

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

CRR-3286-2016

Date of Decision:-22.08.2023

Karnail Singh.

.....Petitioner.

Vs.

State of Punjab & Ors.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Lalit Singla, Advocate for
Mr. Ankur Mittal, Advocate for the Petitioner.

JASJIT SINGH BEDI, J.(ORAL)

The instant revision petition has been preferred by the petitioner against the judgment dated 16.05.2016 passed by Additional Sessions Judge, Ludhiana whereby the judgment of acquittal dated 13.08.2014 passed by the Judicial Magistrate Ist Class, Samrala has been affirmed.

2. Briefly put, the case of prosecution is that as per allegations of the complainant Karnail Singh, Jagtar Singh was serving with Punjab State Electricity Board. The family of Jagtar Singh owned a small chunk of land, out of which 02 kanals of land fell to the share of Jagtar Singh. Jagtar Singh showed the land to the complainant at Ropar Road, Machhiwara and told him that the deal of the land would be struck for Rs.01,00,00,000/- approximately. The complainant agreed to purchase the land with Jagtar Singh jointly. The bargain was struck for land measuring 1K-1M. Jagtar Singh assured that they would have have equal share of the profit after sale of the land after converting it into plots. The owner of the land was Dev Raj,

who had given power of attorney in favour of his son Narinder Pal. On 13.06.2005, the agreement was got scribed by Jagtar Singh in the name of his brother Bhag Singh by showing the complainant as a witness. The complainant was not present at that time, but his signatures were appended either by Jagtar Singh or by his associates. Later on, it transpired that Jagtar Singh had paid Rs.12,00,000/- towards the agreement of sale whereas, the complainant had paid Rs.15,00,000/- to him. Since, the information of entering into the agreement showing the sale consideration as Rs.01,00,00,000/- became known to the Sub-Registrar, the sale deed could not be executed since it required affixation of more stamp fee. At the asking of Jagtar Singh, they got scribed a gift deed in favour of the nephew of Dev Raj. 10 plots were sold by Jagtar Singh and the sale consideration was kept by him. The amount of Rs.15,00,000/- paid by the complainant was returned by Jagtar Singh in installments. But thereafter, neither were the plots given nor were accounts settled with the complainant. Jagtar Singh sold the remaining two plots for Rs.28,00,000/-. It was alleged that Rs.37,48,000/- came to the share of the complainant out of the profit of Rs.74,96,000/- and it had not been paid by Jagtar Singh to him. The matter was compromised at the police station, but as per the promise, Jagtar Singh did not make the payment. Investigation was carried out. Statements of witnesses were recorded. After completion of investigation, the challan was prepared and presented in the court against the accused.

3. On consideration of the challan and documents attached therewith, sufficient grounds were found to presume that the accused had committed the offence punishable under sections 420, 465, 468, 471 and 120-B IPC and accordingly, charge under the above said sections was framed against the accused, to which they pleaded not guilty and claimed

trial.

4. Consequently, the prosecution was called upon to produce its evidence in the case. In order to prove the guilt of the accused, the prosecution examined PW-1 Karnail Singh complainant, PW-2 Bakshish Singh, PW-2 Rajanjit Singh, PW-4 HC Sanjeev Kumar, PW-5 ASI Harbans Singh, PW-6 Dr. Jassy Anand-Documents Expert, PW-7 Inspector Bhupinder Singh, PW-8 Inspector Coma Singh, PW-9 Ashish Jain and PW-10 Dr. Seema Sharda.

5. After closure of the prosecution evidence, statements of the accused were recorded under section 313 Cr.P.C in which all incriminating pieces of evidence were put to the accused, who denied the allegations of the prosecution and pleaded that they were innocent.

6. In defence evidence, the accused examined Narinder Maine as DW-1 and Dr. Inderjit Singh as DW-2.

7. After hearing arguments of the APP and the defence counsel, the trial Court vide the impugned judgment, acquitted the accused/respondents from the charges framed against them vide judgment dated 13.08.2014.

8. The complainant preferred an appeal before the court of Additional Sessions Judge, Ludhiana against the acquittal of the accused and the said appeal came to be dismissed vide judgment dated 16.05.2016.

9. The aforementioned judgments are under challenge in the present petition.

10. The Counsel for the petitioner contends that both the courts below have not appreciated the evidence of the complainant/petitioner and other witnesses particularly the expert witnesses in the right perspective. The photocopy of the agreement to sell dated 13.06.2005 on which the signatures

of the complainant/petitioner had been forged by the accused/respondent was placed on record as Mark-B before the Trial Court. The Courts below had wrongly observed that forgery could not be made out on the basis of the photocopy of a documents and the original was required to be produced. In fact, as the original was in the possession of the accused, the same could not have been produced. The Courts had also wrongly held that the prosecution had withheld the best evidence by not examining/producing Sunil Kumar through whom the plots had been sold. He contends that the same could not have been done as Sunil Kumar was unknown to the complainant/petitioner. He further contends that merely because no writing suggestive of sharing of profit had been brought on record did not falsify the case of the complainant/petitioner. He therefore, contends that the judgments of acquittal be set aside and the accused/respondents be convicted for having committed the offences in question.

11. I have heard the counsel for the petitioner.

12. To establish forgery it is imperative that the original document is produced or the existence and the destruction of the same is proved beyond doubt. In the alternative, the party which wishes to lead secondary evidence with respect to the document must prove that it cannot possibly possess the primary original document as the same is in possession of the opposite party. In the instant case not only was the original agreement to sell dated 13.06.2005 on which the complainants allegedly forged signatures had been affixed not brought on record but the complainant/petitioner has also not been able to prove that the original had ever been executed but was in possession of the opposite party or had been destroyed. Therefore, the courts below have rightly come to the conclusion that the offence or forgery was not made out.

13. There is a contradiction between Ex.P-1, complaint moved by the complainant Karnail Singh to the police and Ex.D-1 the earlier complaint. The complainant/petitioner has also admitted that he did not file a recovery suit against the accused nor did he raise any objection when the gift deed was executed and mutation sanctioned in furtherance of which the plots were carved out and sold through Sunil Kumar by the accused on the basis of the gift deed. He also admitted that neither of the accused had become owners of the properties/plots. However, it is apparent that the sale of the plots was well within the knowledge of the complainant but he took no legal recourse for reasons best known to him. In fact it goes to suggest that there was no profit sharing agreement at all. Thus, no case of cheating is made out as well.

14. In view of the aforementioned facts and circumstances, I find no reason to interfere with the well reasoned judgments passed by both the courts below and the same are therefore upheld. Resultantly, the present revision petition stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

August 22, 2023
Vinay

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