

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

113

CRR-4845-2016

Date of Decision:08.08.2022

Jarnail Singh

.....Petitioner

Versus

Jagir Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

**Present: Mr. Vipin Mahajan, Advocate,
for the petitioner.**

Ms. Amarjit Kaur Khurana, D.A.G., Punjab.

VINOD S. BHARDWAJ , J.(Oral)

The instant revision petition has been preferred against the judgment dated 08.04.2013 passed by Judicial Magistrate 1st Class, Gurdaspur vide which the respondent Nos.1 and 2-accused have been acquitted of the charges framed under Sections 465, 468, 471 & 120-B of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") in FIR No.119 dated 18.09.2003 as well as the judgment dated 05.10.2016 passed by Additional Sessions Judge, Gurdaspur vide which the appeal against the aforementioned judgment has been dismissed.

The brief facts of the prosecution case are that the present case was registered on a complaint moved by petitioner-complainant Jarnail Singh with the allegations that he was resident of Village Gulelra and was an agriculturist. He had land measuring 7 Kanals 16 Marlas in Village Pandori

Bainsa, P.S. Purana Shalla. Accused Jagir Singh prepared a forged and fabricated agreement to sell dated 31.01.2022 in his own favour regarding said land. Jagir Singh also got a decree dated 19.05.2003 for execution and registration of sale deed on the basis of said agreement in his absence and without getting him served. The said case was got decreed by him by playing a fraud with the court without getting the petitioner served. He had never executed any agreement in favour of Jagir Singh nor had he put his thumb impression on any such document. In fact, he was not on talking terms with respondent-accused Jagir Singh for the last several years. The document was fabricated by Jagir Singh with an intention to grab his property in connivance with Raghbir Singh and Raj Kumar who appeared as marginal witnesses on the same. Bakshish Singh Aujla, Advocate also connived with them in preparing the said document. Earlier also, Jagir Singh alongwith said persons had prepared several forged documents. On the basis of this complaint, an inquiry was conducted into the matter. After inquiry and investigation of the case, FIR bearing No.119 dated 18.09.2003 under Sections 465, 468, 471, 120-B IPC was registered against respondents-accused with the Police Station City Gurdaspur.

After investigating into the matter, statements of witnesses were recorded and on completion of investigation, challan was presented against all the respondents-accused.

Copies of the challan were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C.

Finding a prima facie case against the respondents-accused, they were charge-sheeted under Sections 120-B, 465, 468 and 471 IPC, to which they pleaded not guilty and claimed trial.

It is necessary to mention here that respondent-accused Raghbir Singh expired during the pendency of trial before the trial Court and proceedings against him were dropped vide order dated 27.09.2008.

In order to prove its case, prosecution examined complainant Jarnail Singh as PW-1, Lambardar Joga Singh as PW-2, Ex. Sarpanch Darbara Singh as PW-3, Bakshish Singh Aujla, Advocate as PW-4, SI Ram Singh as PW-5, MHC Jabarjeet Singh as PW-6, ASI Sharam Singh as PW-7, Gurmukh Singh Ahlmad to the Court of Sh. Rajiv Kalra, ADJ, Gurdaspur as PW-8, Smt. Balwinder Kaur Bajwa Advocate again as PW-8, Gurdev Singh Patwari as PW-9, PHC Karnail Singh again as PW-9 and Avtar Singh retired DSP as PW-10. Thereafter, prosecution failed to conclude its evidence despite availing numerous opportunities and ultimately evidence of the prosecution was closed by order dated 3.10.2012.

Statements of accused Jagir Singh and Raj Kumar under Section 313 Cr.P.C. were recorded, wherein, entire incriminating circumstances and evidence against them were put to them. Accused denied all the allegations levelled against them and pleaded that in fact, complainant Jarnail Singh had executed a valid agreement to sell in favour of accused Jagir Singh. Accused did not adduce any evidence in their defence and their counsel closed the same after tendering into evidence document Ex.D-1.

After hearing arguments advanced by learned A.P.P. for the State, learned counsel for accused and going through the file of case, learned trial Court, acquitted respondents-accused of the charges framed against them giving benefit of doubt vide judgment and order dated 08.04.2013.

The aforesaid judgment passed by the trial Court was challenged by means of Criminal Appeal No.20 of 23.07.2013 before the

Court of Additional Sessions Judge, Gurdaspur which was dismissed vide judgment dated 05.10.2016.

Hence, the present criminal revision petition.

Learned counsel appearing on behalf of the petitioner contends that the learned Courts below have failed to appreciate that the case of the prosecution was duly proved to the extent that the agreement to sell dated 31.01.2002 was fabricated by the respondents-accused in connivance with Raghbir Singh and Raj Kumar who had appeared as marginal witnesses. The complainant himself appeared as PW-1 along with the corroborative evidence which duly established the agreement to be forged. Furthermore, the inquiry was conducted by an officer in the rank of DSP, who also appeared as PW-10 to prove the said inquiry report. He contends that the said respondent-accused also had criminal antecedents. It has been additionally informed by the learned counsel appearing on behalf of the petitioner that the aforesaid agreement to sell was also a subject matter of dispute in civil proceedings wherein the Civil Court has although held that the agreement, in question, was a valid document, however, it was recorded that the intent of the parties was not to enter into any sale transaction with respect to the property but only as a security against a loan transaction amongst the parties.

I have heard learned counsel for the petitioner and have gone through the record of the present case.

The aforesaid argument has already been considered concurrently by the Courts below and after consideration thereof, the lower Appellate Court has recorded as under:-

“14. As per the case of complainant, respondent/accused

Jagir Singh got prepared forged and fabricated agreement to sell dated 31.1.2002 in connivance with respondents/accused Raghbir Singh and Raj Kumar. In fact, he had never put his thumb impression on said agreement to sell. In order to succeed in its case, it was incumbent upon prosecution and complainant to prove that thumb impression on agreement to sell in question was not that of complainant Jarnail Singh and was rather put by some one else. However, prosecution has miserably failed to prove this fact by leading any cogent and convincing evidence in this regard. Disputed thumb impressions of complainant Jarnail Singh on agreement to sell in question were not got compared with his standard thumb impressions to prove that thumb impression on agreement to sell in question was not that of complainant. It was admitted by all the prosecution witnesses that standard thumb impressions of complainant Jarnail Singh were not obtained to get the same compared with his disputed thumb impression on agreement to sell. It was stated by complainant Jarnail Singh in his cross examination that he had not got compared his standard thumb impression with his disputed thumb impression on the agreement nor he had moved any application in that regard. Similarly, it was stated by PW-5 SI Ram Singh Investigating Officer in his cross-examination that he had not obtained thumb impression of Jarnail Singh complainant for its comparison with disputed thumb impression on agreement Ex. P-1. He further stated that he could not say whether thumb impression on the agreement was that of Jarnail Singh or not. Still further PW-10 DSP Avtar Singh who conducted an inquiry into the matter and on whose report present case was registered also stated in his cross-examination that he had not got the thumb impression of complainant compared from any government lab. He even stated that he had not seen original agreement to sell during the inquiry. All the other prosecution witnesses were of formal nature. Thus, what to say of getting

compared disputed thumb impression with standard thumb impression, absolutely no effort was made in that regard.

15. Science of Finger Prints is a perfect science and case of prosecution could have been proved by leading cogent and convincing evidence that disputed thumb impression of complainant on agreement to sell in question was not his thumb impression by getting disputed thumb impression compared with his standard thumb impression. Things would have been different if it had been the case of complainant that his thumb impression was obtained on a blank paper which was used by accused to prepare fabricated document. Then in that case, case of the prosecution could have been proved by leading circumstantial evidence, but in the case in hand, prosecution was required to give specific opinion of Finger Prints Expert that disputed thumb impression of complainant on the agreement was not put by him. On the other hand, PW-4 Bakshish Singh, Adv. scribe of agreement to sell in question categorically stated in his statement in the court that agreement to sell in question was thumb marked by complainant Jarnail Singh in his presence.

16. Strangely enough, standard signatures of accused were obtained during investigation of the case and same were sent to FSL, for comparison of the same with their signatures on agreement to sell in question. Report of FSL, Punjab Chandigarh Ex.PW5/E was also received in that regard but signatures of accused on agreement to sell were never in dispute and as such, same were not required to be compared. It shows that investigation in this case was conducted in a casual manner without even knowing basics of law.

17. It was also submitted by learned counsel for respondents/accused that ex-parte judgment and decree passed in favour of respondent/accused Jagir Singh was set aside on an application moved by complainant under Order 9 Rule 13 CPC. Subsequently, after recording evidence, suit of

respondent/accused for specific performance was decreed for alternative relief of recovery. It means that agreement to sell in question was also upheld by the learned Civil Court. This fact was also not disputed by learned counsel for appellant/complainant but he submitted that an appeal is still pending against said judgment and decree. Though, judgment passed by learned Civil Court is not binding on this Court yet it has a persuasive value while deciding a case. Thus, it can be safely held that agreement in question has also been upheld by learned Civil Court.”

The very fact that the Civil Court has already upheld the agreement to sell as a valid document *albeit* as a security against a loan transaction, it cannot thus be held that the said document was a forged document.

While settling its revisional jurisdiction, this Court does not substitute its opinion for the opinion arrived at concurrently by the Courts below.

No illegality, perversity, impropriety or gross mis-appreciation of the evidence has been demonstrated by the petitioner by making reference to any evidence on record.

In view of the above, the present petition is dismissed and the judgments passed by the Courts below are affirmed.

August 08, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No