

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

(i)

CRR No.629 of 2017 (O&M)

Ghanshyam Singh Rathaur

...Petitioner

VERSUS

Rajinder Singh Rathaur

...Respondent

(ii)

CRM No.M-3434 of 2017 (O&M)

Rajinder Singh Rathaur

...Petitioner

VERSUS

Ghanshyam Singh Rathaur

...Respondent

Date of Decision: April 11, 2019

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.P.S.Sidhu, Advocate
for the petitioner (in CRR No.629 of 2017) and
for the respondent (in CRM No.M-3434 of 2017).

Mr.Deepinder Singh, Advocate
for the petitioner (in CRM No.M-3434 of 2017).

INDERJIT SINGH, J.

CRM No.5709 of 2017 in CRR No.629 of 2017

Heard.

For the reasons mentioned in the application, the same is
allowed. Delay of 5 days in filing the revision petition is condoned.

Main cases

Both the above-mentioned cases are taken up together as these have arisen between the same parties.

Petitioner Ghanshyam Singh Rathaur has filed CRR No.629 of 2017 challenging the order dated 03.11.2016 passed by learned Addl. Sessions Judge, Faridabad, vide which, revision petition filed by respondent Rajinder Singh Rathaur was partly allowed by setting aside the order passed by learned trial Court qua summoning of the respondent under Sections 302 and 201 IPC.

Petitioner Rajinder Singh Rathaur has filed CRM No.M-3434 of 2017 for quashing the order dated 03.11.2016 passed by learned Addl. Sessions Judge, Faridabad to the extent, vide which the revision petition filed by the petitioner was partly allowed and summoning of the petitioner under Sections 420, 465, 467, 468 and 506 IPC was upheld whereas summoning of the petitioner under Sections 302 and 201 IPC was set aside and also for quashing of criminal complaint No.268 dated 14.07.2015 under Sections 302, 420, 463, 464, 465, 466, 467, 468, 417, 419, 201, 200, 452 and 506 IPC titled as 'G.S.Rathaur vs. Rajinder Singh Rathaur', as well as summoning order dated 19.01.2016 passed by learned ACJM, Faridabad, summoning the petitioner under Sections 302, 420, 465, 467, 468, 201 and 506 IPC.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

The brief facts of the case as noted down by learned ACJM,

Faridabad in the order dated 19.01.2016 are as under:-

“2. Brief facts of case of complainant are that Shri Todar Mal Rathaur, Harphool Singh Rathaur and Shri Rattan Lal Rathaur sons of Shri Budha were the owners in possession in equal shares of the agricultural land detailed in para no.1(a) and (b) of the complaint. It is further submitted that Todar Mal was unmarried and he died issueless on 9.12.1993. Harphool Singh left four sons and seven daughters but he was succeeded by his sons only on the basis of the Will executed by him in their favour. Rattan Lal left behind complainant and six daughters but he transferred all his rights, title and interest in the suit properties in the favour of his son, complainant. It has been submitted that after the death of Todar Mal, accused told the complainant, his father and other family members that Todar Mal during his life time had executed a court decree regarding his 1/3rd share in favour of the accused. All family members believed upon the statement of accused. It has also been submitted that on 29.6.2014 accused came to the house of complainant without informing regarding quarrel with the father-in-law of Lokesh, daughter of Parath (real brother of Rajinder Singh Rathaur) as well as with the husband of Smt.Lokesh. While he was consuming tea with the father of the complainant, accused proclaimed himself that he has been having good friendship with the father-in-law of Lokesh as well as husband of Lokesh. Accused also invited them for the marriage of his son Pushpinder going to be solemnized on 3.7.2014. Despite resistance by complainant, accused took the stand that father-in-law of Smt.Lokesh as well as husband of Lokesh were involved in a murder case. Accused and complainant exchanged hot words and accused got infuriated and threatened that he would continue to support the husband and father-in-law of Lokesh. Accused even in the same heat of moment, claimed that he had committed murder of Todar Mal

by administering poison to him and forged the Adoption Deed instead of court decree in his favour. He got mutated all the property of Todar Mal in his favour. He even threatened the complainant with dire consequences of death if matter was reported to any one. Later on, complainant made enquiries regarding cause of death of Todar Mal and it came in the notice of complainant that accused had definitely administered poison to Todar Mal and he even cremated his body hastily and immersed his ashes in Ganga. He disappeared the evidence of death of Todar Mal. Complainant also further enquired about the Adoption Deed. He came to know that Adoption Deed was forged. He also relied upon the sale deed bearing No.2333 dated 4.11.1985. It was found that in the sale deed Shri Rajender Singh Rathaur was one of the attesting witness and he cannot deny the thumb impression of Todar Mal. It has been submitted that it is a clear cut case of murder against the accused.”

The perusal of the record shows that Todar Mal was unmarried and issueless and he died on 09.12.1993. The present complaint has been filed in the year 2015 i.e. after about 22 years of death of Todar Mal. Now, the complainant is alleging after 22 years that Todar Mal was murdered by accused Rajinder Singh Rathaur. No post-mortem examination was conducted on the body. There is no explanation regarding delay of 22 years. There is also no cogent evidence on record regarding murder of Todar Mal. The dead body was cremated at that time. There are no inquest proceedings. There was no complaint during above-said long period regarding murder of Todar Mal. There is no FSL report that Todar Mal was killed by poisoning. The complainant is alleging that accused himself told him in the fit of anger that he had killed Todar Mal. The accused will not

come to the witness box to prove his statement or to make confession. Except this allegation, there is nothing in the complaint to show that Todar Mal was murdered. Therefore, learned Addl. Sessions Judge, Faridabad has rightly set aside the summoning order qua Sections 302 and 201 IPC and no illegality has been committed. Resultantly, finding no merit in the revision petition (CRR No.629 of 2017) filed by the petitioner Ghanshyam Singh Rathaur, the same is dismissed.

As regarding the quashing petition filed by Rajinder Singh Rathaur, I find that admitted facts are that Todar Mal died in the year 1993. Accused Rajinder Singh Rathaur is alleged to be adopted son of Todar Mal and complainant is real cousin of accused. From the record, it is clear that mutation was sanctioned in the year 1995. In the year 2006, accused filed petition for claim of compensation for acquisition of land in question and present complainant stood surety in the claim petition filed by the accused. The adoption deed is a registered document, which is dated 04.02.1985.

Learned counsel for accused-petitioner brought it to the notice of this Court that document Annexure P-11 is death certificate regarding death of Todar Mal on 09.12.1993. Annexure P-12 is the copy of mutation and mutation is of March 1995. In this mutation, there is specific mention regarding adoption deed vide Vasika No.1686 of 04.02.1985. Annexure P-13 is the copy of jamabandi showing Rajinder Singh Rathaur as adopted son of Todar Mal having 1/3rd share and the complainant also having 1/3rd share in the khata in this jamabandi of the year 1998-99. There is also mention regarding adoption deed. Annexure P-16 is the copy of ration card showing Rajinder Singh and his family along with Todar Mal as father. The

complainant has also filed civil suit for joint possession and permanent

injunction, which is stated to be still pending, in which, he has challenged the adoption deed etc.

Learned counsel for the petitioner Rajinder Singh Rathaur also brought to the notice of this Court the order dated 30.09.2006 passed by learned Addl. District Judge, Faridabad, which is Annexure P-20, in which, Rajinder Singh Rathaur accused is Advocate for decree holder, wherein, it is stated that in pursuant to order dated 26.08.2006, security bond has been furnished by decree-holder, wherein Shri G.S.Rathaur, Advocate (present complainant) has stood surety. This order itself shows that complainant was knowing regarding adoption deed and for so many years, he has not challenged the same. Otherwise also, the adoption deed is dated 04.02.1985 and Todar Mal died in the year 1993 and he also never challenged the adoption deed, which is a registered document. The present complaint has been filed by the complainant on 14.07.2015 i.e. after 30 years of execution of the adoption deed and more than 22 years of the death of Todar Mal.

Further, I find that documents of the accused normally cannot be looked into in the quashing petition but the documents, which are revenue record and order of learned Addl. District Judge, are prima facie, *per se* admissible documents, which can be looked into for deciding quashing petition.

Keeping in view the above discussion, I find that filing of present complaint is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merits in the petition filed by Rajinder Singh Rathaur, the same is allowed. Criminal complaint No.268 dated 14.07.2015

452 and 506 IPC titled as 'G.S.Rathaur vs. Rajinder Singh Rathaur', as well as summoning order dated 19.01.2016 passed by learned ACJM, Faridabad along with all the subsequent proceedings arising therefrom, are hereby quashed.

Resultantly, CRR No.629 of 2017 stands dismissed whereas CRM No.M-3434 of 2017 stands allowed.

April 11, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No