

CRM-M-12195 of 2022

CRM-M-12482 of 2022

Neutral Citation No.2023:PHHC:044058

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: March 24, 2023

1. CRM-M-12195 of 2022

Balbir Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

2. CRM-M-12482 of 2022

Balbir Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Ms. Rupinder Kaur Thind, Advocate
for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG,
Haryana.

Mr. P.K. Ganga, Advocate for respondents
No.2 and 4.

DEEPAK GUPTA, J.

This order shall dispose of two petitions referred above, as both of them have emanated from the same proceedings. In CRM-M-12195 of 2022, prayer is made to quash order dated 03.08.2021 (Annexure P.4) passed by learned Additional Chief Judicial Magistrate, Sirsa, whereby two applications moved under Section 91 Cr.P.C have been dismissed in the criminal case titled State of Haryana Vs. Hira Singh and others, arising out of FIR No.729 dated 24.09.2015 registered at

Police Station City Sirsa under Sections 420/467/468/471/120B IPC. In CRM-M-12482 of 2022, prayer is made to quash order dated 20.05.2019, whereby application under Section 311 Cr.P.C in the same proceedings has been dismissed.

2. FIR was lodged on the complaint of petitioner, as per which a plot measuring 8 kanals situated at Village Khairpur, Tehsil and District Sirsa was transferred by his father late Jatinder Singh in his name and that of his brothers Rattan Singh @ Harrattan Singh and Hira Singh, i.e. respondents No.2 and 3. It was alleged that petitioner had come to know that accused Rattan Singh in collusion with other accused Hira Singh had contested a civil suit more than 28 years ago bearing Civil Suit No.159 of 1987 on false and concocted grounds. In that suit, petitioner-complainant was made the sole defendant. Written statement admitting the claim of plaintiff of that case, i.e. Hira Singh was filed by Rattan Singh on the basis of a forged and bogus Special Power of Attorney dated 31.01.1987 purportedly executed by the petitioner-complainant. Rattan Singh had also signed the vakalatnama by impersonating himself as alleged Power of Attorney holder of the complainant. On the basis of that admitted written statement, the share in the property in question of petitioner was transferred in the name of Hira Singh. Later on, Hira Singh transferred the share of his property in the name of his younger son Amanpreet Singh; and in the name of Harleen Kaur, elder daughter of Rattan Singh proving the collusion amongst both the accused Rattan Singh and Hira Singh. It was further stated that property was still in joint possession and that when complainant came to know about transfer of the

property in the name of Amanpreet Singh and Harleen qua his share, then on inquiry, he came to know about the fraud.

3. After necessary investigation, challan was presented. The accused- respondents are facing trial.

4. During proceedings, petitioner-complainant moved an application dated 08.11.2017 to summon judicial record of Civil Suit No.149 of 1980; and judicial record of Civil Suit No.159 of 1987. Request was also made to summon the reference documents containing standard signatures as mentioned in the FSL reports No.16/D-94 dated 26.04.2016 and also to await FSL report with regard to specimen signatures of accused Hira Singh and Rattan Singh alias Harrattan Singh, which was sent to FSL on 04.06.2016.

5. Another application dated 22.02.2018 was moved to summon the record relating to registered gift deed dated 30.05.2008 executed by Hira Singh in favour of Harleen Kaur; mutation in favour of Harleen Kaur; registered transfer deed No.5102 dated 01.10.2014 executed by Harleen Kaur in favour of Balbir Kaur and the mutation in favour of Balbir Kaur.

6. Both the aforesaid applications were dismissed by the learned trial Court vide detailed order dated 03.08.2021. This order has been assailed in CRM-M-12195 of 2022.

7. Apart from above, another application under Section 311 Cr.P.C was moved by the petitioner – complainant to summon Manager of Union Bank of India; and Dr. Satish Kumar, Senior Scientific Officer, FSL, Madhuban. By way of order dated 20.05.2019, said application

under Section 311 Cr.P.C has been partly allowed, dismissing the prayer for summoning the Manager of the Union Bank of India, which order is assailed in CRM-M-12482 of 2022.

8. It is contended by Ld. Counsel that Hira Singh had earlier filed Civil Suit No.149 of 1980 against his father Jatinder Singh for seeking a decree regarding the property in question in his favour on the ground of alleged family settlement. Later on, he preferred to amend the suit by impleading Rattan Singh and the complainant as a party to the suit and, thus, Hira Singh had got the plaint amended to seek the share of Jatinder Singh for accused Rattan Singh and the complainant in addition to himself. It is urged that production of the record of this Civil Suit No.149 of 1980 is necessary to show the evil plans of Hira Singh. It is further submitted that judicial record of Civil Suit No.159 of 1987 and that of Civil Suit No.149 of 1980 would disclose the modus operandi of accused Hira Singh, as he had attempted to grab the property in the similar manner in both the cases. It is further submitted that after obtaining the decree on the basis of forged Power of Attorney, Hira Singh subsequently transferred the property and, therefore, the subsequent gift deed and transfer deed and the consequent mutations are necessary to be proved.

9. It is further submitted that a forged Special Power of Attorney dated 31.01.1987 was used by Rattan Singh during proceedings of Civil Suit No.159 of 1987. The charge-sheet submitted by the Police discloses that letter dated 30.10.2015 was sent to the Manager, Union Bank of India, National College Branch, Sirsa for seeking the Account

Opening Card of Account No.3150 bearing signatures of the complainant and that in compliance of the said requisition, the peon of the said Bank, namely, Ajay Kumar, delivered the Account Opening Card, which was seized vide Seizure Memo dated 07.12.2015. However, statement of the Bank Manager to the effect that Account Opening Card was in his custody and that he handed over the same to the Bank peon for delivery to the Police is not available with the charge-sheet nor he has been included in the list of prosecution witnesses. It is contended that said missing link will weaken the case of the prosecution giving escape passage to the accused and so, application under Section 311 Cr.P.C for examining the said Bank Manager has been wrongly dismissed.

10. Both the petitions have been strongly opposed by learned State Counsel as well as by counsel for respondents No.2 and 4, who defended the impugned orders.

11. As far as CRM-M-12195 of 2022 is concerned, it has no merit. As rightly observed by the learned trial Court, the issue before the Court is regarding the forgery of signatures of the complainant on Special Power of Attorney dated 31.01.1987 produced during the proceedings of Civil Suit No.159 of 1987 and, therefore, there appear to be no relevance for production of the record of Civil Suit No.149 of 1980 and Civil Suit No.159 of 1987 because the Special Power of Attorney in question had already been taken into possession and sent to the FSL. Similarly, the subsequent transactions i.e. gift deed dated 30.05.2008 and transfer deed dated 1.10.2014 have no relevancy to the case, as the issue before the Court is only regarding the forgery of Special Power of Attorney. It was

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also observed by trial Court that reference document containing standard signature as mentioned in the FSL report No.16/D-94 dated 26.04.2016 and the FSL report regarding the specimen signatures of accused Hira Singh & Rattan Singh had already been received in the Court file, which fact was duly admitted by counsels for both the sides. As such, learned trial Court rightly dismissed the application for summoning the judicial record of Civil Suit No.149 of 1980 and that of Civil Suit No.159 of 1987 and the subsequently executed documents i.e. registered gift deed dated 30.05.2008 and transfer deed dated 01.10.2014 and consequent mutations. As such, CRM-M-12195 of 2022 is hereby dismissed.

12. Coming to the CRM-M-12482 of 2022, no doubt that the seizure memo in respect of the Account Opening Card of Account No.3150 bears the signatures of Bank Peon Ajay Kumar, who is duly mentioned in the list of witnesses but as per the contention of the complainant- petitioner, the requisition for the said record was sent to the Manager of the Bank and it is the said Manager, who had handed over the Account Opening Card to the Peon. In these circumstances, recording the statement of the Bank Manager, Union Bank of India, National College Branch, Sirsa is necessary to complete the link, as the statement of the Bank peon may not have that force, as he could not be presumed to be in possession of the Bank record. As far as request of the petitioner to summon Dr. Satish Kumar, Senior Scientific Officer, Madhuban, Karnal is concerned, the same was already accepted by the trial Court.

13. Consequent to above discussion, CRM-M-12482 of 2022 is hereby accepted. The trial Court is directed to summon the Manager of

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the Union Bank of India as a witness on behalf of the prosecution and
proceed further in the trial.

Disposed of.

March 24, 2023 (DEEPAK GUPTA)
renu JUDGE

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