

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

**CRM-M-43446-2015 (O&M)
Date of Decision: February 23, 2023**

Kewal Krishan

...Petitioner

Versus

Balwinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Ms. Sonia G. Singh, Legal Aid Counsel for the petitioner.

Ms. Sukhmani Patwalia, Advocate for respondent No.1.

Mr. Prateek Gupta, and Mr. Prashant Puri, Advocates
for respondent Nos.3 and 4.

None for respondent Nos.2 and 5.

Ms. Sumanjit Kaur, Advocate for respondent No.6.

DEEPAK GUPTA, J.(Oral)

Prayer in this petition under Section 482 Cr.P.C. is to quash the order dated 21.05.2014 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Chandigarh, dismissing the criminal complaint No.21485 of 2010; and the order dated 14.07.2015 (Annexure P-2) passed by learned Addl. Sessions Judge, Chandigarh, dismissing the revision against Annexure P-1.

2. Complaint in question was filed by the petitioner to prosecute the respondents under Sections 420, 467, 468, 471 and 120-B IPC. As per allegations, two brothers, namely Lal Chand and Gopal Dass had purchased house No.2109, Sector 15-C, Chandigarh, on 22.01.1954. Lal Chand transferred his 50% share in the house in the name of his wife Veeran Devi, though said Lal Chand was also holding General Power of Attorney of Gopal Dass. It is alleged that in a family settlement dated 04.12.1954, Gopal Dass transferred his 50% share in the name of Veeran Devi and also wrote a letter dated 02.12.1955 to transfer his 50% share in favour of Lal Chand. By way of an agreement dated 17.02.1966, he also

agreed to transfer his share in favour of Veeran Devi. Lal Chand later on

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rented out the entire house to one Roop Lal Bhardwaj against whom ejectment petition was filed. After ejectment order, said tenant handed over possession to Gopal Dass instead of Veeran Devi. As Gopal Dass came to know that his affidavit and family settlement had not been acted upon, he claimed ownership of his 50% share in the house. Said Gopal Dass also allegedly made a complaint alleging business activities in the house, due to which the house was resumed by the Estate Officer on 24.10.1988. When the resumption order was in force, Gopal Dass transferred his share of 50% in the house to respondent Nos.1 and 2 on 03.07.1989, who further sold the same to respondent Nos.3 and 4, vide sale deed dated 18.10.1995. Resumption order was vacated on 18.04.1995. Complaint was filed alleging that no sale deed could have been executed during the resumption order and that all acts have been committed by the respondents in conspiracy with each other and thus, they have committed the offence of cheating and forgery.

3. After recording preliminary evidence and calling for the report under Section 202 Cr.P.C., learned Judicial Magistrate 1st Class, Chandigarh, dismissed the complaint vide impugned order dated 21.05.2014 (Annexure P-1), which has been upheld by learned Addl. Sessions Judge, Chandigarh in the revision vide order dated 14.07.2015 (Annexure P-2).

4. It is contended that impugned orders are illegal, as sale deed dated 03.07.1989 was executed by Gopal Dass when resumption order was in force and besides no objection certificate was not obtained from the concerned Estate Officer. Complaint was made to the Governor of Punjab for registering the FIR, which was ultimately enquired into by the

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Superintendent of Police (Crime) and who found *prima facie* offence of cheating, trespassing and criminal conspiracy but the said inquiry report was not accepted by the I.G., UT, Chandigarh, who opined that there was no need to pursue the matter. Petitioner has also given various references of civil litigation between the parties and has prayed for setting aside the impugned orders.

5. After considering submissions of both the sides, I find no merit in the petition.

6. As rightly noticed by the learned Addl. Sessions Judge, Chandigarh in the impugned order dated 14.07.2015 (Annexure P-2) that question involved is whether purchase of property by respondent Nos.1 and 2 during the resumption order and further selling the same to respondent Nos.3 and 4 amounted to an offence under Section 420, 467, 468, 471 read with Section 120-B IPC and whether all the respondents were colluding with each other to make out an offence under Section 420 IPC. It has rightly been observed that there is no allegation that any of the respondents made dishonest inducement to the petitioner-complainant to deliver any property by the person and so, in the absence of the ingredient of the inducement, no offence under Section 420 IPC is made out. Section 467 IPC speaks of forgery of any valuable security or Will. There is no specific averment as to which document has been forged by any of the respondents-accused. As far as the sale deed executed by Gopal Dass in favour of respondent Nos.1 and 2 and then further execution of the sale deed by respondent Nos.1 and 2 in favour of respondent Nos. 3 and 4 are concerned, these were duly executed before the competent authority. These cannot be termed as forged documents. As

to whether those documents would be illegally enforceable or not, is purely a civil matter but for that reason, the documents cannot be stated to be forged.

7. Coming to the contention of the petitioner that by way of family settlement, an affidavit and the letter given to the Estate Officer, Gopal Dass had given his 50% share to Veeran Devi, it is conceded case that no transfer deed was executed. So much so, Gopal Dass retracted from the family settlement. All this is dispute of the civil nature and for this reason, no criminal offence can be stated to have been made out.

8. It will not be out of place to mention that many civil litigations have been filed regarding the property in dispute. A civil suit for partition of $\frac{1}{2}$ share by respondent Nos.3 and 4 was filed, which was decreed in their favour. Appeal filed by the petitioner and others was dismissed. RSA No.2736 of 2013 (O&M) has also been dismissed by this High Court on 13.02.2020, wherein all the issues as raised by the petitioner have been dealt with. This Court (a coordinate bench) in RSA No.2736 of 2013 held as under:-

“8. The contention of the learned counsel for the appellants to seek setting aside all the judgments and decrees passed by the Courts below inter alia, is that Gopal Dass had relinquished his $\frac{1}{2}$ share in the property in question in favour of Veeran Devi. Therefore, he had no right to sell the property to Balwinder Singh and Mrs. Jasbrinder Ahluwalia from whom respondents No.1 and 2/plaintiffs had bought the $\frac{1}{2}$ share. The second contention is that since the property in question was under resumption, the sale deed from Gopal Dass in favour of the vendees could not have been executed and the same was null and void. Thirdly, the house in question could not have been partitioned as per the rules applicable in Chandigarh and no public auction could thus take place. It is contended that both the Courts below have acted

illegally and decreed the suit filed by respondent Nos.1 and 2/plaintiff by wrongly rejecting all the pleas taken by the present appellants.

9. I am unable to persuade myself to accept these contentions. As regards the relinquishment deed/family settlement dated 04.12.1954 (Ex.D-3), allegedly executed between Gopal Dass and Veeran Devi in the year 1954, firstly; the same being unregistered did not extinguish the ownership of Gopal Dass, secondly; it was not acted upon, thirdly and lastly; it had been retracted by Gopal Dass as evident from order dated 05.02.1996 passed by the Estate Officer, Chandigarh. Resultantly, Gopal Dass was the owner of ½ share in the house, when he sold the same to Balwinder Singh and Mrs. Jasbrinder Ahluwalia. The appellants and respondent No.4 (who later sought transposition as an appellant) neither filed any civil suit for declaration, making any claim on the basis of the family settlement and the relinquishment deed nor ever challenged the said sale deed during the lifetime of Gopal Dass or Veeran Devi. Even otherwise, the appellants failed to establish any settlement or relinquishment by leading any cogent or to bring anything on record as to what property if any did Gopal Dass get by way of the family settlement.

*10. The second plea of the appellants that in the year 1989 when the property was under resumption, the sale could not be made by Gopal Dass, is also liable to be rejected. It is settled law that till the time the resumption proceedings attain finality a person remains the owner of his property and can sell/deal with it in whichever way he wants. Also it came in evidence that, in fact, the resumption proceedings were later set aside, vide order dated 18.04.1995 (Ex. D-5). The conveyance deed dated 31.08.1963 issued by the Estate Office executed jointly in favour of Gopal Dass and Veeran Devi is also on record. The first sale deed dated 03.07.1989 Ex P-1 between Gopal Dass (seller) and Balwinder Singh and Jasbrinder Kaur (buyer) were rightly by both the Courts below held to be perfectly valid and duly executed sale deeds. In this regard, reliance may be had on a decision of this Court in **Vidya Sagar Vs. Punjab State Warehousing Corp. 2002 (4) RCR (Civil) 519** and also another case cited as **Pritibha***

Jhangi Vs. Devinder Kumar Singla, 2010 (3) RCR (Civil) 649.

11. Furthermore, it would also be pertinent to note that in multiple rounds of earlier litigation inter se the same parties/their predecessor in interest, the Courts have already held Gopal Dass to be the owner of 50% share of house in question. All such similar pleas as are being raised by the appellants in the instant appeal were also raised, had been dealt with and rejected in the earlier rounds of litigation by the Courts.....”

9. In the above said judgment dated 13.02.2020, the High Court also referred to the various other litigations, which have been earlier filed and the same had been decided against the petitioner.

10. It will not be out of place to mention that review petition against the above said judgment dated 13.02.2020 was filed, which has also been dismissed on 14.11.2022 in RA-RS-43-2021 (O&M) in RSA No.2736 of 2013.

11. Having regard to the factual position as discussed above and the decision of this Court in RSA No.2736 of 2013, when all the issues raised by the petitioner have already been dealt with on civil side, this petition is found to contain absolutely no force, as no criminal offence even *prima facie* is found to have been made out.

As such, present petition is dismissed.

February 23, 2023

sarita

(DEEPAK GUPTA)

JUDGE

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