

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

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CRM-M-49637-2018 (O&M)

Date of decision: 13.04.2023

TARA CHAND

....Petitioner

Versus

JAGDISH AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. P.K. Ganga, Advocate for the petitioner

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 of Cr.P.C. for setting aside the impugned judgment dated 05.09.2018, Annexure P-4, passed by learned Additional Sessions Judge, Sirsa, affirming the order dated 20.09.2016, Annexure P-2 rendered by learned Judicial Magistrate, 1st Class, Sirsa, vide which the complaint filed by the complainant-petitioner was dismissed.

2. Concisely, the facts of the case are that Jagdish in collusion with other co-accused forged an affidavit in 2006, purported to be signed by one Rajbir Singh who had expired in 2004, to get an electricity connection issued. This all had been done to take benefit for themselves and cause a loss to the complainant-petitioner. When the police on an application filed by him, had failed to take any action against the accused-respondents, he filed a criminal complaint under Sections 406, 420, 467, 468, 470, 471, 474, 476, 120-B IPC before the Judicial Magistrate, 1st Class, Sirsa.

3. In the preliminary evidence, petitioner Tara Chand examined himself as PW1, Harwinder Singh as PW2, Prabhu Singh as PW3, Jagmal Singh as PW4, Lilu Ram as PW5 and Bansi Lal as PW6. After hearing the arguments, the trial Court dismissed the complaint vide order dated 20.09.2016.

4. Aggrieved petitioner, filed a revision assailing the aforesaid order and for summoning of the accused for the commission of offences, which upon hearing both the parties, also came to be dismissed by the Additional Sessions Judge, Sirsa.

5. Hence the present case.

6. Learned counsel for the petitioner submits that there are specific allegations in the complaint against the accused-respondents that they in connivance with each other forged the affidavit of deceased Rajbir Singh and fraudulently took the electricity connection in the joint land. Based on this, they have taken the undue advantage and during partition proceedings, got transferred the land of less value to the complainant, thereby cheating him. Thus, the learned trial Court as well as lower appellate Court without considering the said facts dismissed the complaint.

7. Heard.

8. It would be appropriate to make a reference to the judgments of the Courts below, the relevant paras thereof read thus:

“Order of trial Court

10. I am not satisfied with this plea of the complainant. If Rajbir would have been alive and was not interested in giving his consent then the affidavit may be material. But if Rajbir has expired in year 2004 then his consent was not necessary in year 2006. There was no need to forge his signature. There is no explanation that after death of Rajbir why his signature were forged by the

accused persons. There is nothing on record to prove that if there were not the signatures of Rajbir on affidavit then the complainant would not have suffered in any manner. There is no rule of electricity on record which violation has been made. There is nothing to show that petitioner has any interest in tubewell connection regarding which affidavit was given.

11. It is therefore held that there is no evidence to show prima facie commission of any offence punishable under Section 467,468,470,471,474,476,120-B IPC. As far as Section 406 is concerned, there is no allegation that any property was entrusted to the accused persons by the complainant which was misappropriated by them. Therefore, the offence punishable under Section 406 is not made out against the accused. As far as Section 420 IPC is concerned, there should be inducement to deliver any property and the complainant should parted with property on such inducement. There is no allegation that the complaint was induced by the accused and he parted with property due to such inducement. it is therefore held that the offence punishable under Section 420 of IPC is also not made out against the accused.

12. Keeping in view the above said discussion, it is held that there are no sufficient grounds to proceed against the accused. the present complaint moved on behalf of the complainant is meritless, it deserves to be dismissed and it is hereby dismissed. file to be consigned to record room after due compliance.”

Order of revisional Court

“10. Further the perusal of affidavit reveals that the same has been purchased on 19.06.2006 by Kehar Singh, who is father of Jagdish Singh, Madan Singh and Satpal and said Kehar Singh has expired as per report under Section 202 Cr.P.C. Hence there is no direct evidence for inducement of remaining accused in the affidavit 19.06.2006. There is nothing on record to show that the signatures were forged by the accused.

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12. Further as far as Section 406 IPC is concerned there is no allegation that any property was entrusted to the accused persons by the complainant which was misappropriated by them. As far as Section 420 of IPC is concerned, there should be inducement to deliver any property and the complainant-revisionist should parted with property on such inducement. But there is no allegation that the revisionist was induced by the respondents and he parted with the property due to such

inducement. Therefore, the offence punishable under Sections 406,420 IPC are also not made out against the accused. By observing all the above material aspect of the case the learned Trial Court has rightly considered that there is no prima-face case made out against the accused to summon them for the offences under Sections 467,468,470,471,474,476,120-B IPC...

14. After gone through the whole evidence and other documents and materials available on record there is no illegality or infirmity found in the impugned order dated 20.09.2016 and learned trial court has rightly dismissed the complaint of revisionist and no interference of this court is warranted. Hence, this revision-petition filed by the revisionist is hereby dismissed. File of lower court be sent back with one copy of this judgment and file of this revision-petition be consigned to the records.”(emphasis supplied)

9. Basic allegation of the complainant-petitioner was of an affidavit dated 19.06.2006 to be forged, which was submitted for obtaining the electricity connection, however, the complainant petitioner was unable to prove the requirement of the said affidavit in the year 2006, when the connection was applied for, when Rajbir Singh, who had alleged to have executed the same affidavit on 19.06.2006 had already expired in the year 2004, thus, there being nothing to substantiate reason for requirement of an affidavit from him, thus, no need for forging his signatures. The inducement to deliver any property by complainant-petitioner and misappropriation thereof was also prima facie not proved. The complainant-petitioner are cousins of accused-respondents having joint holding, regarding which partition proceedings had been initiated. The grievance as is apparent was with regard to the said proceedings as the accused -respondents are said to have got in their favour more valuable parcel of the land whereas the complainant, of lesser value. The proceedings thus, are civil in nature

given a criminal texture. The trial Court and the revisional Court have rightly ruled in favour of the accused respondents by acquitting them.

10. Firstly, there is presumption of innocence of the accused person in our criminal jurisprudence and secondly, the concerned court has recorded the finding in favour of the accused and disbelieved the prosecution and has founded as a matter of fact that the prosecution has failed to prove its case beyond reasonable doubt, thus giving benefit to the accused. Both these presumptions- jurisprudential and in regard to the factual matrix- must be kept in mind and unless the conclusions reached by the Court were palpably erroneous or contrary to law or it is likely to result in injustice.[See **Satyavir Singh vs. State of U.P.**, (2010) 3 SCC 174]

11. Hon'ble The Supreme Court of India while following the judgment rendered in **Rajathi vs. C. Ganesan** (1999) 6 SCC 326, observed and held in **Kailash Verma vs. Punjab State Civil Supplies Corpn.**, (2005) 2 SCC 571, that, the power under Section 482 of Cr.P.C. shall not be utilized as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of Cr.P.C. as it is prohibited under Section 397(3) thereof. However, when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when it is felt by the High Court that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court, it can entertain a petition under Section 482 of Cr.P.C.

12. It is trite that there is double presumption in favour of accused, firstly, under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless proved guilty and secondly, having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

13. This Court in view of the above discussion finds there to be no perversity or illegality in the impugned judgments, which have been passed based on correct appreciation of facts and law, therefore, warranting no intervention. As such, the present petition is dismissed.

(AMAN CHAUDHARY)
JUDGE

April 13, 2023
S.Sharma(syr)

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