

(105) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-389-2022(O&M)
Date of Decision: 09.03.2022

Mohammad Sadeek @ Sadiq Khan

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Simranjeet Singh Sarwara, Advocate
for the petitioner.

Mr. Sidakmeet Singh Sandhu, DAG, Punjab.

(Through Video Conferencing)

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the order dated 14.02.2022 passed by the learned Additional Sessions Judge, Patiala, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 11.09.2018 passed by learned Judicial Magistrate, 1st Class, Rajpura, has been dismissed.

2. The brief facts of the case are that, the present FIR was registered on an application moved by complainant-Sampuran Singh PW-3 to the SSP, Patiala, wherein, he had stated that the complainant entered into an agreement to sell dated 29.02.2012 (Ex.PW3/B) with accused/convict Balbir Singh @ Balkar Singh. He, firstly, gave Rs.50,000/- as booking amount (sai) to the accused Balbir Singh @ Balkar Singh. The said sai/receipt is dated 24.02.2012 (Ex.PW4/A). Thereafter, he deposited Rs.18.00 lac in the bank

account of the accused Balbir Singh @ Balkar Singh. The said agreement was witnessed by Naresh Kumar PW-5 and Parveen Sharma PW-4 and by Sadiq Khan @ Mohd. Sadiq the present petitioner. The complainant further alleged that it was agreed between him and accused Balbir Singh @ Balkar Singh that sale deed would be executed on 29.11.2012. The said agreement was also attested by Notary Public at Court Complex, Rajpura. The Notary Public has also made an entry in this regard in his register. It is further alleged that thereafter, on 22.11.2012, accused Balbir Singh @ Balkar Singh came to the complainant and stated that he could not partition his above said land, so, he was unable to execute the sale deed in favour of complainant on 29.11.2012. He requested that the date of execution of sale deed be extended till 02.05.2013. The complainant agreed to the same and an entry on the back side of agreement to sell dated 29.02.2012 was also made qua the above said fact. Later, on 06.12.2012, when he got the Fard Jamabandi of the property, which was agreed to be sold by accused Balbir Singh @ Balkar Singh, to the complainant, he came to know that the property in question had already been sold by accused-Balbir Singh @ Balkar Singh to accused/petitioner Mohd. Sadiq vide sale deed dated 31.10.2012 (Ex.PW10/A). Thereafter, he moved an application Ex.PW3/A dated 07.12.2012 to the police for registration of the above said FIR. Thereafter, the police registered the present case against the accused. Investigation was initiated. The accused were arrested. Statements of witnesses were recorded. After completion of investigation and other necessary formalities, the challan under Section 173 Cr.P.C. was presented against accused/petitioner Mohammad Sadeek @ Sadiq Khan and Balbir Singh @ Balkar Singh.

3. On presentation of the challan, copies of the challan and other accompanying documents as relied upon by the prosecution and as envisaged under Section 207 of Criminal Procedure Code, were supplied to the accused free of cost.

4. Finding a prima facie against the accused, they were charge-sheeted for offences punishable under Sections 406, 420, 120-B IPC, to which, they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined PW1- Gurpreet Singh, Stamp Vendor, Sub-Tehsil, Ghanaur, ASI Malwinder Singh as PW2, Sampuran Singh, complainant as PW3, Parveen Sharma as PW4, Naresh Sharma as PW5, Rajat Pahwa, Deputy Manager, HDFC Bank as PW6, ASI Jaswinder Pal as PW7, ASI Yashpal as PW8, Tarsem Lal as PW9, Manjit Kumar as PW10, Tarjit Kaur as PW11, Manju Khan as PW12 (wrongly typed as PW11) and SHO Rakesh Kumar as PW13. Thereafter, the evidence of the prosecution was closed by order.

6. After closure of the evidence of the prosecution, statements of the accused under Section 313 Criminal Procedure Code were recorded, in which all the incriminating evidence appearing on record against the accused was put to them, to which, they denied all the allegations and termed the case to be false and deposition of the witnesses to be false against them and pleaded innocence.

7. In defence evidence, accused Mohammad Sadeek examined Navdeep Gupta, Handwriting and Finger Print Expert as DW1. The accused further examined DW2 Ashwani Kumar, DW3 Kunal Gupta, DW4 Pardeep

Thakur and then, the accused/petitioner Mohammad Sadeek himself appeared as DW5.

8. The trial Court, after hearing the learned A.P.P. for the State and learned counsel for the accused as well as appreciating the evidence on file, vide judgment and order of sentence dated 11.09.2018 convicted the accused as under:-

Sr. No.	Name of Convict	Under Section	Sentence	Fine imposed
1	Mohammad Sadeek @ Sadiq Khan	420 IPC	Rigorous imprisonment three years	Rs.3000/-, in default of payment of fine, Rigorous imprisonment for two months.
2	Balkar Singh @ Balbir Singh	420 IPC	Rigorous imprisonment three years	Rs.3000/-, in default of payment of fine, Rigorous imprisonment for two months.

9. Aggrieved by the judgment and order of sentence dated 11.09.2018 passed by the trial Court, both the appellants preferred separate appeals, which were heard together.

10. After hearing the rival contentions of the parties, the appeals were dismissed and the judgment of the learned trial Court was upheld.

11. Further aggrieved by the dismissal order, the present revision has been preferred.

12. The learned counsel for the petitioner has argued that the petitioner had not signed the agreement to sell (Ex.PW3/B) and the receipt (Ex.PW4/A). He contended that the name of the petitioner was Mohammad Sadeek and in the agreement to sell, it is mentioned as Sadiq Khan and as per DW1-Navdeep Gupta, a Handwriting Expert his signatures were fabricated on the said agreement. He contended that in fact, the co-convict and main

accused-Balkar Singh @ Balbir Singh had executed an agreement to sell dated 25.08.2010 (Ex.DW5/A) in his favour and the sale deed in question on 30.10.2012 on the petitioner having paid Rs.30,66,000/- and as such he was a bona fide purchaser for consideration. The learned counsel further contended that taking the allegations to be correct, the dispute was primarily of civil nature, for which the complainant had already instituted a civil suit for recovery and thus, the conviction of the petitioner cannot be sustained.

13. I have heard the learned counsel for the petitioner at considerable length.

14. PW3-Sampuran Singh who is the complainant as also PW4-Parveen Sharma the attesting witness have categorically stated that it was the petitioner who had signed the agreement to sell dated 29.02.2012 (Ex.PW3/B) and the receipt dated 24.02.2012 (Ex.PW4/A). In Ex.PW4/A, the petitioner signed as Mohammad Sadeek but his name has been mentioned as Sadiq Khan. However, in the agreement to sell (Ex.PW3/B), he signed as Sadiq Khan. In both these documents, the father's name has been mentioned as Sabar Mohammad, which clearly shows that Mohammad Sadeek and Sadiq Khan are the same person. Even otherwise, there is nothing in the statement of the petitioner who examined himself as DW-5 to suggest that there was another person in the village by the name of Sadiq Khan. Thus, once the petitioner has been duly identified as the signatory of both the documents, the change of his name has no significance moreso, when the father's name is the same.

15. So far as, the Handwriting Expert (DW1) is concerned, only one document was got compared by him i.e. (Ex.PW3/B), where, petitioner-

Mohammad Sadeek has signed as Sadiq Khan. Ex.PW4/A was not got compared, where he has signed as Mohammad Sadeek because he might have apprehension that the signatures would match. On the contrary, the complainant, as has already been submitted hereinabove, has specifically stated that one and the same person has signed Ex.PW4/A and Ex.PW3/B and that fact has been endorsed by Parveen Sharma (PW-4).

16. From the above discussion, it is clear that the agreement to sell (Ex.PW3/B) was executed by main accused-Balkar Singh @ Balbir Singh in favour of complainant-Sampuran Singh and the petitioner had duly signed the same as an attesting witness. However, after execution of this agreement to sell on 29.02.2012, Balkar Singh @ Balbir Singh executed a sale deed dated 31.10.2012 (Ex.PW10/A) in favour of the present petitioner.

17. The contention that it was a civil dispute as after the agreement to sell had been executed, the land had been sold to another person is absolutely incorrect. The facts in the present case would show that the offence is clearly made out.

18. Admittedly, the agreement to sell to which the petitioner was a signatory as an attesting witness, is dated 29.02.2012. The sale deed was to be executed on 29.11.2012, which period was extended on the asking of the main accused-Balkar Singh @ Balbir Singh to 02.05.2013. In the meantime, Balkar Singh @ Balbir Singh sold the property to the petitioner on 31.10.2012 prior to the target date of 02.05.2013 as per the agreement to sell. Thus, the petitioner was well-aware that he was a signatory to a document by which rights had been partially created in favour of the complainant and a substantial sum of money had also been paid to complainant-Balkar Singh @

Balbir Singh, but he nevertheless got executed the sale deed in his favour. These facts clearly show that the petitioner and his co-accused Balkar Singh @ Balbir Singh had dishonest intention from the very inception to cheat the complainant. This is moreso, when the deposition of the petitioner himself as DW-5 reveals that there was a prior agreement to sell with him on 25.08.2010 (Ex.DW5/A). If this was the case, the fact that the petitioner became a witness to the subsequent agreement to sell with the complainant dated 29.02.2012, itself establishes his culpability.

19. It would also be relevant to mention here that the factum of transfer of the sale consideration to the account of Balkar Singh @ Balbir Singh is also a matter of record. It is also a matter of record that the petitioner after purchasing the property on 31.10.2012, executed a further sale deed in favour of Tarjit Kaur wife of Harpal Singh on 17.12.2012, whereas the date fixed for execution of the sale deed in favour of the complainant was on 02.05.2013 as per the endorsement (Ex.PW3/C).

20. In view of the above discussion, it is clearly established that accused-Balkar Singh @ Balbir Singh had executed an agreement to sell Ex.PW3/B in favour of complainant-Sampuran Singh and received Rs.18,50,000/- as earnest money. The agreement to sell was attested by petitioner-Mohammad Sadeek as attesting witness, with an intention to cheat the complainant. The petitioner-Mohammad Sadeek had also an intention to cheat the complainant, so he had not disclosed the earlier agreement to sell claimed by him, Ex.DW5/A in his favour.

21. Having examined the facts and circumstances and after examining the record, I am of the considered view that there is no merit in

this revision petition. Hence, while upholding the impugned judgment of conviction and order of sentence dated 11.09.2018 passed by the learned trial Court and order dated 14.02.2022 passed by the Lower Appellate Court, the present revision petition is hereby dismissed.

22. However, since the petitioner is a first time offender and the occurrence is approximately 10 years old, I modify the sentence and reduce it to a period of 2 ½ years. The quantum of fine and sentence in default shall remain intact.

(JASJIT SINGH BEDI)
JUDGE

09.03.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No