

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.202 (3 cases)

Case No. : CRM-M No.35669 of 2014

Date of Decision : September 16, 2022

Satpal and another Petitioners

vs.

State of Punjab and another Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR.

* * *

Present : Mr. Rajesh Kumar Girdhar, Advocate
for the petitioners.

Mr. Ferry Sofat, Additional Advocate General, Punjab.

Mr. A. S. Gulati, Advocate
for respondent no.2-complainant.

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NAMIT KUMAR, J. (Oral) :

By this common order, three petitions bearing CRM-M No.35669 of 2014, CRM-M No.37376 of 2014 and CRM-M No.40297 of 2014 shall be decided as all the three petitions relate to the same dispute and relief sought in all these petitions is also the same. However, the facts are being taken from CRM-M No.35669 of 2014.

This petition has been filed by the petitioners under Section 482 Cr.P.C. for quashing the Complaint No.202 dated 23.10.2010 (Annexure P-1) and all consequential proceedings arising therefrom, as also the order dated 03.09.2014 (Annexure P-3) passed by the Court of learned Additional Sessions Judge, Sri Muktsar Sahib, vide which the revision petition filed by respondent no.2 has been allowed and all the accused

persons, including the present petitioners, have been ordered to be summoned to face trial for offences under Sections 467/468/471/420/120-B IPC.

As per the averments, it has been pleaded by the petitioners that complainant-respondent no.2 purchased land measuring 77 kanals 02 marlas from Balwinder Singh @ Pargat Singh, Kheta Singh, Jarnail Singh and their mother Balwant Kaur, vide sale deed dated 20.06.2006. Mutation of this land was also sanctioned in his favour on 24.07.2006. It has further been averred that on 04.07.2006, the co-accused of the petitioners namely Kuldip Singh and Ajaib Singh, who are also related to the complainant-respondent no.2, called the complainant to Tehsil Complex, Malout saying that there is a defect in the sale deed and the same is to be rectified. When the complainant-respondent no.2 went to Tehsil office, then petitioners-accused persons were already present there. Signatures of the complainant-respondent no.2 were obtained on the blank papers in the office of another accused namely Vinod Kumar – Document Writer. It has further been averred that the accused persons including the petitioners got executed mortgage deed qua land measuring 44 kanals 15 marlas in favour of Satpal (petitioner no.1) in lieu of consideration of Rs.6,00,000/-. It has been alleged by the complainant-respondent no.2 that in fact, he never met Satpal and never knew him and also, the mortgage deed was executed by the accused persons in connivance with each other, whereas he never appeared before the Registrar on 04.07.2006 and with these allegations, he filed a complaint dated 23.10.2010 (Annexure P-1).

After recording preliminary evidence, the learned Judicial

Magistrate Ist Class, Malout, came to the conclusion that there is no evidence to make out a case for summoning accused persons and the complaint was dismissed vide order dated 11.09.2012 (Annexure P-2). The concluding paras of order dated 11.09.2012 reads as under :-

“7. After giving thoughtful consideration to the arguments raised by counsel for complainant and perusing the case file carefully, it is observed that it is an admitted fact that complainant deals in the sale and purchase of land. The reading of the complaint itself makes it clear that earlier the complainant along with his father purchased land in Tehsil Budhlada and thereafter they have purchased the land in village Ratta Khera. Thus the factum regarding the complainant being well conversant with the dealings relating to sale and purchase of land is established. The case of complainant is that the accused in connivance with each other have got obtained the signatures of complainant over blank papers and blank stamp papers along with registers. It is very astonishing that a person who is well conversant with the dealings of land would make signatures over blank papers/stamp papers. Similarly, regarding the arguments raised by complainant counsel that the photograph of complainant along with Sub Registrar is not in the endorsement Ex.C2, it is observed that the perusal of that document reflects that more than half of portion of that document containing the picture of parties at the time of registration is blurred, as it is present on file in hand and that is why only two persons standing on the left side of

picture are visible and remaining persons are not visible due to said blurredness. Furthermore, it is observed that the said document has been relied upon by the complainant and the onus was upon the complainant that infact he was not in the photograph and it is someone else. But the said blurredness has further created a doubt over the averments of the complainant. Therefore, in my considered opinion as discussed above, it is observed that a reasonable and rational man would never sign over any blank papers. But in present case, the complainant who already knew the complexities of selling and purchasing the land has signed the blank papers/stamp papers in favour of accused, which is very improbable. Thus, it creates a doubt over averments made in the complaint. Further the testimony of CW1 is very formal in nature. He has merely proved that the signatures of registrar are over the document Ex.C1 and Ex.C2 and thereafter there is they testimony of complainant himself. Thus in my considered opinion there is no independent witness to the averments made by the complainant in his complaint. Similarly, it is not supported and corroborated by any other reliable evidence. The only evidence which supports the complainant evidence is his own testimony which is of very little value in the eyes of law. Accordingly, I am of the opinion that complainant has miserably failed to prove a case in his favour for summoning the accused for the offences alleged in the complaint. Therefore, the complaint stands disposed of as dismissed.

Sd/-
(Hem Amrit Mahi)
Judicial Magistrate Ist Class
Malout”

Aggrieved against the aforesaid order dated 11.09.2012, the complainant-respondent no.2 filed a revision petition (**CRR No.174 of 2012**) before the learned Sessions Judge, Sri Muktsar Sahib. The said revision came to be decided by the learned Additional Sessions Judge, Sri Muktsar Sahib, vide order dated 03.09.2014. The same was accepted and accused persons including the petitioners were ordered to be summoned to face trial for offences committed under Sections 467/468/471/420/120-B IPC and the learned Area Magistrate was directed to proceed further in accordance with law. The concluding portion of the order dated 03.09.2014 reads as under :-

“11. From the perusal of statement of complainant coupled with documentary evidence and testimony of CW1, there is more than prima facie material for proving the allegations of complaint of complainant, qua offence under Sections 420/467/468/471 read with Section 120B of IPC. But, inspite of summoning the accused learned trial Court has incorporated the new reasons from their own observations, which have to be determined at the time of final decision or when the respondents will cross-examine the complainant or other witnesses. As such, incorporating the opinion of the learned lower Court is beyond scope of Section 204 Cr.P.C. which is neither legal nor permissible. Moreover, it shows that learned trial Court has acted in an illegal manner.

12. Complainant has come with specific

plea that the alleged mortgage deed neither bears his signatures nor his photographs and he has substantiated this fact with his own testimony. Learned trial Court instead of appreciating the same has given new reasoning, though this fact has been clearly proved by the complainant that there is no photograph. Moreover, when the testimony of complainant is un rebutted, then there was no necessity for any further corroboration, therefore, findings of learned trial Court that the evidence of complainant has little value in the eyes of law is totally arbitrary and against the settled cannons of principle of criminal justice system. Moreover, findings recorded in the Civil Proceedings have already been stayed by the Hon'ble High Court and further those are neither conclusive and nor binding, when the complainant has independently proved his stand before the learned trial Court. Further learned trial Court has only to see prima facie case at this stage, which has not been seen by the learned trial Court and he has wrongly ignored the evidence and passed the order on conjecture and surmises. The learned trial Court has also made microscopic inquiry of the evidence, which is not permissible at this stage. As such, order passed by learned trial Court is found to be cryptic and without judicial application of mind. On this account this court finds support and strength from Kewal Krishan Vs Suraj Bhan and another AIR 1980 Supreme Court 1780 and U.P.Pollution Control Board Vs Dr. Bhupindera Kumar Modi and another 2009 (1) R.C.R.(Criminal) 733.

13. *In the light of above discussion, this*

Court is considered view that impugned Order passed by learned trial Court is totally illegal, wrong and against the principles of law, which warrants interference from this Court, in view of Provision of Section 397 of Cr.P.C. Resultantly, the revision brought by the Revisionist is hereby accepted and accused are hereby ordered to be summoned to face trial for offence u/ss 467/468/471/420/120B of IPC. Record of learned lower court be returned alongwith copy of this order with directions that the complainant should appear on 19-09-2014 before the learned Area Magistrate for further proceedings in accordance with law. File of this Court be consigned to the record room after due compilation.

*Sd/- (D.P.Singla)
Addl. Sessions Judge,
Sri Muktsar Sahib.”*

Consequently, the complaint dated 23.10.2010 (Annexure P-1) and the order dated 03.09.2014 (Annexure P-3) passed by the learned Additional Sessions Judge, Sri Muktsar Sahib have been challenged by the petitioners in the present petition.

On issuance of notice of motion, the respondents appeared and filed their written statement.

It has been argued by learned counsel for the petitioners that the allegations levelled in the complaint dated 23.10.2010 (Annexure P-1) were also subject matter of the **Civil Suit No.133-1** dated 10.04.2008 against the petitioners and others, for declaration to the effect that mortgage deed no.1511 dated 04.07.2006 regarding land measuring 44 kanals 15

marlas, which is the subject matter of the complaint, is null, void and not binding upon the rights of the complainant and is liable to be set aside. The said suit was dismissed by the learned Additional Civil Judge (Senior Division), Malout, vide judgment dated 19.07.2013 and it was held that the sale deed was executed on 20.06.2006 and the plaintiff (complainant) was the owner of the suit land on 04.07.2006, when he executed the mortgage deed. The learned Court also held that mere misprinting of photograph of the plaintiff (complainant) on its registration endorsement is nowhere sufficient to raise any suspicion qua its alleged fraudulent execution because the genuineness of the signatures are admitted as correct. Para 13 of the judgment dated 19.07.2013 passed by learned Additional Civil Judge (Senior Division), Malout is as under :-

“13. In order to adjudicate said controversy, this court has carefully scrutinized the ocular testimony of DWs and documents produced on record. It is observed that, being registered document, initial presumption of correctness is attached with due execution of mortgage deed (Ex.P1). Mere fact that, there is misprinting of photograph of plaintiff, on its registration endorsement, is nowhere sufficient to raise any suspicion qua its alleged fraudulent execution because; the genuine of signatures are admitted correct. Moreover, it is observed that, its stamp papers have been purchased on same date i.e. on 4.7.06 itself, on which date, it as get registered. Ashok Kumar (DW2) has appeared as independent witness who has undisputedly, no enmity with any party and that, he has deposed on oath that, cash amount of Rs.6,00,000/- has

actually been paid to plaintiff in his presence and that, mortgage deed (Ex.P1) is voluntarily executed by him. It has substantially been deposed that, plaintiff has signed this document (Ex.P1) after admitting its contents as correct.”

Aggrieved against the judgment and decree dated 19.07.2013 passed by learned Additional Civil Judge (Senior Division), Malout, the complainant-respondent no.2 filed **Civil Appeal No.59 dated 31.08.2013** in the Court of learned District Judge, Sri Muktsar Sahib. This appeal was dismissed vide judgment dated 05.02.2014 by holding that the mortgage deed dated 04.07.2006 is a genuine document.

Faced with the aforesaid situation, both the judgments passed by the Courts below were challenged by way of Regular Second Appeal i.e. **RSA No.3281 of 2017 - Amar Singh vs. Sat Pal and others** by complainant-respondent no.2 and the same were upheld vide order dated 01.11.2018 passed by this Court, thereby dismissing his Regular Second Appeal, both on the ground of delay as well as on merits.

Counsel for the petitioners further submits that once the same issue has been concluded by the learned Civil Court and upheld by this Court in **RSA No. 3281 of 2017**, the complaint dated 23.10.2010 (Annexure P-1) is also liable to be set aside as the findings of fact recorded by the Civil Court is binding on the Criminal Court. To support this contention, the counsel for the petitioners has relied upon two judgments passed by this Court in **Amar Nath and another vs. Atma Ram** reported as **2007 (2) RCR (Criminal) 942** and **Nirmala Devi and others vs. State of Punjab and others** reported as **2009 (4) RCR (Criminal) 468**.

Counsel for the complainant-respondent no.2 could not dispute

the legal position. However, he submits that the contents of the complaint dated 23.10.2010 (Annexure P-1) are true and the criminal proceedings initiated against the petitioners and co-accused are liable to be continued and to be decided on their own merits.

Having heard learned counsel for the parties, I agree with the contentions raised on behalf of learned counsel for the petitioners. Once the dispute has been settled on the civil side and upheld by this Court in Regular Second Appeal i.e. **RSA No.3281 of 2017**, (decided on 01.11.2018) and the said judgment having attained finality, the criminal proceedings cannot be allowed to continue on the same issue as the findings of fact recorded by the Civil Court is binding on the Criminal Court. Consequently, the complaint is liable to be quashed.

In view of the above, the Complaint No.202 dated 23.10.2010 (Annexure P-1) and all consequential proceedings arising therefrom, as also the order dated 03.09.2014 (Annexure P-3) passed by the Court of learned Additional Sessions Judge, Sri Muktsar Sahib are quashed, qua petitioners, with no order as to costs.

Pending applications would also stand disposed of in view of the abovesaid judgment.

September 16, 2022
monika

(NAMIT KUMAR)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>