

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28668-2019 (O&M)
Date of decision: 08.07.2019

Daljit Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Abhishek Yadav, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 11.12.2018 (Annexure P-2) passed by the Additional Sessions Judge, Gurdaspur, vide which the revision petition filed against the order dated 06.10.2016 (Annexure P-1) passed by the trial Court, dismissing the complaint of the petitioner, was dismissed.

Brief facts of the case are that complainant Daljit Singh, Tarlochan Singh and Nirmal Singh are real brothers. Nirmal Singh died on 21.09.2009 leaving behind four legal heirs i.e. Daljit Kaur (wife), Satinder Pal Singh (son), Germanjit Singh (son) and Darshan Kaur (mother). Satinder Pal Singh, Germanjit Singh and Darshan Kaur executed a sale deed of land measuring 4 marlas out of khasra No.53R/7/2/2/1 (0-17) Khewat No.167 Khatauni No.279, jamabandi for the year 2007-2008 Hadbast No.61, situated at Village Ghuman,

Tehsil Batala, on 31.03.2010 bearing Wasika No.2038, in favour of the complainant, in the office of Joint Sub Registrar, Srihargobindpur, the mutation thereof is disputed and the same is pending in the Court of SDM, Batala. It is stated by the complainant that his property and the property of Tarlochan Singh belong to same khasra No.53R/7/2/2/1 (0-17) and previously, they had constructed joint houses, but after the death of Nirmal Singh, Tarlochan Singh hatched a conspiracy by fabricating a false agreement of domestic partition, when he came to know that the complainant has obtained a sale deed from the legal heirs of deceased Nirmal Singh of their respective shares i.e. 01 kanal, 04 marlas, out of khasra No.53R/7/2/2/1 (0-17), in his favour. The alleged agreement of partition, fabricated by Tarlochan Singh is alleged to be of land measuring 5-1/3 marlas for consideration of Rs.25,000/-, executed in his favour, by deceased Nirmal Singh prior to his death on 19.04.1991. It is also stated that in fact, no such document was executed by deceased brother of the complainant in favour of Tarlochan Singh but he procured a back date stamp paper of the value of Rs.10/- from somewhere and made a false and fabricated document, to grab the illegal ownership of the property of his deceased brother Nirmal Singh. In this regard, a civil suit has filed by accused No.1 Tarlochan Singh, titled as Tarlochan Singh Vs. Satinder Pal Singh and the same is pending before the Civil Court at Batala, for execution of the false and fabricated document dated 19.04.1991. Thus, the accused persons have made a criminal conspiracy with each other and prayed that action be taken against them.

In preliminary evidence, complainant Daljit Singh examined Jarmanjit Singh as CW1, Jagdeep Singh as CW2, Daljit Singh as CW3 and thereafter, closed the preliminary evidence.

Thereafter, the trial Court, vide order dated 06.10.2016, dismissed the complainant. The operative part of the order reads as under: -

“.....For the offences to be made out U/S 420/ 465/ 467/ 468/ 471/ 120-B IPC complainant was burden to prove that the accused forged the agreement of partition as the complainant has leveled allegation that the Tarlochan Singh has forged one agreement after knowing the fact that after the death of Nirmal Singh, his Legal Heirs has transferred the land in dispute in favour of complainant, but he has not brought on record the alleged sale deed which was got executed by Nirmal Singh in his favour. He has also not brought on the record alleged agreement of partition which was executed by accused Tarlochan Singh in order to curtail his right. Furthermore, he has not taken any initiative to place on record any copy of the documents which could show that any police complaint was moved by the complainant and no action was taken by them. Though, the complainant is at liberty to file complaint against the accused in case of any grievance however, it is pertinent to mention here that complainant Daljit Singh has miserably failed to prima facie establish that accused has ever executed the agreement to partition in his favour. The complainant has not brought on record the alleged agreement of the partition as well as the sale deed executed by Nirmal Singh in his favour which could have been the best evidence to prima facie show that accused has forged and fabricated the documents document. However, no such evidence has been led by the complainant in

*preliminary evidence. Thus, no prima facie case has been proved by the complainant. Further more, I draw support law laid down from Hon'ble High Court in **Arun Jha & anr. Versus State of Haryana & anr. 2006(1) RCR (Criminal) 300** has observed that:-*

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to be examined the nature of allegations made in the complaint and the evidence both oral and documentary in support thereto. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to be complainant and his witnesses to elicit answers to find out the truthfulness of the allegations”

*Relying upon the ratio of **Arun Jha's** case (supra) it can very safely be concluded that on careful scrutiny of the evidence brought on record, no truthfulness can be found in the allegations levelled by the complainant and this court is of the opinion that summoning a person in a criminal case at the instance of an*

aggrieved/complainant is a serious step and such a process cannot just be issued in a routine manner, as it has its own consequences. So, under these circumstances and by holding the fact that the complainant has fully failed to prove a prima facie case against the accused, I found no ground/justification to summon the accused under the sections mentioned in the complaint and the complaint of the complainant is without any merits and the same is hereby dismissed.”

The petitioner, thereafter, filed a revision petition before the Court of Sessions and the Additional Sessions Judge, vide order dated 11.12.2018, also dismissed the same, by observing as under: -

“From perusal of the file of learned trial Court, I find that petitioner/complainant Daljit Singh filed a complaint against the respondents to summon and try them for the commission of offences punishable under sections 420, 465, 467, 468, 471, 120-B of IPC. It has been alleged by petitioner in his complaint that he has two real brothers namely Tarlochan Singh and Nirmal Singh. Nirmal Singh died on 21.9.2009 and legal heirs of Nirmal Singh executed a sale deed of land measuring 04 marlas of land out of khasra number 53/R7/2/2/1 (0-17) Khewat No.167, Khatauni no.279 and as per Jamabandi for the year 2007-2008 situated at village Ghoman, Tehsil Batala dated 31.3.2010 in favour of the petitioner/complainant. The property of complainant and respondent No.1 belongs to the same khasra number. After the death of Nirmal Singh deceased, Tarlochan Singh hatched a

criminal conspiracy by fabricating a false agreement of domestic partition when respondent No.1 was having knowledge that the complainant has obtained a sale deed from the legal heirs of Nirmal Singh of their respective shares. The alleged agreement of partition was fabricated by respondent No.1.

To prove prima facie, it was upon the petitioner/ complainant to prove the sale deed executed by legal heirs of Nirmal Singh in his favour dated 31.3.2010 and it was also upon the petitioner/ complainant to prove the agreement of partition as alleged by him on the file, but both these documents have not been proved by the petitioner/complainant. So, finding no prima facie case, learned trial court has rightly dismissed the complaint.”

Learned counsel for the petitioner has argued that there is sufficient evidence on record to summon the respondents-accused and both the Courts below have erroneously dismissed the complaint filed by the petitioner. It is further argued that the Courts below have wrongly failed to appreciate that accused Tarlochan Singh has hatched a conspiracy, by fabricating a false agreement of family partition, though he was having knowledge that the complainant has obtained a sale deed from the legal heirs of Nirmal Singh, of their respective shares.

After hearing learned counsel for the petitioner, I find no ground to interfere in the well reasoned findings recorded by the Courts below.

Both the Courts below have recorded a categorical finding that neither the petitioner has placed on record the sale deed, which, according to him, was executed by the legal heirs of Nirmal Singh in his favour nor has

produced on record the alleged agreement of family partition. Therefore, in the absence of any cogent and convincing evidence, I find no reason to differ with the opinion formed by the Courts below.

Petition is dismissed.

08.07.2019
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No