

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.1300 of 2009 (O&M)
Date of Decision: May 22, 2023

Kamla and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. S.S. Narula, Advocate for the petitioners.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.(Oral)

The two petitioners were tried by the Court of learned Additional Chief Judicial Magistrate, Panipat in case FIR No.417 dated 25.08.1997 registered at Police Station Israna, District Panipat and vide judgment dated 15.04.2008, have been convicted under Sections 420, 467 and 468 IPC. Both of them were sentenced as under:-

Under Section	Sentence	Fine	Default Sentence
420 IPC	2 years RI	Rs. 1,000/-	SI for 2 months
467 IPC	3 years RI	Rs. 1,000/-	SI for 2 months
471 IPC	3 years RI	Rs. 1,000/-	SI for 2 months

All the sentences were directed to run concurrently. The fine was paid.

2. Against the afore-said judgment of conviction and order of sentence, the two petitioners filed appeal but the same has been dismissed by the Court of learned Additional Sessions Judge, Panipat on 09.05.2009. Against this concurrent finding of conviction recorded by the Courts below, the petitioners are now before this Court.

3. The FIR was lodged on the basis of complaint made by Chander Bhusan, the Special Power of Attorney holder of Nirmal Singh Bhangu. It was alleged that in January, 1995, the two petitioners along with Sultan told the complainant that both of them along with Nawab and Mukesh were the owners of land measuring 04 kanals 17 marlas. It was further claimed by them that petitioner – Kamla had a Special Power of Attorney dated 16.12.1993 on behalf of her children Nawab and Mukesh. On the basis of that Power of Attorney, petitioner – Kamla executed a sale deed dated 02.02.1995 qua 04 kanals 17 marlas of land for a sale consideration of Rs. 60,625/-. Nawab and Mukesh, later on filed civil suit, challenging the sale deed on the ground that they were minors at the time of execution of Power of Attorney in favour of Kamla as well as at the time of execution of sale deed. It was alleged by the complainant that this way, he had been cheated by the accused, who had forged the documents.

4. FIR was registered. During investigation, requisite documents were collected. After completing the investigation, challan was filed to prosecute the accused- petitioners under Section 420/120-B IPC. However, the two petitioners were charge-sheeted by the Court to face trial under Sections 420/467/471 IPC, to which they pleaded not guilty and claimed trial. Prosecution evidence was taken on record. Statements of the petitioners – accused under Section 313 Cr.P.C were recorded, in which they denied the allegations and pleaded false implication. No evidence was adduced in defence. After hearing both the sides, learned trial Court recorded conviction and sentenced the two

petitioners as per the details given earlier and the appeal filed by them has been dismissed.

5. It is contended by learned counsel for the petitioners that both the Courts below failed to appreciate that no offence under Section 467 or 471 IPC was made out at all. Prosecution failed to prove that Special Power of Attorney executed by Nawab and Mukesh in favour of Kamla was a forged document. Said Power of Attorney was rather proved by the prosecution as a genuine document by producing PW8 Ashok Kumar, Registration Clerk, Samalkha, where this attorney was registered. It is contended further that the two minors Nawab and Mukesh filed the civil suit challenging the sale on the ground that on the date of execution of the Special Power of Attorney as well as the sale deed, they were minors and so sale was not binding on them. In the said civil suit, even the complainant took the stand that the power of attorney was a valid document and so, the sale deed was binding on the children. Civil Court held that children of petitioner- Kamla were minor at the time of execution of attorney as well as sale deed and, so, the sale deed was liable to be set aside but the Civil Court did not doubt the authenticity of either the attorney or the sale deed. It is further contention of learned counsel for the petitioners that specimen thumb impressions of minors Nawab and Mukesh, were never taken for comparing the same with the thumb impressions appearing on the Power of Attorney and, therefore, the Power of attorney could not be said to be a forged document. It is further submitted that sale of the share of the minors on the part of the petitioner – Kamla did not attract the offence of cheating and at the most

it was an invalid sale, which has been repudiated by the minor children after attaining the age of majority and so, the only consequence was that sale deed could have been challenged in the Civil Court. It is also urged that petitioner No.2 was merely a witness to the attorney executed by the minor children of petitioner – Kamla and is not beneficiary of any transaction. With these submissions, prayer is made to set aside the conviction as recorded by the Courts below and to acquit the petitioners.

6. Learned State Counsel defended the impugned judgments.

7. I have considered the submissions of both the sides and have appraised the record carefully.

8. Factual position is not in dispute to the effect that on the basis of Special Power of Attorney dated 16.12.1993 (Ex.PW8/A) executed by Nawab and Mukesh, the children of Kamla, the said Kamla (petitioner No.1) has sold the share of minor children in the land by way of sale deed dated 02.02.1995 (Ex.PW8/B). The trial Court has recorded the conviction under Sections 467 and 471 IPC by terming the Power of Attorney to be a forged document simply on the basis of statement of Nawab, who being examined as PW7 stated that on the date of execution of the Power of Attorney, he was a minor and that Power of Attorney was not executed by him.

9. I agree with the contention of learned counsel for the petitioners that simply on the basis of this bald statement of Nawab, the Power of Attorney could not be held to be a forged document. Prosecution itself examined Registration Clerk in Tehsil Office, Samalkha as PW8, who brought not only the record of sale deed dated

02.02.1995 but also that of Power of Attorney. He proved on record the copy of Power of Attorney as Ex.PW8/A and that of the sale deed as Ex.PW8/B. The statement of PW8 itself proves that Power of Attorney Ex.PW8/A was a genuine document and not a forged one. Simply because Mukesh and Nawab were not shown to be minors in the Power of Attorney, cannot be sufficient to hold the said document to be a forged document. There is nothing on record to suggest that Investigating Officer collected the thumb impressions of Nawab and Mukesh so as to compare the same with the thumb impressions appearing on the Power of Attorney, in order to reach to the conclusion that Power of Attorney had not been executed by Nawab and Mukesh. Not only this, in the civil suit which was filed by Nawab and Mukesh, copy of plaint of which is Annexure P.2, it was specifically stated by them that Power of Attorney dated 16.12.1993 was made due to misrepresentation. Thus, it was not the case of Nawab and Mukesh that said Power of Attorney was a forged document or that the same had not been executed by them.

10. In view of the afore-said discussion, the conviction of the petitioners under Section 467 and 471 IPC cannot be sustained. Both the petitioners are acquitted of the said charges.

11. Coming to the charge under Section 420 IPC, it has not been disputed that on the date of executing of Power of Attorney dated 16.12.1993 (Ex.PW8/A); as well as on the date of execution of the sale deed dated 02.02.1995 (Ex.PW8/B), both Nawab and Mukesh were minors. Petitioner – Kamla being the mother of Nawab and Mukesh, is presumed to have very well known that her children Nawab and Mukesh

were minor at the time she executed the sale deed dated 02.02.1995 in favour of the complainant. However, she deceived the complainant and sold the land for Rs. 60,625/- by representing Mukesh and Nawab to be major. It is because of this reason that in the civil suit filed by Nawab and Mukesh, the sale deed was set aside and complainant lost the litigation.

As such, the charge under Section 420 IPC against petitioner – Kamla is duly proved.

12. As far as petitioner – Jai Kumar is concerned, he also represented the complainant that the two minors were major at the relevant time of executing the Power of Attorney. Though said petitioner is not beneficiary to the sale transaction but he certainly is the part of conspiracy with Kamla, therefore, his conviction under Section 420 IPC is also maintained.

13. Coming to the order of sentence, as per the custody certificate placed on record, petitioner – Kamla has already undergone 6 months and 2 days of the actual sentence; whereas petitioner Jai Kumar has already undergone actual sentence of 2 months and 22 days. The crime in question was committed way back in February, 1995 i.e. more than 28 years back. The sentence of two years was suspended by this court way back in November, 2009 i.e. more than 13 years back.

14. Having regard to all the facts and circumstances of the case, and the role of two petitioners, this Court is of the view that the period of custody already undergone by the two petitioners is sufficient to meet the ends of justice. Therefore, maintaining the conviction of two petitioners under Section 420 IPC, order qua sentence in respect of said offence

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under Section 420 IPC is hereby modified. The two petitioners are sentenced to the imprisonment for the period already undergone by them.

Disposed of.

May 22, 2023
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(DEEPAK GUPTA)
JUDGE

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