

CRM-M-1033-2020

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

CRM-M-1033-2020 (O & M)

Date of Decision: 02.03.2020

Sushil Kumar

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sunny K. Singla, Advocate,
for the petitioner.

Mr. Kirat Singh Singh, DAG, Punjab.

Mr. Anil Kumar Garg, Advocate,
for legal heirs of respondent No.2.

HARNARESH SINGH GILL, J.

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Allowed as prayed for, subject to all just exceptions. Reply
filed on behalf of legal heirs of respondent No.2, alongwith annexures R-
2/A to R-2/G, is taken on record.

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The present petition has been filed against the order dated
07.08.2019 (Annexure P-9) passed by the learned Judicial Magistrate Ist
Class, Malerkotla, in FIR No.20 dated 20.02.2016, registered at Police
Station Amargarh, District Sangrur, under Sections 420 and 120-B IPC,
whereby an application filed by complainant-Gurdial Singh through A.P.P.,

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to lead secondary evidence for proving the dissolution deed dated 15.11.2008, was allowed.

The petitioner alongwith one Harbans Lal is facing the trial for the commission of offences under Sections 420 and 120-B IPC. The aforesaid FIR has been registered against the accused on the ground that in order to cheat the complainant, they had got transferred an amount of Rs.11,50,000/- in the name of M/s Guru Nanak Trading Company, Anaj Mandi, Dhuri, without any title therein.

During the pendency of trial, complainant-Gurdial Singh filed the application to prove the dissolution deed dated 15.11.2008 by leading the secondary evidence on the ground that the same had been misplaced and was not traceable. It was also mentioned in the application that in the case titled as 'State vs. Bhagwan Singh', accused-Sushil Kumar had appeared as a witness in the Court and the original dissolution deed had been put to him and he had identified his signatures on it. Thereafter, the present complainant had been summoned by accused-Sushil Kumar in civil suit titled as 'Sushil Kumar Vs. Bhagwan Singh', wherein the factum of misplacement of dissolution deed had been admitted by him. In that suit, Bhagwan Singh had moved an application for proving the dissolution deed by way of secondary evidence and the aforesaid application had been allowed by the Court of learned ACJ (SD), Malerkotla, vide order dated 19.01.2017. No appeal or revision had been filed by accused-Sushil Kumar against the said order and copy of the dissolution deed was got exhibited by Bhagwan Singh by examining witness-Surjit Singh.

The accused-petitioner filed reply to the said application and

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averred that the alleged dissolution deed was a forged and fabricated document. The same had been forged by taking blank signed affidavit of Sushil Kumar. The complainant had deliberately not disclosed to the investigating officer regarding original dissolution deed. The complainant had also not annexed any police report/DDR with the application for leading secondary evidence, about loss of the alleged dissolution deed. He had also not disclosed the aforesaid fact to the investigating officer on 20.02.2016 while recording his statement under Section 161 Cr.P.C.

Learned Judicial Magistrate Ist Class, Malerkotla, while going through the material available on record, has allowed the application to lead secondary evidence of the dissolution deed, vide impugned order dated 07.08.2019.

Being dissatisfied with the impugned order, the present petition has been filed.

Learned counsel for the the petitioner has argued that on the complaint of Gurdial Singh, the aforesaid FIR had been registered and challan had been presented on 21.11.2016. There was no averment in the FIR or in the challan that the dissolution deed dated 15.11.2008 had been misplaced. The petitioner had moved the application for issuance of direction to prosecution to produce the original dissolution deed. The said application had been allowed, vide order dated 17.05.2018 (Annexure P-3), and the prosecution had been directed to produce the dissolution deed and to supply copy of the same to the accused. The said order has been passed by observing that copy of the dissolution deed was lying in the police file.

However, the dissolution deed had not been produced. Thereafter, an

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application for directing the prosecution to produce the original dissolution deed dated 15.11.2008 was also filed by the petitioner-accused, which had been dismissed on the ground that charge was yet to be framed and prosecution evidence was yet to commence and, therefore, the original dissolution deed could only be summoned when prosecution witness/complainant would appear before the court. However, vide impugned order dated 07.08.2019 (Annexure P-9), the prosecution had been allowed to lead the secondary evidence of the dissolution deed in order to prove its case against the accused. Learned counsel further contended that it was nowhere mentioned in the FIR nor was it ever disclosed by the complainant to the investigating officer on 20.02.2016 while getting his statement recorded under Section 161 Cr.P.C., that the original dissolution deed had been lost. In support of his contentions, the learned counsel relied upon the judgment of this Court in Mukesh Kumar alias Motta Vs. State of Haryana 2011(1) R.C.R.(Criminal) 356.

Per contra, the learned State counsel assisted by the learned counsel for legal heirs of respondent No.2 has argued that the firm was dissolved, vide dissolution deed dated 15.11.2008, and in a case titled as 'State Vs. Bhagwan Singh, the petitioner had appeared as a witness and original dissolution deed dated 15.11.2008 had been put to him and he had admitted his signatures on it. Still further, an application for proving the dissolution deed by way of secondary evidence had been filed and vide order dated 19.01.2017 (Annexure R-2/E), the learned Additional Civil Judge (Sr. Divn.), Malerkotla, had allowed it and against the said order, no appeal or revision had been filed and the same has attained finality.

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I have heard the learned counsel for the parties and with their able assistance, have gone through the case file.

As a matter of fact, the entire case of prosecution is based on the dissolution deed and as per the petitioner, the same is a forged and fabricated document, though existence of the same is not disputed.

Respondent No.2 has placed on record the copy of order dated 19.01.2017 passed by the learned Additional Civil Judge (Sr. Divn.), Malerkotla, in a suit for possession by way of specific performance, whereby Bhagwan Singh, defendant in that suit, was allowed to lead secondary evidence to prove the dissolution deed dated 15.11.2008. No appeal or revision was filed challenging the order dated 19.01.2017 and the same has attained finality. In case titled as 'State Vs. Bhagwan Singh', the petitioner had appeared as a witness in the Court and the original dissolution deed was put to him and he identified his signatures on it. The loss of the dissolution deed has also been asserted by the complainant by producing on record his self declaration dated 19.02.2016, whereby he stated that he had lost dissolution deed.

The learned Judicial Magistrate Ist Class, Malerkotla, while passing the impugned order dated 07.08.2019, has rightly held that the existence and loss of the deed in question stands established and ingredients of Section 65 of the Indian Evidence Act are complied with and accordingly, allowed the prosecution to lead secondary evidence.

Learned counsel for the petitioner has failed to point out any illegality or perversity in the impugned order. The case law cited by the learned counsel for the petitioner is not applicable to the facts of the present

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case.

In view of the above discussion, I do not find any merit in the present petition and the same is dismissed.

02.03.2020
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note: Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No