

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

CRM-M-8731-2018 (O&M)
Date of Decision:- 25.2.2019

Rajpal Singh Sekhon ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. H.S.Brar, Advocate, for the petitioner.

Ms. Ruchika Sabherwal, AAG, Punjab.

Mr. Manohar Lal Chug, Advocate, for complainant.

GURVINDER SINGH GILL, J. (Oral)

1. By way of filing this petition, the petitioner assails order dated 3.11.2017 (Annexure P-5), passed by learned Judicial Magistrate 1st Class, Malout, whereby while accepting an application under Section 319 Cr.P.C. moved by the prosecution, the petitioner has been ordered to be summoned to face trial along with other accused.

2. At this stage, Mr. Manohar Lal Chugh, Advocate has put in appearance on behalf of the complainant and filed memo of appearance. The same is taken on record.
3. The allegations, in nutshell, are that mutation of inheritance in respect of property of one Kashmir Dass had been sanctioned in favour of Harcharan Dass on 30.3.2012 on the basis of a forged WILL whereas said Kashmir Dass was in fact alive as on the date of sanction of said mutation. Initially after conclusion of investigation a challan was filed against the beneficiary Harcharan Dass, Mandar Singh (Member Panchayat), Sukhwinder Singh and Avtar Singh (ex Sarpanch). Subsequently an application under Section 319 Cr.P.C. was filed so as to summon Surinder Singh Nambardar, Narinder Singh Patwari and Rajpal Singh Sekhon, Naib Tehsildar as additional accused. The said application was allowed by learned Judicial Magistrate 1st Class, Malout, vide order dated 3.11.2017 (Annexure P-5). The case against the petitioner was that it was he who had sanctioned the disputed mutation being Naib Tehsildar, Malout.
4. Learned counsel for the petitioner while assailing the impugned order has submitted that the aforesaid position i.e. as regards allegation that petitioner had sanctioned mutation No.3701, dated 30.3.2012 is factually incorrect inasmuch as the mutation in question was never sanctioned by the petitioner as the jurisdiction of the Kanungo Circle had been shifted vide order dated 9.6.2009 (Annexure P-3) and as per entry at Sr. No.5, the jurisdiction of Village Midha was with "Tehsildar", Malout, which was earlier with Naib Tehsildar, Malout.

Learned counsel has submitted that the petitioner was “Naib Tehsildar”, Malout, at the time of sanction of mutation No.3701. It has further been submitted that subsequently pursuant to an application under the Right to Information Act, the requisite information was furnished vide letter dated 26.3.2018 (Annexure P-6) wherein it has been categorically admitted that the mutation in question was sanctioned by Sh. Harcharanjeet Singh, Tehsildar, Malout.

5. The aforestated position is not disputed by the learned State counsel. However, learned State counsel has submitted that in fact the petitioner was the concerned Registrar at the time of registration of the forged WILL and the petitioner having registered the forged WILL, his complicity is evident.
6. I have considered the aforesaid submission.
7. A perusal of the impugned order dated 3.11.2017 (Annexure P-5) shows that the petitioner has been summoned solely on the premises that he had sanctioned the mutation of inheritance i.e. mutation No.3701 whereas the aforesaid position has been found to be factually incorrect, as already discussed above. As far as the contention of learned State counsel to the effect that the petitioner, in capacity of the Registrar had registered the forged WILL, a reference needs to be made to Rule 127 of Punjab Registration Mannual which reads as follows:

“127. Identification of Parties:- When a registering officer is not personally acquainted with executants, he shall

require them to produce any of the following persons known to him personally to testify his identity:-

- (1) A member of the Parliament.
- (2) A member of the Legislative Assembly.
- (3) A member of the Legislative Council.
- (4) A member of the Zila Parishad/Panchayat Samiti/Gram Panchayat.
- (5) A Lambardar.
- (6) A Zail Sewak.
- (7) An Up-Zail Sewak.
- (8) A President/Vice-President/Member of a Municipal Committee.
- (9) A President/Vice-President/Secretary of a Co-operative Society.
- (10) A retired Gazetted Officer.
- (11) An ex-Military Officer.
- (12) Any other well-known person residing in the same locality as the executant.

OR

“Any of the following documents should also be recognised for the identification of executants by the Registering Officers:-

- (i) Passport of the Executant.
- (ii) Income Tax PAN Card of the executant”

Provided that photo copies of such documents will be taken on the back of the deed through computer or photo copies of such documents will be attached with the document and the original documents will be perused and returned by the Registering Officer. The Registering Officer will certify on the photo copy of that he has seen the original document and the photocopy is a true copy of the original.

A stamp Vendor/petition written/peon (class IV Government servant or a servant of a local body) should never be allowed to identify executant, not should be accepted as an identifying or attesting witness in respect of a document presented for registration. An interested party to a deed should not be allowed to identify the executants of the deed.”

8. A perusal of the aforesaid rule indicates that a Registrar who is not personally familiar or acquainted with the executants shall rely upon identification of the executant made by other specified officers as mentioned in Rule 127 of Punjab Registration Manual. A perusal of the WILL (Annexure P-7) in question would shows that Mandar Singh, Member, Panchayat and Sukhwinder Singh Lambardar had identified the executant, on the basis of which the WILL in question was registered by the Registrar. In these circumstances, it will certainly be debatable as to whether the petitioner personally knew the executant or had acted solely on the basis of identification of the aforesaid two. In any case, since the impugned order is not based on the premises that the petitioner had incorrectly registered the WILL in question and is based solely on the premises that the petitioner had incorrectly sanctioned the mutation which has been found to be factually incorrect, the impugned order cannot sustain qua petitioner-Rajpal Singh Sekhon and is hereby set aside. The petition, as such, stands accepted.
9. It is however made clear that in case any evidence surfaces during the course of trial which shows complicity of the petitioner in the matter

pertaining to forgery of the WILL in question, it shall be open to the prosecution to move a fresh application under Section 319 Cr.P.C. so as to summon the petitioner.

10. The petition stands accepted in the above mentioned terms.

February 25, 2019

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**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No