

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

**Reserved on 7th of September, 2022
Pronounced on 27th of September, 2022**

CRM-M No.12565 of 2016

Darshan Singh

.....Petitioner

versus

Ranjit Kaur and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ashish Nagar, Advocate
for the petitioner.

Mr. Tejinder Pal Singh, Advocate
for respondents No.1 to 5.

Mr. Suneet Pal Singh, Advocate
for respondents No.6 and 7.

PANKAJ JAIN, J. (ORAL)

Complainant is before this Court. Petition under Section 482 Code of Criminal Procedure (for short 'Cr.P.C.') has been filed at his behest against the order passed by Sessions Judge, SBS Nagar, dated 2nd of May, 2015 (Annexure P-3).

2. The brief facts necessary for the adjudication in the present petition are that a complaint was filed by the petitioner claiming that he and Manjit Singh are real brothers. Jaswinder Kaur is legally wedded wife of Manjit Singh. In order to save matrimonial relation of Manjit Singh and Jaswinder Kaur, his brother i.e. petitioner purchased a plot in the name of

Jaswinder Kaur vide Registered Sale Deed dated 19th of June, 1989. After Jaswinder Kaur and Manjit Singh migrated to Canada relations between petitioner and his brother and his family got strained. It has been alleged that Manjit Singh and Jaswinder Kaur started threatening petitioner to dispossess him from the plot purchased by him in the name of Jaswinder Kaur *ibid*. Petitioner preferred Civil Suit which was dismissed. Appeal arising out the same also admittedly stands dismissed. He further claims that the said plot has been sold by Jaswinder Kaur through her sister acting as her Attorney namely Ranjit Kaur vide Sale Deed dated 28th of December, 2007. It has been asserted that Power of Attorney dated 23rd of November, 2000 executed by Jaswinder Kaur in favour of the Ranjit Kaur instead stood revoked on 3rd of June, 2002. Thus, the said Sale Deed dated 28th of December, 2007 is result of fraud. All the respondents were said to be guilty of having committed offence punishable under Sections 420, 465, 468, 471, 217, 120-B IPC. Trial Court at the time of summoning found that offence punishable under Section 420 IPC was made out against the accused Jaswinder Kaur and Ranjit Kaur and, thus, ordered that they be summoned to face trial vide order dated 25th of January, 2014. The said order has been placed on record as Annexure P-2.

3. Ranjit Kaur challenged the aforesaid order before the Revisional Court. It was held by the Revisional Court that :-

“12. To sum up the complainant is not on the right side of

law while claiming that sale deed dated 19.6.1989 was Benami Transaction, as he already lost his case and cause on the civil side whereby Jaswinder Kaur has been accepted as owner of the property in question in her own right and guided by Mohd. Ibrahim's case, Darshan Singh not being entitled to carp cheating as there was o transaction whatsoever involving Darshan Singh whereby he may have been dishonestly induced by any of the accused much less having been made to part with his property to any of the accused as a result of such dishonest inducement.

13. In the ultimate outcome no offence much less punishable under Section 420 IPC can be said to have been committed by any of the accused and consequently the impugned order dated 25.1.2014 is held to be illegal, perverse and arbitrary and is hereby set aside and is reversed. The complaint filed by Darshan Singh is ordered to be dismissed.”

4. Hence, present petition.

5. Ld. Counsel for the petitioner submits that the Trial Court travelled beyond the scope of revision. He asserts that in fact Jaswinder Kaur never preferred any revision against the order dated 25th of January, 2014 passed by Judicial Magistrate 1st Class, SBS Nagar, summoning her to face trial yet merely on the revision preferred by Ranjit Kaur, complaint has been dismissed against Jaswinder Kaur as well.

6. Per contra, Counsel for the respondents submit that no fault can be found in the orders passed by Revisional Court. Relying upon Sections 397 and 399 Cr.P.C., it has been pleaded that Sessions Court is not

precluded from exercising revisional powers by himself. Referring to the order passed by the Revisional Court, Counsels submit that the Revisional Court found that the complaint when tested on the touchstone of ingredients constituting offence punishable under Section 420 IPC was found deficient and, thus, was right in dismissing the complaint *in toto*. Reliance has been placed on judgment passed by Bombay High Court in **Valmiki Faleiro vs. Mrs. Lauriana Fernandes and other, 2005 Cri. L.J. 2498**, wherein it has been held that :-

“13. In my, view, the submissions of the learned Senior Counsel Mr. Lotlikar cannot be accepted. Section 397 of the Code of Criminal Procedure, 1973, deals, with the calling for records to exercise powers of revision and provides that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

14. Needless to observe it was within the province of the learned Sessions Judge to exercise suo motu powers of revision and to set right a wrong order whenever it came to his notice that such order was incorrectly made or illegally or

improperly passed. In addition to Section 397 of the Code, Section 399 deals with powers of the Sessions Judge in matters of revision. The learned Sessions Judge, in my view, was fully justified in examining the correctness of the Order which was challenged before him, namely, the Order refusing to recall process and he was also fully justified on his own motion, there being no bar of any limitation to exercise suo motu powers of revision to examine the correctness of the first Order which was refused to be recalled by the learned J.M.F.C. In my view, therefore, there has been no procedural irregularity committed by the learned Sessions Judge in revising the Order issuing process against the accused at a time when the Order refusing recall of process was challenged before the learned Sessions Judge. This Court will not exercise its discretionary revisional jurisdiction to set aside an order which will have the effect of restoring an illegal order.”

7. He further placed reliance upon judgment passed by Bombay High Court (Nagpur Bench) in **Madhav Govindrao Vaiuya vs. State of Maharashtra, 1983 Mh.LJ 1032** wherein it has been held that :-

“4A. Sessions Judge's powers of revision are mentioned in section 399, which is a new provision. Subsection (1) of section 399 lays down that in the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401. Sub-section (2) of section 399 further provides that where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-

sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceedings and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge. Section 400 further provides that an Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge. It is thus clear that under the new Code, the Sessions Judge and the Additional Sessions Judge are invested with revisional powers which are co-extensive with the revisional powers which the High Court can exercise under section 401. Of course, sections 399, 400 and 401 are subject to section 397, sub-section (2) of which imposes the limitation that the powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceeding. Hence, a Sessions Judge or an Additional Sessions Judge, hearing the matter which is transferred to him by the Sessions Judge by general or special order, can exercise all the powers, which the High Court can exercise under section 401 (1) of the Code of Criminal Procedure, 1973, which provision, as mentioned above, is analogous to section 439 (1) of the Code of Criminal Procedure, 1973 1898.”

8. He submits that the respondents have placed on record copy of the Judgment and Decree passed by the Civil Court, dated 28th of July, 2014 wherein the Court found that :-

“36. To sum up, it is pertinent to observe that the checklist stated above screams out loud the name of defendant no.1.

Custody of the sale deed, entries in the revenue record, payment of sale consideration, possession over the suit property, absence of motive for transaction to be benami all stand sufficiently established in her favour. Furthermore, it is only defendant no.1 who has dealt with entirely with the suit property since 19.06.1989. Suffice it so say that the plaintiff has failed to prove his case.”

9. I have heard Ld. Counsel for the parties and have gone through the records of the case.

10. In the considered opinion of this Court, revisional jurisdiction under Section 397 r/w Section 399 and Section 401 Cr.P.C. can be exercised by the Sessions Court also on its own but the question is : *'What are those circumstances wherein such jurisdiction should be exercised suo-moto?'*

11. Apex Court in **Krishnan vs. Krishnaveni and another, 1997(4) SCC 241** while dealing with scope and object of the revisional power of High Court w.r.t. Section 397 Cr.P.C., observed as under : -

“5. Chapter XXX of the Code relating to reference and revisional powers of the High Court, consists of Sections 395 to 405. Under the Code, the revisional power of the High Court has concurrently been given by operation of sub-section (1) of Section 397 to Sessions Judge, to call for the records of any proceeding and to exercise powers of revision. The power is given to examine the record of any proceedings before any inferior Criminal Court situated within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding,

sentence, or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court. Sub-section (3) thereof provides that if an application under the said section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. This was brought by way of amendment to Section 435 of the predecessor Code, i.e., Act V of 1898.

6. *Section 401 of the Code gives to every High Court power of revision. Sub-section (1) of the said section provides that in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389 and 391 and on a Court of Sessions by Section 307. Apart from the express power under Section 397(1), the High Court has been invested with suo motu power under Section 401 to exercise revisional power. In addition, Section 482 saves inherent powers of the High Court postulating that "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice". Section 483 enjoins upon every High Court to so exercise its continuous superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates. It is, therefore, clear that the power of the High Court of continuous supervisory jurisdiction is of paramount importance to examine correctness, legality, or propriety of any finding, sentence or order, recorded or passed as also regularity of the*

proceedings of all inferior criminal courts.

7. *It is seen that exercise of the revisional power by the High Court under Section 397 read with Section 401 is to call for the records of any inferior Criminal Court and to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court and to pass appropriate orders. The Court of Sessions and the Magistrates are inferior criminal courts to the High Court and courts of Judicial Magistrate are inferior criminal courts to the Sessions Judge. Ordinarily, in the matter of exercise of power of revision by any High Court, Section 397 and Section 401 are required to be read together. Section 397 gives powers to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e., to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior Court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice .”*

12. As per the Code, similar revisional jurisdiction vests with the Sessions Court. Bare perusal of Section 397 Cr.P.C. provides for that where the issue relates to satisfaction of the Court to the correctness, legality or

propriety of finding, sentence or order recorded or passed, the Revisional Court may call for and examine the record of any proceedings before any inferior Criminal Court situated within its or his local jurisdiction. Apex Court in the case of **Municipal Corporation of Delhi vs. Girdhari Lal Sapru, AIR 1981 SC 1169**, held that Section 397 of the Code of Criminal Procedure enables the Revisional Court to exercise power *suo motu* when the attention of the Court is drawn to a clear illegality. Applying the aforesaid test to the present case, no fault can be found with the revisional Court dismissing the complaint *qua* Jaswinder Kaur also. Revisional Court while passing the impugned order held that :-

6. *Main stay of the case of Darshan Singh is that he is de facto owner of plot in question and Jaswinder Kaur being its Benami owner and the plot could not have been sold by Ranjit Kaur.*

7. *In the first place plea of benami transaction is not available in the current scenario of Indian System of law. In Niranjan Kaur vs. Financial Commissioner 2011(1) CCC 168, a Full Bench of Honourable Punjab & Haryana High Court has held that consequent upon enactment of Benami Transaction (Prohibition) Act 1988, recovery of any property purchased as benami transaction has been proscribed. Sale deed in question having been executed on 19.6.1989 is squarely covered by rigors of the Benami Transaction (Prohibition) Act 1988 which came into force on 19.5.1988.*

8. *Not only this effort of Darshan Singh to be declared owner in possession of the suit property being its benami*

owner has, after 12 long years of battle in the Court of first instance, failed as the suit has been dismissed on 28.7.2014. Likewise, it cannot be gainfully argued for the complainant that execution of sale deed in favour of Jaswinder Kaur was a sham transaction in view of what has been laid down in Binapani Paul vs. Pratima Ghosh 2007(2) ACJ 581 (SC) and Villiam A. L. vs. Subramaniam 2005(1) ACJ 533.

9. *Other grouse of the complainant that by way of the sale deed so executed by Jaswinder Kaur through her attorney Ranjit Kaur, he has been cheated is also lawfully untenable. The sale deed was executed by Jaswinder Kaur through Ranjit Kaurt in favour of Jagjit Singh if any body could have carped of having been cheated, it is Jagjit Singh and none else especially Darshan Singh, in view of Md. Ibrahim vs. State of Bihar 2009(4) RCR (Crl) 369.*”

13. Thus, it is evident that the Revisional Court was fully satisfied that it is a case where complaint itself had no legs to stand and, thus, dismissed the same. Another fact needs to be appreciated is that in case the summoning order is quashed *qua* Ranjit Kaur only, question will arise: can the complaint be sustained against Jaswinder Kaur alone? In order to answer the said question, the complaint filed by the petitioner needs to be analyzed. There is no denial to the fact that Ranjit Kaur was acting as Attorney of Jaswinder Kaur. The allegation against her is that she executed the sale deed despite the fact that the Power of Attorney in her favour stood revoked which is the bedrock on which the whole complaint stands. It was Ranjit Kaur who was acting in the shoes of Jaswinder Kaur. Thus, once the

summoning order as well as the complaint is being quashed *qua* Ranjit Kaur, it can be axiomatically said that the complaint cannot survive against Jaswinder Kaur alone. Thus, it is one of those rare cases wherein the Revisional Court was justified in invoking revisional powers on its own.

14. Consequently, the present petition sans merit and, thus, is dismissed.

September 27, 2022

Dinesh

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No