

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

**CRR No.3930-2018(O&M)
and other connected case
Date of Order:27.08.2019**

Jaspal Singh and another

..Petitioners

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S.Dhaliwal, Advocate,
for the petitioners(in CRR No.3930 of 2018)

Mr. Manoj Sharma, Advocate,
for the petitioner (in CRR No.9835 of 2018)

Mr. Bhupender Beniwal, AAG, Punjab

Mr. Surinder Gandhi, Advocate, with
Mr. R.P.S.Ahluwalia, Advocate,
for the complainant.

ANIL KSHETARPAL, J.

By this order CRR Nos.3930 and 9835 of 2018 shall stand disposed of. Learned counsel for the parties also admit that both the petitions can be conveniently disposed of by a common judgment.

Before the learned trial Court petitioners (3 in number) in both, the petitioners along with Balkar Singh were prosecuted, convicted and three of them i.e. the petitioners were sentenced as Balkar Singh, in the meantime, had died. However, two separate appeals were filed before the first appellate Court i.e. Gurnam Singh filed separate appeal whereas Jaspal Singh and Paramjit Singh sons of Balkar Singh filed separate appeals which were disposed of by a common judgment by the learned first

appellate Court.

Learned trial Court convicted the petitioners under Section 420/467/468/471/120-B IPC and sentenced them to undergo rigorous imprisonment for a period of 3 years with a fine specified in the order of sentence. However, learned first appellate Court has absolved the petitioners under Section 420 IPC, however, maintained conviction and sentence under Section 467/468/471/120-B IPC.

Detailed facts have already been noticed by the Courts below, however, for the purpose of present revision petitions, it is to be noted that two special power of attorneys dated 27.05.1991, one executed by Kuldeep Rai for himself and for his brother (Surjit Rai) in favour of Gurnam Singh son of Mahender Singh, Ex.PW3/A and another executed by Smt. Sukhnandan Devi for herself and for her son (Ved Parkash) of the same date in favour of same person i.e Gurnam Singh, Ex/PW3/B is alleged to have been interpolated so as to include land comprised in khasra number 15R/28 measuring 59 kanals 6 marlas and on the basis thereof, sale deed dated 06.06.1991 has been executed by Gurnam Singh in favour of Balkar Singh, accused who had died and his two sons, namely, Jaspal Singh and Paramjit Singh. It is the further case of the prosecution and as found by the learned Courts below that Balkar Singh and Gurnam Singh are closely related.

Main arguments before this Court were addressed in CRR No.3930 which has been filed by Paramjit Singh and his brother Jaspal Singh. Learned counsel has submitted that there is no evidence to prove criminal conspiracy and, therefore, the conviction of Paramjit Singh and Jaspal Singh by the Courts below is a result of error. He further submitted

that no civil suit has been filed by the owners and the present FIR was lodged after a period of 19 years from the date the sale deed was executed. Hence, he submitted that the case against the petitioners is result of after thought and in fact petitioners after receiving the sale consideration had sold the property through power of attorneys. He further submitted that the original power of attorneys have not been produced and therefore the judgment of conviction passed by the courts below are erroneous.

On the other hand, counsel for the State duly assisted by counsel for the first informant had defended the judgments of the courts below.

It may be noted here that the prosecution in order to prove its case have examined large number of witnesses. First witness Surjit Rai Ahluwalia has been examined as PW1, Raj Kumar scribe of both the special power of attorneys dated 27.05.1991 had been examined as PW2, whereas Rakesh Kumar, clerk in the office of Deputy Commissioner has been examined as PW3, Manjit Singh, Clerk has been examined as PW4, Kuldip Rai Ahluwalia has been examined as PW5, Vijay Guleria, scribe of sale deed dated 06.06.1991 has been examined as PW6, Jasbir Singh ASI has been examined as PW7, Satnam Singh, retired Sadar Kanugo has been examined as PW8, SI Baldev Singh, the Investigating Officer has been examined as PW9, Shrimati Romi, HRC, Office of Deputy Commissioner, Jalandhar, has been examined as PW10 and PHC Nirmal Singh has been examined as PW11.

Whereas defence has examined Surinder Kumar, registration clerk as DW1 and Smt. Romi, HRC, office of Deputy Commissioner, Jalandhar as DW2 and produced certain documents in evidence.

Both the courts have concurrently found that Balkar Singh and Gurnam Singh were cultivating the land which was originally owned by Barkat Rai Ahluwalia, who had three sons Ved Parkash, Kuldeep Singh and Surjit Rai Ahluwalia. He had also left behind a widow Smt. Sukhnandan Devi. Barkat Rai Ahluwalia had executed a registered will in faovur of his wife Smt. Sukhnandan Devi dated 05.10.1968 bequeathing only life interest. Balkar Singh and Gurnam Singh were looking after the land. Two power of attorneys were executed by the heirs of Barkat Rai Ahluwalia. However, it has been found that those power of attorneys did not include land comprised in khasra no.15R/28 measuring 59 kanals 6 marlas. It has been established from the evidence of scribe Raj Kumar PW2, Rakesh Kumar, Clerk, office of Deputy Commissioner PW3 that the original power of attorney was not with respect to the land comprised in khasra no.15R/28 measuring 59 kanals 6 marlas. It has also come on record that the original book in the office of Sub-Registrar where entries with regard to those power of attorneys were made were also removed. However, on examination of overwhelming evidence, particularly the record of the scribe who has been examined as PW2 and copy of the power of attorney available in the office of the sub-registrar proved by Rakesh Kumar PW3, it has been proved that the power of attorneys executed in favour of Gurnam Singh were not with respect to land comprised in kahsra no.15R/28. However, it is apparent that the sale deed which was executed by Gurnam Singh on 06.06.1991 in favour of Balkar Singh and his sons Paramjit Singh and Jaspal Singh, the land in khasra no.15R/28 was included. Even the official who had brought the copy of the sale deed available in the office of Sub-Registrar which was on the strength of power of the attorneys dated 27.05.1991, copies of the attorneys

were found attached thereto also prove that the power of attorneys have been interpolated so as to include land comprised in khasra no.15R/28

Sh. Vijay Gularia, scribe of sale deed dated 06.06,1919 has also deposed that two power of attorneys were brought in by the parties, which include land comprised in khasra no.15R/28 and therefore, on the basis of the aforesaid power of attorneys, the sale deed was scribed by him.

It may further be noted here that mutation sanctioned on the basis of sale has already been set aside by the Divisional Commissioner after holding enquiry vide order dated 01.01.213.

Now let us deal with the arguments of learned counsel for the petitioners.

As regards first submission that is with regard to absence of evidence of criminal conspiracy so as to involve Jaspal Singh and Paramjit Singh sons of Balkar Singh. It may be noted that both the Courts have found that Balkar Singha and Gurnam Singh are closely related. Still further prosecution has examined PW1 Surjit Rai Ahluwalia, first informant and Kuldeep Rai Ahluwalia as PW5. Both have deposed that the sale deed was executed in favour of Balkar Singh and his sons Parmajit Singh and Jaspal Singh due to criminal conspiracy.

It is well settled that usually direct evidence of criminal conspiracy is not available. It has to be found out on the basis of circumstantial evidence. If the court examines the circumstances, in the present case, the only inescapable conclusion is that petitioners Jaspal and Paramjit had conspired along with their father Balkar Singh and got the sale deed executed particularly when Balkar Singh and Gurnam Singh were jointly cultivating the land and were closely related. It may be noted that

during the pendency of the trial Gurnam Singh filed an application for grant of pardon as he wanted to become approver. The trial court did not grant that permission. He has submitted his application stating that he wants to disclose that how there was conspiracy among them.

As regards second arguments of learned counsel for the petitioners that original power of attorneys have not been produced, it may be noticed that original power of attorneys were in possession of the accused. They have not chosen to produce the aforesaid document. An application for permission to lead secondary evidence was filed which was allowed and thereafter the power of attorneys were proved while summoning the original record from the office of the sub-registrar where power of attorneys were registered. Still further once the power of attorneys were in possession of accused, the court has rightly drawn adverse inference, as the accused did not produce the same, although opportunity was granted to them. It is not the case of the accused that the power of attorneys have been lost. At one stage, when prayer for custodial interrogation was made by the prosecution, the accused had taken a stand that the power of attorneys have been filed in the civil suit. Thus, petitioners-convicts cannot take benefit of non production of the power of attorneys.

Next argument of learned counsel for the petitioners is with respect to delay, it may be noticed that it is proved case of the first informant resides out of country. Still further, in the present case delay would not be significant because FIR was registered at the very moment when Surjit Rai Ahluwalia, first informant came to know of the interpolation and fraud played by Balkar Singh, Gurnam Singh and other

accused. The entire case of the prosecution is based on documents which has been proved beyond shadow of reasonable doubt.

While excessing powers of revision, this court has limited jurisdiction. However, with the able assistance of counsel, this court has also gone through the record of the case which was summoned. After examining the overwhelming evidence produced by the prosecution, this court is satisfied that there is no error of law or procedure in the judgments passed by the courts below.

Last argument of learned counsel for the petitioners is equally without any substance because the sale deed which has been executed on the basis of interpolated/forged power of attorneys, does not result in passing of ownership to the extent of interpolation. Hence, sale deed was not required to be challenged.

In view of the aforesaid, both the revisions are ordered to be dismissed.

27th August, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No