263 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-721-2022 (O&M)
Date of Decision: 24.11.2023

Narain Singh …Petitioner

vs.

State of Punjab and another …Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Sukhjit Singh, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

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N.S.Shekhawat J. (Oral)

1. Reply by way of an affidavit of Deputy Superintendent of Police (Narcotics), Moga, Addl. Charge Deputy Superintendent of Police (City), Moga, District Moga has been filed on behalf of the respondent-State in Court today and the same is taken on record.

2. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No.367 dated 27.12.2005 under Sections 420, 465, 467, 468, 471, 120-B of IPC, registered at Police Station City Moga, District Moga (Annexure P-1) and all consequential proceedings arising therefrom.

3. The FIR in the present case was got registered by Jarnail Singh Gill son of Bachhitar Singh, resident of Duneke presently 6075 Island, DRNW, Canton Ohio, USA and the FIR has been reproduced as under:-

> *"To DIG, Ferozepur Subject: Regarding illegal possession of the land of the NRI by Naib Singh, Ajaib Singh,*

Karnail Singh, Dalip Singh @ Deep sons of Bachitar Singh and Gurdial Kaur wife of Naib Singh etc. resident of Duneke. Sir it is respectfully stated that I, Jarnail Singh son of Bachitar Singh, resident of Duneke, citizen of USA and my land was common with my brothers situated in village Gholkalan Salina, Moga, Jit Singh. I came to India in the year 1982 and 24.09.1982. I went back to America. I have now come to know that my brothers have fabricated a forged power of attorney, which is at No.488 Bahi No.4, Jild No.52 dated 30.12.1982 at the office of Sub Registrar Moga. I was not in India on that date. These persons, on the basis of the Power of Attorney transferred my land in the name of Dalip @ Gurdial Kaur wife of Naib Singh, Karnail Singh through Naib Singh General Power of Attorney by playing fraud. I have come to know that vide one Registry No.2739 dated 03.06.1994, they have transferred land in their names and the sale registries would be known by investigating the record. The General Power of Attorney has the witness of Gurdial Singh Sarpanch and Karnail Singh son of Madho Singh resident of Duneke. These persons also must be in connivance with the above persons. The sale deed No.2379 dated 03.06.1994, which has been registered in their favour has the witness of Manmohan Singh Numberdar, Gurdial Kaur wife of Naib Singh whereas Gurdial Kaur is the purchaser. She cannot put signatures as witness. They have done fraud. It is therefore requested that this matter be investigated by Sr. Police officer in an independent manner so that strict action be taken against Dalip Singh, Karnail Singh, Gurdial Kaur w/o Naib Singh r/o Duneke, who have conspired with each other and by fraud taken over my land. Action also be taken against the false witness Gurdial Singh, who was the Sarpanch of this Village. I shall highly grateful to you. Thanking you."

4. Learned counsel for the petitioner contends that the petitioner was neither named in the FIR nor there was any allegation against the petitioner,

which could prove his involvement in the alleged crime. As per the allegations levelled in the FIR, on the strength of an alleged Power of Attorney dated 30.12.1982, the property in question was sold vide a registered sale deed dated 03.06.1994 to the petitioner and other accused, by using the said Power of Attorney. However, the FIR in the present case was got registered by respondent No.2/complainant on 14.04.2005 i.e. after a delay of about 11 years. Learned counsel further contends that in the present case, all the allegations were mainly levelled against Dalip Singh, co-accused/brother of the complainant. However, Dalip Singh has been declared to be innocent by the police during the course of investigation. Learned counsel further contends that the petitioner had neither forged the Power of Attorney nor had conspired with other accused in the present case. He was himself a bonafide purchaser of the property in question, who had purchased the property on the basis of a registered General Power of Attorney from the brothers of respondent No.2.

5. Learned counsel for the petitioner further contends that Dalip Singh and Jarnail Singh, respondent No.2/complainant are real brothers. Earlier Dalip Singh got registered one FIR No.99 dated 14.04.2005 under Sections 420, 465, 467, 468, 471, 120-B of IPC, registered at Police Station City Moga, District Moga against the family members of respondent No.2. Due to this grudge, the complainant also got the present FIR registered against Dalip Singh as a counter blast to the FIR (Annexure P-2). Learned counsel further contends that the petitioner had gone abroad in the year 2008 and since then, he was living abroad. He never received any notice/summons from any Investigating Agency/Court. However, he applied for cancellation of his arm licence through his Power of Attorney Manga Singh Brar, in the year 2021 and came to know

that the present case was still pending against him after several years. He further contends that in the present case, respondent No.2 had filed a civil suits qua the property in question. However, vide judgments dated 15.02.2018, 19.05.2018 and 30.07.2018 (Annexure P-5), the cases filed by respondent No.2/complainant were ordered to be dismissed. Thus, the findings recorded by the Civil Court are binding on criminal Courts and the criminal prosecution is liable to be quashed by this Court. Learned counsel further submits that even if the allegations levelled by the complainant are admitted to be correct, for the sake of argument, still no offence is made out against the present petitioner and the FIR is liable to be quashed by this Court.

6. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner on the ground that Dalip Singh and other co-accused, including the petitioner had forged and fabricated the Power of Attorney of respondent No.2/complainant and on the strength of a forged and fabricated document, the registered sale deed was executed in favour of the petitioner and his co-accused. Still further, during the course of investigation, it was found that with a malafide intention to grab the property of the complainant, the Power of Attorney was forged and the property of the petitioner and Gurdial Kaur wife of Naib Singh was illegally alienated in favour of the accused party.

8. I have heard learned counsel for the parties and perused the record.

9. It has been held by the Hon'ble Supreme Court in the matter of ***"Md Ibrahim and others Vs. State of Bihar and another", 2009(4) RCR (Criminal) RCR 369; 2009(3) SCC (Criminal) 929*** as follows as under:-

"10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories :

> *10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.*
>
> *10.2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.*
>
> *10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.*

11. In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the *said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted."*

10. While discussing the offence under Section 420 IPC, the Hon'ble Supreme Court had also held as under:-

"13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows : (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or

dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415

> *are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code."*

11. In the present case, it has been alleged that a Power of Attorney dated 30.12.1982 was allegedly forged and fabricated by the brothers of respondent No.2 and other accused and vide registered sale deed dated 03.06.1994, the property in question was sold to the petitioner and others on the basis of the said Power of Attorney. Thus, it is apparent that the petitioner was the bonafide purchaser in the said sale deed. From a perusal of the record that it is also clear that the vendor as well as vendee, both the sides have been impleaded as accused in the present case. It has been alleged that the sale deed, whereby the property was conveyed in favour of the petitioner, had been executed by making a false claim of ownership and the petitioner had to pay the sale consideration to the holders of Power of Attorney. Consequently, a simple inference can always be drawn that in such a eventuality, it was the petitioner, who was cheated by the vendors and by any stretch of imagination, it can never be said that the present complainant was cheated by them. In fact, the ratio of ***Md Ibrahim's case (supra)*** laid down by the Hon'ble Supreme Court would squarely cover the facts of the present case.

12. Still further, in the present case, the co-accused had executed the sale deed by appearing themselves. It is not the allegation that the person executing the sale deed had impersonated as the owner. The Hon'ble Supreme Court has rightly held in the matter of ***Md Ibrahim case (Supra)***, that when a person executes a document conveying the property describing it as his property, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. Second is that he may be dishonestly or

fraudulently claiming it to be his even though he knows that it was not its property. In the present case, the accused had not sold the property with the intention that he was someone else nor he claimed so. Rather the property was conveyed by the co-accused by claiming themselves to be owner and did not impersonate as the owner of the plot. Thus, no offence under Sections 465, 467, 468, 471, 120-B IPC is made out against the petitioner and others.

12. Without commenting on the merits of the case and in view of the law laid down by Hon'ble the Supreme Court in the matter of ***Md Ibrahim case (Supra),*** the present petition is allowed and FIR No.367 dated 27.12.2005 under Sections 420, 465, 467, 468, 471, 120-B of IPC, registered at Police Station City Moga, District Moga (Annexure P-1) and all consequential proceedings arising therefrom are hereby quashed qua the present petitioner.

(N.S.SHEKHAWAT)
JUDGE

24.11.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No