

**CRR-1326-2019 (O&M)
and connected case**

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

1. CRR-1326-2019 (O&M)

Joginder Kaur and others

....Petitioners

Versus

State of Haryana

...Respondent

2. CRR-1835-2019 (O&M)

Sanjay Sharma

....Petitioner

Versus

State of Haryana

...Respondent

Date of Decision : 02.11.2019

CORAM : HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present : Mr. D.S.Matya, Advocate for the petitioners
in CRR-1326-2019

Mr. Vaibhav Parashar, Advocate for petitioner
in CRR-1835-2019

Mr. Vikas Chopra, DAG, Haryana

ANIL KSHETARPAL, J.

By this order, two criminal revision petitions bearing CRR-1326-2019 and 1835-2019 shall stand disposed, arising from a common judgment passed by learned Judicial Magistrate First Class and affirmed in appeal by Additional Sessions Judge, Faridabad.

As per the case of the prosecution Durga Builders Private

Village Ismilpur, Sehatpur and Agwanpur Tehsil and District Faridabad in the year 1987. Out of the land measuring 101 kanals 6 marlas was purchased from Harsukh Lal, Harbans Lal, Tilak Raj and others. However, the revenue record was not updated by incorporating the name of vendee and taking benefit thereof, by impersonating Harsukh Lal, Harbans Lal, Tilak Raj and others, Sanjay Sharma, petitioner in CRR-1835 of 2019 got executed a sale deed (Ex.PW6/A) in his own favour. Thereafter, Sanjay Sharma appointed Joginder Singh, petitioner No.3 in CRR-1326-2019 as General Power of Attorney vide Ex. PW6/E dated 21.5.2009. Thereafter, Joginder Singh further appointed Mangal Singh, his own relative as a Special Power of Attorney vide Ex.PW6/G. Mangal Singh pursuant to the aforesaid special power of attorney, further sold the land vide sale deed dated 18.8.2009 in favour of Joginder Kaur (petitioner No.1 in CRR-1326-2019) wife of Joginder Singh (petitioner No.3). Sanjay Sharma thereafter cancelled general power of attorney dated 21.5.2009. Sanjay Sharma also sold land measuring 24 kanals 1 marla to various persons in August, 2009.

Keeping in view the aforesaid facts which were proved on file, learned Judicial Magistrate found that Mangal Singh and Smt. Joginder Kaur are not found to have committed offence punishable under Section 467 IPC. However, they were convicted for offence under Section 423 IPC read with Section 120-B IPC. Whereas Sanjay Sharma and Joginder Singh were found guilty for offence punishable under Section 467, 471, 120-B IPC. The Judicial Magistrate imposed the following sentences:-

Section	Imprisonment
423 IPC	Convicts Mangal Singh and Joginder Kaur to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.1,000/- each. In default of payment of fine, they shall

	further undergo Rigorous Imprisonment for a period of one month.
467 IPC	Convicts Sanjay Sharma and Joginder Singh to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.2,000/- each. In default of payment of fine, they shall further undergo Rigorous Imprisonment for a period of one month.
471 IPC	Convicts Sanjay Sharma and Joginder Singh to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.2,000/- each. In default of payment of fine, they shall further undergo Rigorous Imprisonment for a period of one month.
120-B IPC	Convicts Sanjay Sharma, Joginder Singh, Mangal Singh and Joginder Kaur to undergo Rigorous Imprisonment for six months each and to pay a fine of Rs.1,000/- each. In default of payment of fine, they shall further undergo Rigorous Imprisonment for a period of 15 days.

Two appeals were preferred; one by Sanjay Sharma whereas other by Joginder Singh, Mangal Singh and Joginder Kaur. Learned Court of Sessions after re-appreciating the evidence dismissed both the appeals.

This Court has heard learned counsel for the petitioners in both the petitions as also counsel representing State of Haryana.

Learned counsel for the petitioners while drawing attention of the Court to criminal complaint filed has submitted that Joginder Kaur and Mangal Singh were not impleaded as accused. He further submitted that PW 3 Bhupinder Singh did not come forward for further cross-examination and therefore, his evidence cannot be read. He further submitted that once the Judicial Magistrate found that Joginder Kaur and Mangal Singh are not guilty of offence punishable under Section 467 IPC, therefore, their conviction under Section 423 IPC is not legally sustainable. Learned counsel representing Sanjay Sharma re-iterated same contentions.

This Court has considered the submission and gone through the

paper book. As regards first submission, it may be noticed that criminal complaint was forwarded by the Judicial Magistrate to the police in exercise of powers under Section 156 (3) Cr.P.C. Thereafter, police carried out investigation and found that in fact there is no sale deed executed by Harbans Lal and Harsukh Lal and the alleged sale deed in favour of Sanjay Sharma Ex. PW6/A is result of impersonation. However, the police formed an opinion that not only Joginder Singh and Sanjay Sharma have committed offence but Joginder Kaur wife of Joginder Singh and Mangal Singh (relative of Joginder Singh) are also involved. Hence, mere non-filing of complaint against Joginder Kaur and Mangal Singh shall not debar the police to prosecute Joginder Kaur and Mangal Singh.

As regards second argument of learned counsel for the petitioners that PW 3 Bhupinder Singh has not come forward to complete his cross-examination, it may be noticed that learned Appellate Court has considered this aspect in detail and found that Bhupinder Singh had already been cross-examined at length by the counsels representing the accused. Still further the case of the prosecution is based on documentary evidence which stands established. Prosecution has examined as many as 7 witnesses including subsequent purchaser Dinesh Chaudhary PW7, who had been sold property by Sanjay Sharma through a registered sale deed. In view of the aforesaid overwhelming evidence, merely because Bhupinder Singh PW 3 did not come forward to face further cross-examination is not sufficient to reverse the judgments.

Last argument of the learned counsel for the petitioners that once the Judicial Magistrate First Class has found that offence punishable

under Section 467 IPC is not made out against Joginder Kaur and Mangal Singh hence their conviction under Section 423 IPC is also not sustainable, on close scrutiny found without substance. Section 423 IPC provides for a much lesser sentence. Section 423 IPC deals with dishonest or fraudulent execution of deed of transfer containing false statement of consideration. On careful reading of Section 423 IPC it is apparent that whosoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge in any property, or an interest therein, and which contains any false statement regarding consideration for such transfer or charge or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description of term which may extend upto 2 years or fine or both. Thus, offence punishable under Section 423 IPC is not dependent on offence punishable under Section 467 IPC which is with regard to forgery of valuable security etc. Thus, Joginder Kaur and Mangal Singh have correctly been convicted under Section 423 IPC read with Section 120-B IPC.

In the end, learned counsel for the petitioners prayed that learned Court has awarded maximum sentence of 2 years to Joginder Kaur and Mangal Singh. He submits that compassionate view be taken and the sentence awarded to the petitioners be reduced.

This Court has considered the submissions. The immovable property in National Capital Region of Delhi is sought to be transferred to themselves even after knowing that the property does not belong to them.

First sale deed was got executed in favour of Sanjay Sharma by

impersonating the original persons who were not even owners on that date. Thereafter, General Power of Attorney was given by Sanjay Sharma to Joginder Singh who in turn gave attorney to Mangal Singh who thereafter transferred in favour of Joginder Kaur w/o Joginder Singh. Thus, all the transactions were made with object of usurping the property.

In view of the aforesaid, this Court is not inclined to take any lenient view.

Hence, both the petitions are dismissed.

**(ANIL KSHETARPAL)
JUDGE**

02 .11.2019

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No