

CRM-M-29384-2013 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29384-2013 (O&M)
Date of Decision: 17.10.2023

DAYAL SINGH

... Petitioner

Versus

STATE OF PUNJAB & ANOTHER

...Respondent

CRM-M-9171-2015

KANWALJIT SINGH

... Petitioner

Versus

STATE OF PUNJAB & ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. M.S. Bedi, Sr. Advocate with
Mr. Abhishek Thakur, Advocate and
Mr. Manpreet Singh, Advocate
for the petitioner in CRM-M-29384-2013.

Mr. ADS Sukhija, Advocate with
Mr. M.S. J.S. Ghuman, Advocate
for the petitioner in CRM-M-9171-2015.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab
for respondent No.1.

Mr. Vipin Mahajan, Advocate
for respondent No.2-complainant.

JASJIT SINGH BEDI, J.

This order shall dispose of two petitions bearing No.CRM-M-
29384-2013 titled as Dayal Singh Versus State of Punjab & another and
CRM-M-9171-2015 titled as Kanwaljit Singh Versus State of Punjab &

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another as the same are arising out of the same FIR. However, for the sake of convenience the facts have been taken from CRM-M-9171-2015.

2. The prayer in the present petitions under Section 482 Cr.P.C. is for quashing of FIR No.121 dated 09.06.2012 registered under Sections 420, 467, 468, 471 and 120-B of the IPC at Police Station City Gurdaspur, District Gurdaspur along with all subsequent proceedings arising therefrom.

3. The brief facts of the case as emanating from the pleadings are that Kanwaljit Singh (petitioner in CRM-M-9171-2015) entered into an agreement to sell with Dayal Singh (petitioner in CRM-M-29384-2013) with respect to land measuring 31 Kanals 12 Marlas 5 Sarsai situated at village Jagatpur Kalan on 30.06.2003 (Ex.D1 in the civil suit for specific performance filed by complainant-Bakshish Singh against the petitioners).

4. It is alleged that the petitioner-Kanwaljit Singh had also entered into an agreement to sell with the present complainant-Bakshish Singh for the said land and had received a sum of Rs.5,00,000/- as earnest money on 29.11.2003 (Ex.P1 with the suit for specific performance).

5. A sale deed was executed by Kanwaljit Singh (petitioner in CRM-M-9171-2015) in favour of Dayal Singh (petitioner in CRM-M-29384-2013) on 09.02.2004 (Ex.D2 with the suit for specific performance).

6. The aforementioned sale deed was challenged by way of a suit for specific performance of the agreement to sell dated 29.11.2003 by Bakshish Singh (plaintiff-complainant herein) in which Kanwaljit Singh (accused-petitioner in CRM-M-9171-2015) was defendant No.1 whereas Dayal Singh (accused-petitioner in CRM-M-29384-2013) was defendant No.2. The said suit came to be decreed vide judgment dated 14.03.2011

passed by Civil Judge (Sr. Division), Gurdaspur (Annexure P-3) and the finding of the Court was as under:-

“27. The facts of the case law relied upon by the learned counsel for the plaintiff comes closure to the facts of this case and therefore, I have arrived at the conclusion that the agreement to sell exhibit D-1 and the sale deed exhibit D-2 allegedly executed by defendant no.1 in favour of defendant no.2 are nothing but the sham transactions and waste piece of paper whereas the agreement exhibit P-1 is found to be valid agreement. Therefore, the issue no.1 is decided in favour of the plaintiff.

ISSUE NO.2

28. In view of my findings on the issue no.1 in favour of the plaintiff, the plaintiff is held entitled to the relief of specific performance of the agreement to sell and not any alternative relief of money decree and therefore, this issue is decided in favour of the plaintiff accordingly.

ISSUE NO.3

29. In view of my findings on the issue no.1, the suit of the plaintiff is found legally maintainable and this issue is decided in favour of the plaintiff.

ISSUE NO.4

30. In view of my findings on the issue no.1 defendant no.2 is found to be not a bona fide purchaser as both the documents exhibit D-1 and D-2 are mere paper transactions. So, this issue is decided against defendant no.2. In view of these observations, both these documents are declared null and void and this issue is decided in favour of the plaintiff accordingly.

ISSUE NO.5- RELIEF

31. In view of my findings on the issues mentioned above, the suit of the plaintiff is decreed with costs. The plaintiff is granted the relief of possession as owner by means of specific performance of the agreement of sale dated 29.11.2003 regarding the land measuring 31 kanal 12.5 marla out of land measuring 63

kanal 5 marla being half share comprised in Had Bast no.627, khewat no. 162, khatauni no.339, killa No. 61R, 4 (7-19), 5 (6-18), 7 (8-0), 14 (8-0), 15 (8-0), 16, (7-17), 17 (8-0), 24 (3-4), 62R 11 (5-7) situated in the revenue estate of village Jagatpur Kalan, Tehsil Gurdaspur as entered in the Jamabandi for the year 2001-2002 on payment of balance sale consideration rupees twenty eight lacs (28,00,000) and also permanent injunction restraining the defendants from alienating or changing the nature of the suit land in any manner. The balance sale consideration be deposited by the plaintiff in the Court within period of two months and in case, the defendant no.1 fails to execute the sale in favour of the plaintiff, he shall be entitled to get observed that the documents exhibit P-1, D-1 and D-2 should not be returned to the parties. The un-exhibited documents be returned to the parties against proper receipt. The decree sheet be prepared accordingly and the file be consigned to the record room.”

7. An appeal came to be instituted by Dayal Singh (petitioner in CRM-M-29384-2013) and vide judgment dated 17.05.2012 (Annexure P-4), the same came to be allowed by the Court of Additional District Judge, Gurdaspur. The findings of the said Court were as under:-

“20. Learned lower court has erred in holding without any basis that on the closure scrutiny of document Ex. D-1 shows that it is anti dated. Learned lower court has not appreciated that the owner of the property has denied the agreement to sell. Learned lower court has not appreciated that Kanwaljit Singh has categorically stated that he has never executed any agreement in favour of Bakshish Singh. Even in cross examination he proved that Ex. D-1 was executed by him. Merely saying that Ex. P-1 was executed by Kanwaljit Singh does not prove the case of Bakshish Singh. Learned lower court has come conclusion to erroneous without appreciating evidence of Kanwaljit Singh and without appreciating that Bakshish Singh has failed to prove that

Ex. P-1 was executed by kanwaljit Singh. Thus, the findings of learned lower court are not sustainable in the eyes of law as these are erroneous. The judgment passed by learned Trial Court granting the relief of specific performance to Bakshish Singh respondent no.1 is set aside and the suit filed by Bakshish Singh is dismissed. Accordingly, the present civil appeal is accepted. Decree sheet be drawn accordingly. Lower Court file be sent back alongwith copy of judgment. Present civil appeal file be consigned to record Room.”

8. Thereafter, a complaint was filed by Bakshish Singh on 24.10.2011 which fructified into the instant FIR No.121 dated 09.06.2012 under Sections 420, 467, 468, 471 and 120-B of the IPC, Police Station City Gurdaspur, District Gurdaspur with the allegations that Kanwaljit Singh (petitioner in CRM-M-9171-2015) had agreed to sell his land to the complainant vide agreement dated 29.11.2003 and had received an amount of Rs.5,00,000/- as earnest money. However, later on, with a view to defeat the rights of the complainant, he had created an anti-dated agreement dated 30.06.2003 with Dayal Singh (petitioner in CRM-M-29384-2013) and had executed a sale deed in favour of Dayal Singh on 09.02.2004. The copy of the said FIR is annexed as Annexure P-1 to the petition.

9. Meanwhile, against the judgment of the Lower Appellate Court dated 17.05.2012, the complainant-Bakshish Singh preferred RSA No.3421 on 03.08.2012 which came to be dismissed by this Court vide order dated 24.05.2023 (Annexure A-1). The relevant extract of the said judgment is as under:-

14. After considering the rival contentions, I find that the plaintiff indeed omitted examining hand writing expert. If such expert

after examining disputed signatures of Kanwaljit Singh with his specimen/admitted signatures had arrived at the conclusion that those were by the same person, that would have strengthened the case of the plaintiff to a considerable extent but without such examination, the case of the plaintiff suffered a big jolt. The Ist Appellate Court has relied upon judgment by this Court titled Shiv Charan Vs. Siri Ram & Anr., 2008 (3) RCR 454, wherein it was observed that if party to the contract denies his signatures on the agreement to sell, the plaintiff cannot be granted specific performance thereof, unless he proves the signatures of the parties on the agreement.

15. In this case, the plaintiff has failed to establish signatures of Kanwaljit Singh on the agreement to sell, therefore, execution of that agreement was not established. If execution was not established, the question of plaintiff being ready and willing to perform his part of the contract does not arise. The judgment by the trial Court shows that the officer was unable to understand the facts of the case properly and did not apply the law to the given facts in an proper and appropriate manner. The trial Court fell in error in coming to the conclusion that Kanwaljit Singh had entered into an agreement to sell Ex.P1 with Bakshish Singh or that the agreement between Kanwaljit Singh and Dayal Singh was anti-dated to defeat rights of the plaintiff, therefore, the said agreement and sale deed by Kanwaljit Singh in favour of Dayal Singh were held to be sham transactions and waste piece of papers.

16. The Ist Appellate Court by proper understanding of the factual position and due application of law has rightly come to the conclusion that the agreement to sell set up by the plaintiff Ex.P1 has not been proved on the record and agreement to sell by defendant No.1 in favour of defendant No.2 was legal and valid and so is the sale deed executed by defendant No.1 in favour of defendant No.2 on the basis thereof. Detailed reasons

have been given in the judgment for arriving at such conclusion, which I find to be cogent and convincing.

17. Learned counsel for the appellant had submitted that permission to examine hand writing expert could not be taken to conclude that execution of agreement Ex.P1 is not proved when an attesting witness of the agreement its scribe and son of the deceased attesting witness had appeared to depose in that regard. In support of his contentions, learned counsel had referred to a judgment by a Single Judge of this Court in case Vijay Kumar Vs. Bishan Singh in RSA-2184-2018 decided on 01.05.2018. That judgment is not applicable due to different facts and circumstances. In the present case, defendant No.1 Kanwaljit Singh had not only denied execution of agreement in favour of the plaintiff but claimed it to be a forged and fabricated document. Thus, keeping in view the totality of circumstances, it was incumbent upon the plaintiff to examine the hand writing expert, which he omitted to do. The judgment referred to by learned counsel for the appellant does not help him in any manner. Whereas, the Ist Appellate Court has rightly followed the judgment by a Single Judge of this Court in case Shiv Charan (supra).

18. Whereas learned counsel appearing for the respondent has further referred to another judgment Mohinder Singh Vs. Balbir Singh & Ors. 2011 (2) PLR 390 by a single Judge of this Court on this very lines to the effect that onus to prove the execution of agreement by the defendant in favour of the plaintiff was on the plaintiff and they were to adduce the evidence in affirmative including examination of hand writing expert to discharge the said onus.

19. Learned counsel for the appellant had further referred to certain judgments Gulwant Singh Vs. Gurbakshish Singh & Ors., 2012 (4) PLR 412, Harjinder Singh @ Rajinder Singh Vs. Karam Chand & Anr., 2012 (3) PLR 723, Jora Singh Vs. Lakhwinder Kumar & Ors., 2011 (1) RCR (Civil) 130, Asha

Pandey & Ors. Vs. D.K. Dubey, 2010 (42) RCR (Civil) 103 and Veena Tuli Vs. Ram Snehi, 2015 (2) PLJ 191, in support of his contentions that since execution of agreement has been duly proved by the plaintiff by enough cogent and convincing evidence and there was no necessity of examining hand writing expert and further the agreement to sell by defendant No.1 in favour of defendant No.2 was ante-dated, as has been rightly observed by the trial Court. Therefore, judgment of trial Court be restored and Ist Appellate Court be set aside. The judgments referred to by learned counsel for the appellant are not applicable due to different facts and circumstances and the context in which such observations have been made.

20. Furthermore, in view of detailed discussion above, the execution of agreement Ex.P1 is not established on the record, therefore, there is no question of any specific performance thereof being granted in favour of the appellant/plaintiff. Furthermore, there is nothing to show that agreement is ante-dated or such agreement and sale deed by defendant No.1 in favour of defendant No.2 are sham transactions, as has already been observed, the judgment and decree passed by the trial Court are not sustainable, therefore, any observations made therein are not of any help to the appellant.

21. There is no ground to upset the detailed well reasoned judgment passed by learned Addl. District Judge, Gurdaspur and to restore the judgment of the trial Court. No substantial question of law arises in this appeal. There is no merit in the present Regular Second Appeal. The same stands dismissed accordingly.”

10. Against the aforementioned judgment of this Court, an SLP No.18348 of 2023 was preferred which came to be dismissed by the Hon’ble Supreme Court vide judgment dated 11.09.2023 (Annexure A-1). The same is reproduced hereinbelow:-

“Having heard learned senior counsel for the petitioner, we are not inclined to interfere in the matter. The Special Leave Petition stands dismissed.

However, liberty is reserved to the petitioner herein only to recover Rs.5,00,000/-, said to have been paid by the petitioner to defendant no.1 in accordance with law de hors the findings arrived at by the Courts in this matter, if so advised. This liberty is reserved on the basis of the submission that there is proof of payment of the aforesaid amount by petitioner to respondent no.1.

Further, learned senior counsel submitted that a sum of Rs.28,00,000/- is deposited by the petitioner before the Trial Court. It is needless to observe that if an application is made by the petitioner for refund of the said sum, the same shall be considered expeditiously and the amount shall be refunded to the petitioner. Pending applications shall stand disposed of.”

11. Meanwhile, pursuant to the registration of the FIR, CRM-M-29384-2013 came to be filed by Dayal Singh seeking quashing of the FIR whereas CRM-M-9171-2015 came to be filed by Kanwaljit Singh seeking the similar relief in which presentation of the challan had been stayed. Both these petitions have come up for final hearing today.

12. The learned counsel for the petitioners contend that the complaint dated 24.10.2011 which led to the registration of the present FIR was lodged after 8 years of the date of the execution of the alleged agreement dated 29.11.2003. The SSP Pathankot had opined that the decision of the appeal should be awaited but the IGP, Border Range had ordered the registration of the FIR. In fact, the impugned FIR had been registered without disclosing the fact that in the appeal, the decision of the Civil Judge (Sr. Division), Gurdaspur had been set aside and there was a categorical findings of

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the Lower Appellate Court that the agreement to sell dated 29.11.2003 allegedly executed by Kanwaljit Singh in favour of the complainant-Bakshish Singh had not been proved. The Regular Second Appeal filed against the judgment of the Additional District Judge, Gurdaspur dated 17.05.2012 had been dismissed and SLP No.18348 of 2023 had met the similar fate. Once the agreement in question had not been proved in accordance with law, there was no question of relying upon the same to allege cheating and forgery of the same. They, therefore, pray that the FIR No.121 dated 09.06.2012, under Sections 420, 467, 468, 471 and 120-B of the IPC, Police Station City Gurdaspur, District Gurdaspur and all subsequent proceedings arising therefrom be quashed in the interest of justice.

13. The learned counsel for the State along with the learned counsel for the complainant while referring to the replies dated 09.11.2013 and 05.12.2018 filed in CRM-M-29384-2013 and CRM-M-9171-2015 contend that the offence in question stands established beyond any reasonable doubt. The FIR in question came to be registered after a proper inquiry had been conducted and the civil suit had been decreed in favour of the complainant. As the case was still at the stage of investigation, no case for quashing of the FIR was made out. However, they fairly concede that the findings of the Civil Judge, Senior Division, Gurdaspur had been set aside by the Lower Appellate Court which findings had been upheld by this Court and the Hon'ble Supreme Court.

14. I have heard the learned counsel for the parties.

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15. Before proceeding further in the matter, it would be apposite to refer to the judgment of the Hon'ble Supreme Court as under:-

In State of Haryana and ors Versus Ch. Bhajan Lal ors, 1991(1) R.C.R.(Criminal) 383, decided on 21.11.1990, held as under:-

107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

(emphasis supplied)

16. As per the allegations levelled in the FIR, Kanwaljit Singh (petitioner in CRM-M-9171-2015) had agreed to sell his land to the complainant vide agreement dated 29.11.2003, had received an amount of Rs.5,00,000/- as earnest money but subsequently, with a view to defeat the rights of the complainant had created an anti-dated agreement dated 30.06.2003 with Dayal Singh (petitioner in CRM-M-29384-2013) and had executed a sale deed in favour of Dayal Singh on 09.02.2004. Undoubtedly, the suit for specific performance had been decreed by the Court Civil Judge, Senior Division, Gurdaspur vide judgment dated 14.03.2011 wherein it was held that the agreement to sell dated 30.06.2003 (Ex.D1 in the civil suit) and

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sale deed dated 09.02.2004 (Ex.D2) were sham transactions and it was only the agreement dated 29.11.2003 (Ex.P1 in the civil suit) which was a valid agreement. However, the aforementioned finding had been set aside in appeal. The judgment in appeal had been upheld by this Court in RSA No.3421 of 2012 vide judgment dated 24.05.2023 and SLP No.18348 of 2023 preferred against the aforementioned RSA has been dismissed by the Hon'ble Supreme Court vide order dated 11.09.2023 (Annexure A-1). Thus, it stands established by the Civil Courts of competent jurisdiction that the agreement dated 29.11.2003 purportedly executed by Kanwaljit Singh (petitioner in CRM-M-9171-2015) in favour of the complainant-Bakshish Singh has not been proved which further establishes that the agreement to sell dated 30.06.2023 and sale deed dated 09.02.2004 executed by Kanwaljit Singh in favour of Dayal Singh are not forged document and their execution cannot amount to cheating of the complainant.

While, it is true that the proceedings ordinarily ought not to be quashed when the investigation is still pending as the facts may be hazy, it is equally true that where the facts are admitted and do not establish an offence, the criminal proceedings can be quashed at the very inception. In the instant case, as has already been discussed hereinabove, the document dated 29.11.2003 has not been proved to have been executed by the petitioner-Kanwaljit Singh in favour of the complainant-Bakshish Singh. Therefore, once the existence of that document has not been proved, the question of the agreement dated 30.06.2003 being a forgery or the sale deed dated 09.02.2004 being executed with a view to cheat the complainant does not arise.

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17. In view of the aforementioned discussion, I find considerable merit in the present petitions and therefore, the FIR No.121 dated 09.06.2012, under Sections 420, 467, 468, 471 and 120-B of the IPC, Police Station City Gurdaspur, District Gurdaspur along with all subsequent proceedings arising therefrom stand quashed qua the petitioners.

(JASJIT SINGH BEDI)
JUDGE

17.10.2023

JITESH

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