests and also

could not file appeal/revision. He stated that this fact has been fully established on record. He stated that after the impugned partition order, Sanad takseem has also been prepared and issued, and, proprietary possessions have also been given to respondent No. 1 and others vide Rapat Roznamcha No. 519 and Mutation No. 1218 has also been entered by the Patwari. He argued that partition is complete and the revision is not legally maintainable as ruled in 1996-PLJ-659 and 1992(1)-LLR-497. He argued that the petitioner is required to show sufficient and satisfactory reasons for causing delay in the filing of the revision and the petitioners have failed to do so. He that the revision may be dismissed.

DECISION

6. I have given my thoughtful consideration to the written arguments of the parties and have also carefully examined the record. I condone the delay caused in presenting the present revision in this court. However, on merits, I do not find any merit in the revision. Necessary permission to review earlier partition order, was granted by the Financial Commissioner, Punjab, therefore, there is no merit in the arguments of the counsel for the petitioner. On grant of permission to review earlier partition order, fresh proceedings were initiated with the participation of the petitioner, Mode of Partition was ordered on 8.5.2002 which has never been challenged by the petitioner, therefore, the same has become final and binding qua the parties. Moreover, after the partition order impugned in this revision, Sanad Takseem has been prepared and issued, and, possessions, have also been transferred to the parties in accordance therewith. 'Therefore, the partition of the land in dispute, has become final and unassailable. The revision is not maintainable. The revision is dismissed.'

Thus, it is clear that *Sanad Takseem* was prepared and issued and the possession was delivered to the complainant whereas in the present

case the complaint in question was filed on 28.5.2008.

The petitioner had not fraudulently misrepresented before the revenue authorities. Simply by handing over the copy of the revision petition, without any stay order, there was no occasion for the revenue officials to not deliver the possession of the land to the respondent-complainant. Even in the warrants of possession dated 16.3.2006 (Ex. C1), it was specifically stated that if any stay order was produced on the spot, the Court proceedings be stopped. Further, as per the report, only copy of the case was produced and that the same was pending for 9.6.2006, whereas it was filed on 20.5.2006 (Ex. D2).

On this, the stand of the petitioner is that copy of the revision petition was handed over to him by his counsel who informed him that the matter was fixed for 9.6.2006. Thus, no offence under Section 420 IPC is made out against the petitioner as the petitioner had not stopped the proceedings of delivery of possession of land nor any wrongful loss had been caused.

Thus, keeping in view the above facts and circumstances of the present case, the petition is allowed. The petitioner is acquitted of the charge framed against him. As a result, the impugned judgments and order of the Courts below, are set aside.

(HARNARESH SINGH GILL)
JUDGE

October 24, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes