

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8958-2015 (O&M)
RESERVED ON: 20.12.2022
PRONOUNCED ON: 08.05.2023

KULBIR KAUR & ORS.

.....PETITIONERS

VERSUS

PARMINDER SINGH & ANR.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. B.S. Sidhu, Sr. Advocate with
Mr. Chandan Singh and Mr. Satveer Singh, Advocates
for the petitioners.

Mr. Nandan Jindal, Advocate for respondent No.1.

Mr. Kunwarbir Singh, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

The jurisdiction of this Court under Section 482 Cr.P.C., has been invoked for quashing of order dated 18.02.2015 (Annexure P-10) passed by Additional Sessions Judge, Amritsar vide which the order of discharge dated 07.09.2013 (Annexure P-9) passed by Judicial Magistrate 1st Class, Amritsar in a complaint case has been set aside.

Before this Court advert to the factual narration and background of the case, a glance of pedigree table would be of much help to facilitate the crux of controversy, which reads as under:-

KASHMIR SINGH			
Varinder Kaur (Ist Wife)		Sarabjit Kaur (2 nd Wife)	
Kulbir Kaur W/o Navtej Singh	(Inderbir Kaur)	Parminder Singh	Harinderpal Singh

daughter and son-in-law of Varinder Kaur-1st wife of Kashmir Singh. It is also noticable that Varinder Kaur had two brothers namely Jaipal Singh and Madan Gopal Singh, whereas petitioners No.3 to 6 are legal heirs of late Jaipal Singh being wife, sons and daughters. Kulwant Singh is admittedly without any dispute is real brother of Sarabjit Kaur. Jaipal Singh and Madan Gopal Singh had purchased piece of land in village Manawala in equal shares as detailed in the FIR No.389 dated 14.11.2006 (Annexure P-1), registered under Sections 419, 420, 467, 468, 471, 120-B of IPC, 1860 at Police Station Civil Lines, Amritsar vide registered sale deed dated 09.07.1971, who was inherited by petitioners No.3 to 6. The LR's of Jaipal Singh-petitioners No.3 to 6 later on relies that Kulwant Singh son of Thakur Singh (brother of Sarabjit Kaur) and her son Parminder Singh Gill in connivance with one Suresh Kumar Chaudhary and Pritam Singh, Numberdar of village Manawala prepared a forged Power of Attorney allegedly executed by Jaipal Singh and Madan Gopal Singh on 13.09.1995, whereas Jaipal Singh had already died on 20.07.1998. Madan Gopal was alive at that time, who was died on 30.05.2000. Subsequently on the basis of said forged Power of Attorney two sale deeds on 23.04.1997 and 27.11.2001 were executed by Kulwant Singh in favour of his sister Sarabjit Kaur showing the sale of land measuring 27 kanals 12 marlas and 27 kanals 13 marlas respectively in the office of sub-registrar, Amritsar. The FIR was registered by the petitioners No.3 to 5 alleging that Suresh Kumar Chaudhary and Ramesh Kumar have also witnesses to the Power of Attorney on the basis of which, the aforesaid sales have been registered fraudulently.

A civil suit was also filed for declaration by the petitioners No.3 to 6 against Kulwant Singh and his sister Sarabjit Kaur challenging the forged general Power of Attorney dated 17.08.1995 and sale deed dated 23.04.1997,

completion of investigation, wherein the accused was under trial, but as a counter-blast to the said FIR and civil suit, it is alleged that respondent No.2- Parminder Singh filed a false and frivolous complaint No.370 dated 30.01.2007 (Annexure P-3), under Sections 420, 465, 467, 468, 471, 511, 120-B of IPC, registered at Police Station Civil Lines Amritsar in the Court of Chief Judicial Magistrate, Amritsar alleging that mother of the complainant Sarabjit Kaur is the true and lawful owner of the property bearing Khasra No.51/4/2, (2-0), 5/2 (0-11), 6/2(5-4), 7(8-0), 8(8-0), 9/1(4-15), 13(7-13), 14(8-0), 15/1(6-8), 16(7-16), 17(8-0) situated at Manawala Khurd, Amritsar measuring about 27 kanals 12 marlas vide sale deed dated 23.04.1997. It has been further averred in the said complaint that she is also owner in possession of the property situated at Manawala Khurd bearing Khasra No.51/9/1(4-15), 13(7-13), 14(8-0), 15/1(6-8) measuring about 26 Kanals 16 Marlas vide three registered sale deeds dated 27.11.2001 each and since then the enteries had also been made in the record of revenue regarding the same. It is pertinent to mention here that till date neither the ownership of complainant nor their possession has ever been challenged in any Court of law.

On 29.08.2006, one Yogesh Ohir came to his house and passed on two registered power of attorneys dated 31.05.2006 and 22.03.2006 and told him that in case, he is interested in purchasing some property, he can take him along for a visit to the sight. On the asking of the complainant, he went to meet the owners of the property and thereafter proceeded to the house of Sh. Navtej Singh, s/o Jagir Singh and Kulbir Kaur w/o Navtej Singh. Navtej Singh and his wife Kulbir Kaur claimed to be owners in possession of the property in question having got power of attorney in the name of Kulbir Kaur from the original owner after paying due consideration and on the basis of these two registered power of attorneys misrepresented and convinced the complainant as true owners in possession and both demanded Rs.4.52 crore as

consideration. The complainant believing the aforesaid assurance agreed and paid Rs.25,000/- as token money to Navtej Singh. He further agreed to pay balance of Rs.40,00,000/- on the date of execution of sale deed i.e., on 02.09.2006.

It is further the assertions put forth by the complainant that once he came to home and minutely read the power of attorneys, it revealed that the same is not in the name of Navtej Singh and Kulbir Kaur but in the name of the complainant and his mother and, therefore, approached them to handover the power of attorneys to them, who also having read those power of attorneys concluded that the same have been got prepared by none other than his step sister namely Kulbir Kaur alongwith other husband Navtej Singh in connivance with accused Nos.3 to 6 namely Dalbir Kaur w/o Jaipal Singh, Gurbinder Singh and Manjinder Sngh sons of late Jaipal Singh and Harpreet Kaur daughter of later Jaipal Singh.

It is also the averment that Jaipal Singh and Baljeet Singh had earlier sold the said land to the complainant and his mother through their power of attorney holders, but after their death, now their legal heirs are trying to defraud him by forging the power of attorneys conniving with each other. Another fact on record on perusal of the complaint also is in the form of allegation that accused Nos. 3 to 9 were neither entitled nor authorised to dispose of the said land, as the same already stood sold by their predecessor in interest. It is now with such mens rea of dishonest intent when agreement to sell their share has been prepared only with the motive to grab the land from complainant and his mother. Kulbir Kaur alongwith her real sister Inderjeet Kaur had earlier executed a family settlement giving up her share in the estate of her father in favour of her step-mother namely Sarabjit Kaur and step brother namely Parminder Singh-complainant and Harinder Singh on

greed for the property and connivance between Navtej Singh and Kulbir Kaur due to rise in the prices of the land. It is with the aforesaid facts, the complaint was lodged before the Judicial Magistrate 1st Class, Amritsar on 07.09.2013. The trial Court-JMIC, Amritsar discharged the accused while dismissing the complaint vide its order dated 07.09.2013. The said judgment was challenged by way of revision petition under Section 397 Cr.P.C., by Parminder Singh-complainant in the Court of Additional Sessions Judge, Amritsar. The revision petition stands allowed vide order dated 18.02.2015 and the judgment dated 07.09.2013 was set aside with a direction to the trial Court to frame the charge afresh, after hearing both the parties and taking into consideration, the facts and legal propositions involved in the instant complaint.

It is against this order dated 18.02.2015 passed by the revisional court below, the present petition has been filed with the contention that the petitioners No.3 to 6 filed a civil suit dated 05.02.2007 against Sarabjit Kaur and Kulwant Singh seeking a declaration to decline the general power of attorney dated 07.08.1995 and sale deed dated 23.04.1987 to be null and void, which pending before the Additional Civil Judge (Sr. Division), Amritsar.

It has also been argued on behalf of the petitioners that Jaipal Singh and his brother Madan Gopal Singh purchased some land in village Manawala vide registered sale deed dated 19.07.1971 in equal shares as has been detailed in FIR No.389 dated 14.11.2006 (Annexure P-1), under Sections 419, 420, 467, 468, 471, 120-B of IPC, 1860, registered at Police Station Civil Lines, Amrtisar, wherein challan stands presented and accused in the said FIR are facing trial. It is case set up by the petitioners that the instant complaint is a result of vengeance and as a counter blast to the aforesaid FIR No.386 and the civil suit.

Learned counsel for the petitioner has submitted for setting aside

Judge, Amritsar (Annexure P-10) vehemently stressing upon the fact that the power of attorney dated 30.05.2006 stands cancelled on which the complainant has put reliance and in the light of the same, the continuance of complaint as well as the summoning order would tantamount to an abuse of process of law, as the issue in hand with regard to the genuinity of documents and title is a subject matter of civil suit as well another aspect on which the contention has been made as to the effect that general power of attorneys dated 22.03.2006 and 30.05.2006 are claimed to be documents, as the petitioners still stick to these power of attorneys, which are duly registered before the Sub-registrar, wherein the executants have already suffered at the hands of Kulwant Singh, Sarabjit Kaur and her son Parminder Singh-complainant, Suresh Kumar Chaudhary.

Learned counsel for the petitioners assailed the order dated 18.02.2015 on the ground that perusal of complaint as well as the summoning order do not make out a case under Sections 420, 465, 467, 471, 511 and 120-B of IPC in support thereof, it is argued that no person of common prudence would prefer to buy such a property without making any due inquiries, whereas in the instant case one of the complainant namely Yogesh Ohri went to the extent of paying token moneys and very rightly so on account of the fact that the power of attorneys itself clearly identify the property, its owner, the name of GPA holder and about the litigation of the property. It is actually a matter of fact and law that the complainant is not a bona fide purchaser and now after having paid token money to the tune of Rs.25,000/- making an attempt to take a u-turn from his legal liability.

In addition thereof, learned counsel for the petitioners challenged the filing of revision petition before the Additional Sessions Judge being not maintainable alleging that the dismissal of first complaint would amount to

to appeal can be preferred under Section 378(4) Cr.P.C.

Learned counsel for the petitioners concludes his argument relying upon case law “ 2013, (1) RCR (Criminal) 1013”, wherein it was held that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court.

Mr. Nandan Jindal, learned counsel for the respondent-accused vehemently argued that since no prima facie case for the offence alleged in the complaint was made out. The trial Court has rightly discharged all the accused. It has been further submitted that Sarabjit Kaur and the complainant fraudulently forged the sale deeds dated 23.04.1997 and 27.11.2001 resulting into execution of power of attorney by legal heirs of respondents No.3 to 6 of Jaipal Singh and respondents No.7 to 9 of Baljit Singh in favour of Kulbir Kaur authorising her to file any complaint, suit and FIR etc., in connection to the property in question against Sarabjit Kaur, Parminder Singh and other persons. As far as the question of maintainability, the submissions of the counsel for the respondents is concerned, it is argued that the revision petition is maintainable, since the matter is pending before the Civil Court and the complaint was filed as a counter blast to the said civil suit as well as criminal case was registered by respondent-accused Kulbir Kaur and others vide FIR No.126 dated 14.07.2009 and also on account of the legal propositions that it is not a case, where the complaint has been dismissed, after going into the evidence, but at the pre-charge stage, the respondents-petitioners have been discharged.

Having heard learned counsel for the parties and after examining the voluminous record with the able assistance of Mr. B.S. Sidhu, learned Sr. Advocate.

After considering the rival contentions, this Court has no doubt

that Sarabjit Kaur and the complainant purchased the above said land having

got prepared forged power of attorneys, while authorising Kulbir Kaur to file the complaint, suit and FIR etc., against Sarabjit Kaur and complainant alongwith civil suit and criminal case bearing FIR No.126 dated 14.07.2009, which have been filed against the mother of the complainant namely Sarabjit Kaur. The allegations of the complainant giving authority to sell/transfer the said land to Kulbir Kaur vide these power of attorneys by respondents-accused Nos.3 to 9 alleging themselves as owners of the suit land shows their mala fide intentions to cheat the complainant and Yogesh Ohri with whom they struck a deal to sell the said land with an intention to grab it, which belongs to the complainant and his mother.

So far, the sale deeds dated 23.04.1997 Ex. C-6 and 27.11.2001 Ex.C-3 to C-5 have not been set aside by any Court of law. It is also to be borne in mind that filing of a criminal case against Sarabjit Kaur, mother of complainant and others in itself sufficiently does not raise a presumption to hold that sale deeds are forged and fabricated documents particularly in the light that Yogesh Ohri, who deposed as CW-1 categorically stating that property dealer Paramjeet Singh approached him for selling the said land, who took them to Kulbir Kaur and Navtej Singh purporting to be owners of the said land on the basis of power of attorneys, which are under challenge in the civil suit. It is also matter of record that earnest money of Rs.25,000/- was taken by Kulbir Kaur and Navtej Singh, while entering into an agreement to sell with the date of execution agreed as on 02.09.2006, on which date balance amount of Rs.40,00,000/- was to be paid.

It is a settled law as held by plethora of judgments that minor discrepancies are bound to occur with the passage of time, and, therefore, any such discrepancy, if at all has accrued in the statement of CW-1-Yogesh Ohri is of no help and not sufficient to ignore his entire testimony in totality

seen that prima facie ingredients of alleged offences under Sections 420, 467, 468, 471, 511 and 120-B of IPC, 1860 making of a case is to be looked into.

It is other way around in the instant case, wherein the sale deeds dated 27.11.2001 (Ex.C-3 to C-5) and 23.04.1997 Ex. C-6 still stand hold good in the eyes of law, as the same offence set aside in any Court of law and a filing of criminal case against mother of the complainant cannot be a ground to make an opinion at this stage that the aforesaid sale deeds are forged and fabricated documents especially, in the light of deposition of CW1-Yogesh Ohri.

Therefore, this Court is of the considered view, after having discussed the factual aspects and considered the submissions of learned respective counsel that the order dated 18.02.2015 (Annexure P-15) passed by Additional Sessions Judge, Amritsar and order dated 07.09.2013 (Annexure P-9) passed by Judicial Magistrate 1st Class, Amritsar does not suffer from any perversity, illegality or infirmity for interference of this Court.

Hence, the petition stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

08.05.2023
Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>