

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: May 01, 2023

1. CRM-M-14524 of 2017

Sahab Khan		...Petitioner
	Versus	
Iqbal Ahmad and others		...Respondents

2. CRM-M-19860 of 2017

Hasan Khan		...Petitioner
	Versus	
State of Haryana and another		...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Arnav Udai Singh Ahlawat, Advocate for
Mr. Sunil K. Nehra, Advocate for the petitioner
in CRM-M-14524 of 2017.

Mr. Sarfraj Hussain, Advocate for the petitioner in
CRM-M-19860 of 2017.

Mr. Randhir Singh, Addl. AG, Haryana.

Mr. Randhir S. Hooda, Advocate for respondent
No.1 in CRM-M-14524 of 2017 and for respondent
No.2- complainant in CRM-M-19860 of 2017.

DEEPAK GUPTA, J.

Both petitions titled above have arisen out of the same proceedings. Under challenge is the order dated 07.12.2015 passed by learned Judicial Magistrate Ist Class, Nuh, whereby the petitioners along with others were summoned to face trial in a criminal complaint No.130 of 2015 filed under Sections 419, 420, 467, 468, 471 and 120-B IPC titled "Iqbal Ahmad Vs. Hassan Khan and others" and order dated 15.11.2016 passed by learned Additional Sessions Judge, Mewat, vide which the revision against the afore-said summoning order was dismissed.

2. As per complainant Iqbal Ahmad (respondent herein), his father

Rehmat Khan along with Dabir Ahmad, Mohd. Iliyas, Samsudola and Liyakat Ali was owner of 05 kanal 18 marlas of land comprised in Rect. No.57 Killa No.9 situated in Mauza Nuh, which was purchased by them vide sale deed dated 30.03.1971. All the afore-said persons i.e., Rehmat Khan etc., have since died. It is alleged that complainant came to know recently about a General Power of Attorney bearing Vasika No.93 dated 15.03.1990 purported to have been executed by Rehmat Khan etc., in favour of Hasan Khan (petitioner of CRM-M-19860 of 2017). The said GPA is alleged to be a forged and fabricated document, not bearing signatures of any of the alleged executants Rehmat Khan etc. So much so, one of the alleged executant and co-owner of the land, namely, Mohd. Iliyas had already expired on 02.02.1990 i.e., prior to the execution of the forged GPA dated 15.03.1990. It was alleged that Hasan Khan in collusion with Hari Chand and Sahab Khan (petitioner of CRM-M-14524 of 2017), who are the attesting witnesses to the GPA, got GPA executed in his favour and on basis of that forged and fabricated GPA executed various sale deed in favour of others. Prayer was made to summon and prosecute accused Hasan Khan, Hari Chand, Sahab Khan, subsequent vendees Aneesa and Sabana and attesting witnesses of the sale deeds Hamid Hussain and Mohd. Javed.

3. After taking preliminary evidence, learned Judicial Magistrate Ist Class, Mewat ordered summoning of all the accused on 07.12.2015. The said order was challenged by the petitioners and others by filing separate revisions before Court of Sessions. Vide order dated 15.11.2016, although the revisions filed by Aneesa and Sabana, i.e., subsequent vendees and that of Hamid Hussain and Mohd. Javed, the attesting witnesses of the sale deeds, were accepted but the revisions filed by present petitioners Hasan Khan and Sahab Khan were dismissed.

4. By way of these two petitions filed under Section 482 Cr.P.C, prayer is made by the two petitioners to set aside the summoning order as well as the order dated 15.11.2016 of learned Additional Sessions Judge, Mewat whereby revision against the summoning order was rejected. It is contended that Shri Rehmat Khan, father of the respondent- complainant had expired in May, 2006 and during his lifetime, he neither ever challenged the GPA nor the subsequent sale deeds. Complaint has been filed in January, 2015, i.e., almost after 25 years of the execution of the GPA and so on the ground of delay itself, the summoning order deserve to be quashed. Civil litigation regarding the GPA is already pending. In addition to these grounds, it is also pleaded by petitioner Sahab Khan that being attesting witness, he is not the beneficiary and so was not expected to know the contents of the document nor was involved in the criminal conspiracy.

5. Opposing the petitions, learned counsel for the respondent-complainant raised objection at the very outset that these petitions are not maintainable in view of the bar placed by Section 397(3) Cr.P.C. He has relied upon ***Rajan Kumar Manchanda Vs. State of Karnataka, 1988(2) R.C.R. (Criminal) 662***. It is further contended that the impugned orders are based upon the evidence on record and that at the stage of summoning, only the prima-facie case is to be seen and that delay in itself cannot be ground to dismiss the complaint as it is only some days prior to the filing of the complaint that complainant came to know about the forged GPA.

6. Having considered submissions of both the sides, I find no merit in any of these revisions.

7. As rightly pointed out by Ld. Counsel for respondent, these petitions under Section 482 Cr.P.C are not maintainable. Section 397 of Code of Criminal Procedure provides for calling of the record to exercise

power of revision by the High Court or any Sessions Judge. Sub Section (3) of Section 397 Cr.P.C reads as under: -

“If an application under this Section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

8. In the present case, order dated 07.12.2015 summoning the petitioners had been challenged by them by filing revision under Section 397 Cr.P.C before the Court of Sessions. Revisions were dismissed. Once they have availed the remedy of filing revision before Court of Sessions, the present petition becomes barred under Section 397 (3) Cr.P.C before the High Court in the guise of Section 482 Cr.P.C. In ***Rajan Kumar Manchanda’s case (supra)***, Magistrate ordered releasing a truck. Revision against the order was dismissed by the Sessions Court. Second revision was filed before the High Court by invoking inherent powers under Section 482 Cr.P.C. It was held by Hon’ble Supreme Court that:

“Heard learned Counsel for the parties. The respondent State had challenged the order before the Court of Sessions when the learned Magistrate before whom the matter was proceeding directed release of the truck in favour of the appellant. The Revisional Court dismissed the petition of the State. A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C.

should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld.”

Thus, filing of the second revision before the High Court by invoking inherent powers under Section 482 Cr.P.C is not maintainable.

9. In view of the legal position as above, both these petitions deserve to be dismissed being not maintainable.

10. Apart from above, alleged GPA was executed on 15.03.1990 by Rehmat Khan and others in favour of petitioner Hasan Khan. Petitioner Sahab Khan; and Hari Chand are the attesting witnesses. As per the death certificate produced in the preliminary evidence, one of the alleged executants of the GPA, namely, Mohd. Iliyas had already expired on 02.02.1990. Ld. Counsel for petitioner Hasan Khan pointed out towards Death Certificate Annexure A1 of Mohammad Iliyas to contend that his death was got registered on 18.02.2015 i.e., after filing of the complaint. It is contended that this certificate has been procured by the complainant.

11. There is no merit in the contention. As rightly pointed out by counsel for the respondent, though the death was got registered on 18.02.2015 but date of death is 2.2.1990. It is urged that there is presumption of correctness to the death certificate issued by the competent authority under law, which is always issued after verification of facts.

12. Thus, prima-facie either forged signature was appended for Mohd. Iliyas on the GPA or somebody impersonating said Mohd. Iliyas was produced for execution of GPA. No doubt, that petitioner Sahab Khan is attesting witness only but he was supposed to know the identity of the executants.

13 In view of the above discussion, this Court does not find any illegality or material infirmity in the impugned orders passed by the Courts below.

Both the petitions are hereby dismissed.

May 01, 2023
renu

(DEEPAK GUPTA)
JUDGE

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