

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

107-CRR-1775-2022 (O&M)

Date of Decision: 14.12.2022

Balkar Singh

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Suvir Sidhu, Advocate and
Mr. Mandeep Singla, Advocate for the petitioner

Sandeep Moudgil, J.

CRM-31424-2022

Application under Rule 3/A(I) of Chapter VI, Part B, Vol V of Punjab and Haryana High Court Rule and Order for exemption of filing is allowed.

CRM stands disposed of.

CRM-31425-2022

For the reasons mentioned in the application, the same is allowed and the delay of 57 days in filing the petition is hereby condoned.

CRM stands disposed of.

Main case

This criminal revision petition has been preferred under Section 397 CrPC read with Section 401 CrPC seeking revision against the judgment dated 08.02.2022 passed by the Additional Sessions Judge, Hoshiarpur and judgment dated 06.10.2016 passed by Sub Divisional Judicial Magistrate, Dasuya in case FIR No.98 dated 13.06.2008 under Sections

420/200/465/468/471 IPC, registered at Police Station Tanda, District Hoshiarpur.

The trial court has convicted the petitioner under Section 200 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 2000/- and in default of payment of fine, to further undergo RI for a period of one month.

The appellate court maintained the judgment passed by the trial court, and upheld the conviction of the petitioner under Section 200 IPC and keeping in view the fact that petitioner is first offender aged more than 100 years, the appellate court set aside the sentence and ordered that the petitioner be released on probation of good conduct under Section 4(i) of the Probation of Offenders Act, 1988 for a period of one year, on his furnishing probation bonds, in the sum of Rs. 50,000/- with one surety in the like amount.

The brief facts of the case are that on 13.6.2008 one application No. 864 dated 13.6.2008 was received at PS Tanda from E.O Municipal Committee, Tanda regarding registration of FIR against Balkar Singh as he had filed false affidavit before MC Tanda. As per letter of Municipal Council, Dasuya, Balkar Singh got sanctioned site plan No. 149 dated 20.3.2006 from E.O Municipal Committee by filing false affidavit. In this regard, Sh Kamaljit Singh son of Karam Singh resident of Budi Pind, District Hoshiarpur, made complaint before the Sub Divisional Magistrate, Dasuya on 2.4.2008. The learned SDM, Dasuya sent this application to the Deputy Commissioner, Hoshiarpur and the Deputy Commissioner, Hoshiarpur marked the said application for conducting inquiry under Section 420,200,465,468,471 of

IPC. After thorough investigation, FIR U/s 420,200,465,468,471 of IPC was registered against the accused.

Learned counsel for the petitioner submits that the judgment passed by both the courts below are erroneous on the ground that no dishonest intention of the petitioner has been proved and as such the conviction under Section 200 IPC cannot be sustained. It is averred that the disputed affidavit on the basis of which the site plan has been approved still exists and has not been proved to be wrong or illegal. As such, no question of commission of offence under Section 200 IPC would be made out.

The judgments passed by both the courts below are faulty on the ground that the complainant has no *locus standi* to file the complaint as he is not the aggrieved party. The persons shown as actual owner have not filed any complaint against the petitioner and as such, the complaint, itself, is not maintainable as no criminal liability is made out against the petitioner.

Learned counsel for the petitioner urged that the both the courts below have ignored the fact that the petitioner had purchased the land in the name of Brij Mohan and Khushal Singh, being their attorney, which is evident from the sale certificate Ex.P4.

Heard learned counsel for the petitioner and perused the record of the case.

The allegation against the petitioner is that he had filed false affidavit dated 14.03.2006 and got sanctioned the site plan from the Municipal Council, Tanda which is Ex.PW1/B. He filed affidavit Ex.PW-1/A claiming that he is the owner of the land and it is also proved that petitioner had purchased land in the name of Brij Mohan and Khushal Singh being their

attorney. It is further clear from the sale certificate Ex.D4 that Site plan Ex.PW-1/B was sanctioned and one complaint was filed to the SDM, Dasuya on the basis of which Municipal Council, Tanda cancelled the site plan vide order dated 03.04.2008. The petitioner filed writ petition before this Court and this Court set aside the order dated 03.04.2008 passed by the Municipal Council, Tanda with a direction to pass a fresh order. The Municipal Council, Tanda passed order dated 31.03.2009 where it has stated that petitioner claimed that as per agreement dated 1.10.1959 he has purchased land from Govt of India in the name of Brij Mohan and Khushal Singh but in that order, site plan was not cancelled and only held that there is a dispute of ownership and party can approach the civil court to decide the matter of ownership. It is proved that Balkar Singh has purchased the property in the name of Brij Mohan and Khushal Singh as power of attorney. He is in possession of the land being Gair Marusi which is clear from jamabandi Ex.PW-5/C to Ex.PW-5/F. In these jamabandis, petitioner was shown as Gair Marusi in column no.5 which is proved that he is in possession being tenant and in the column no.9 it is written as "Jimgi Gair Marusi Basra Parta Deh Bawja Be" which means oral sale. But petitioner has not produced any document regarding his ownership that he has become owner of the land.

The trial court rightly observed that petitioner has purchased land from Balwant Singh vide mutation no. 9777 which was sanctioned. If the petitioner was owner then why did he purchase the land from Balwant Singh. Moreover, petitioner who filed one document which is agreement and is Mark D/58 but in that agreement father's name of Brij Mohan written as Ravail Chand. Moreover, the agreement does not create title of the accused. So, the

allegations against the petitioner are that he has filed false affidavit before the Municipal Council, Tanda to get sanctioned site plan. But as the property is belonging to Brij Mohan and Khushal Singh and not belonging to complainant who is examined as PW-5 admitted the fact that he has no power of attorney of Charanjit Kaur and no property is owned by him in village Urmar and property purchased by Balkar Singh from the Govt of India in the name of Brij Mohan and Khushal Singh. He also admitted that Balkar Singh is in possession of the disputed land. So, complainant himself admitted that he is not owner of the land and he has not produced any document that he is owner of the land. In terms of Section 415 CrPC, accused must have deceived some person. But in this case petitioner has not deceived the complainant he has only filed the affidavit regarding ownership which is in the name of Brij Mohan and Khushal Singh but they have not filed any complaint against petitioner which shows their implied consent.

The trial court rightly held that the complainant is neither aggrieved nor is competent to file the complaint as for constituting the offence of forgery, a person must have prepared a false document as defined under section 464 CrPC. The petitioner has filed affidavit only giving a wrong information regarding his ownership and he has not prepared any false document regarding the ownership. As petitioner is shown as tenant in the jamabandi but he declared that he has purchased the property in the affidavit. But actually property is purchased in the name of Brij Mohan and Khushal Singh being an attorney. So, the petitioner has committed any offence that is only against Brij Mohan and Khushal Singh who have not filed any complaint against the petitioner.

The trial court was right in concluding that the petitioner has not forged any document rather he has made only false declaration before the Municipal Council, Tanda to get the site plan sanctioned. As such, it is not proved that petitioner has prepared any false document and committed the forgery and committed a cheating with the complainant. Since the petitioner has filed affidavit declaring himself to be the owner, although he is not the owner of the suit land and such affidavit having been filed before the Municipal Council, Tanda, to get the site plan sanctioned despite having knowledge of its falsity, the petitioner was rightly held guilty under section 200 of IPC.

In view of the above, this Court is of the considered view that no fault can be found with the judgments passed by the court below.

Dismissed.

14.12.2022

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No