IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

110 **CRM M-3441 of 2022 (O&M)**
Date of Decision: 11.12.2023

Balbir Singh ...Petitioner

Versus

State of Punjab and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

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

Mr. Mohit Chaudhary, AAG, Punjab.

Ms. Mehak Sawhney, Advocate as Legal Aid Counsel for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 208 dated 02.06.2018 under Sections 419, 420, 465, 467, 468, 471 and 120-B IPC, Police Station Zirakpur, District SAS Nagar and all subsequent proceedings arising therefrom qua the petitioner.

2. The FIR in the present case was got registered by Dharminder Singh son of Jaswant Singh against Nirmal Singh, Manoj Yadav and Khushal Singh Advocate regarding cheating. As per the complainant, he was the owner in possession of a plot measuring 165 square yards at Saini Vihar Phase 3 Baltana District SAS Nagar, Mohali. As per him, out of 165 square yards, 120 square yards had been sold by unknown person by forging his signatures to Nirmal

Singh son of Prem Singh resident of House No. 110, Kamal Colony, Samrala, District Ludhiana. In fact, some person had impersonated as Dharminder Singh, complainant. The above said Nirmal Singh had done this by forging and fabricating the documents of his property and he had not sold the said land to anyone. However, when he went to Patwari Baltana for getting Fard/Jamabandi of his land, he came to know that 120 square yards of land had been sold. When he inquire about the matter, he came to know that 120 square yards of Plot No. 1047 had been sold by some one by impersonating as Dharminder Singh and the land was sold to Nirmal Singh. Nirmal Singh further sold it by way of two plots of 55 square yard plots. He went to Khushal Singh Advocate, to enquire about his property and when the complainant started talking about his land, he ran away from the spot. At about 4 O'clock in the evening, the complainant received a threatening call from Nirmal Singh. With these main allegations, the complaint was lodged by Dharminder Singh, respondent No. 2.

2. Pursuant to the notice, a short reply by way of an affidavit of the Deputy Superintendent of Police, Sub Division, Zirakpur, District SAS Nagar (Mohali) had been filed on behalf of the State of Punjab. As per the learned State counsel, the FIR had been registered against Nirmal Singh, Dharminder Singh, Imran Khan and Balbir Singh (petitioner). As per the said inquiry, Dharminder Singh was the owner in possession of 7 Biswas 6 Biswasi of land in view of the registered sale deed No. 9286 dated 16.02.2010. Out of the said

land, he had transferred 02 Biswas of land in favour of Amit Kumar and, thereafter, 2 Biswas 2 Biswasi in favour of Kamal Kishore on 11.10.2010. After some time, Nirmal Singh produced Ravinder Kumar @ Ravi @ Goga @ Dharminder Singh as Dharminder Singh. After impersonating as Dharminder Singh, Ravinder Kumar @ Ravi @ Goga @ Dharminder Singh executed a general power of attorney vide deed No. 477 dated 28.03.2016 in favour Nirmal Singh. Based on the said GPA, Nirmal Singh sold the property of the complainant in the shape of two plots of 55 square yards each to Adil Kumar Chauhan and Om Parkash. Adil Kumar Chauhan further sold the said plot to Rajni Devi on 11.05.2016. In fact, Imran Khan and Balbir Singh, petitioner had appeared as witnesses of a fake agreement to sell regarding making full payment by Nirmal Singh to Ravinder Kumar @ Ravi @ Goga, who had impersonated as Dharminder Singh.

3. Learned counsel for the petitioner contended that the petitioner had been wrongly arrayed as an accused in the present case. In fact, during the inquiry, it was found that the land was allegedly sold by Dharminder Singh to Nirmal Singh and on the agreement to sell, the petitioner had only signed as marginal witness. He further contended that the petitioner was not the beneficiary of any of the aforesaid deals in any manner and had only signed as witness. Apart from that, in the present case, some person, impersonated as Dharminder Singh and had allegedly sold the land to Nirmal Singh,

who had further sold the land to Adil Kumar Chauhan and Om Parkash. He further contended that even if the allegations of the complainant are admitted to be correct for the sake of arguments, still no offence under Sections 419, 420, 465, 467, 468, 471 and 120-B IPC, Police Station Zirakpur, District SAS Nagar is made out against the present petitioner. Learned counsel for the petitioner has also placed reliance on the law laid down in **Md. Ibrahim and others Vs. State of Bihar and another, 2009(4) R.C.R. (Criminal) 369**, wherein, Hon'ble Supreme Court of India has held as follows:-

> *"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".*

4. Still further, the Hon'ble Supreme Court also discussed the ingredients of the offence under Sections 467 and 471 of IPC and other related provisions of forgery and held as follows:-

> *"8. Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under section 467 or section 471 of Penal Code. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason*

to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 470 defines a forged document as a false document made by forgery.

9. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below :

"464. Making a false document. - A person is said to make a false document or false electronic record -

First. - Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document; (b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such

document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly. - Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly. - Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note : The words 'digital signature' wherever it occurs were substituted by the words 'electronic signature' by Amendment Act 10 of 2009]."

The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

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".*

5. On the other hand, learned State counsel submitted that the land of the complainant/respondent No. 2 was sold by the petitioner and his co-accused fraudulently. In fact, Ravinder Kumar @ Ravi @ Goga, had impersonated as Dharminder Singh and he had executed a registered GPA in favour of Nirmal Singh. On the strength of the illegal GPA, Nirmal Singh had illegally sold the land of the respondent No. 2 to Adil Kumar Chauhan and Om Parkash on different dates. However, in the present case, the purchasers of the land are not the complainants of the case. Rather they have also been arrayed as accused in the present case. In the present case, as per the

complainant, only the purchaser of the land was deceived and not the complainant himself. The complainant still continues to be the owner of the land as Ravinder Kumar @ Ravi @ Goga while impersonating as Dharminder Singh could not have sold the land to Nirmal Singh or as he had no title of the land and could not have passed the title better then he had.

6. Still further, the facts of the present case are clearly covered by the ratio laid down by the Hon'ble Supreme Court in the matter **Md. Ibrahim and others Vs. State of Bihar and another** (supra). In the present case, the ingredients of the offence Sections 419, 420, 465, 467, 468, 471 and 120-B IPC are completely missing in the present case. Still further, the petitioner is only a witness in the agreement of full payment and was not beneficiary of any of the transaction in the present. Even, he had no role to play in the entire transaction between the parties.

7. Consequently, in view of the above discussion, the present petition is allowed and FIR no. 208 dated 02.06.2018 under Sections 419, 420, 465, 467, 468, 471 and 120-B IPC, Police Station Zirakpur, District SAS Nagar and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner.

11.12.2023 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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