

112 -A

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41292-2021 (O&M)

Date of decision: 03.08.2023

Gulzar Singh

...Petitioner

Vs.

Kanta Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ranjit Saini, Advocate,
For the petitioner.

Mr. DhruvDayal, Additional A.G. Punjab.

ARUN MONGA, J. (ORAL)

CRM-28186-2023

Application is allowed, as prayed for.

Documents at Annexures P-5 to P-8 are taken on record, subject to all just exceptions.

Main case

The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 19.08.2016 (Annexure P-1) passed by learned Judicial Magistrate First Class, Gurdaspur vide which complaint under Sections 420, 427, 463, 467, 468, 471 and 120-B IPC against the respondents was dismissed and order dated 26.02.2018(Annexure P-4) passed by learned Additional Sessions Judge, Gurdaspur, whereby revision filed against the aforesaid order was also dismissed.

2. Brief facts of the case in hand, as recorded by learned trial Court in the impugned judgment, are reproduced as under:

“The present complaint has been filed by the complainant on the facts that the complainant is owner of the land pertaining to Killa no.100/2 (1-14) of Khewat no.46, Khatauni No. 180 situated near the village abadi of Village Ali Nangal and valuable land having its minimum price of Rs. 5,000/- per marla, which devolves to the complainant by way of Khangri wand, of which the mutation of the land has been got entered in his name vide mutation no. 1301 of

village Ali Nangal. It is further stated that the complainant is already in possession of the land of killa no. 100/2 being owner. There is enmity between the complainant and accused and the accused entered into the conspiracy to harm the interest of the complainant deliberately, intentionally, knowing the facts that the complainant is owner of the land pertaining to killa no. 100/2 situated in the revenue estate of village Nangal, of which the mutation of land has already been effected in his favour, created a forged fabricated the document in order to cheat misappropriate and make undue loss to the complainant in connivance with the other accused and created the registered sale deed dated 14.6.2010. It is further submitted that Nirmal Singh accused executed the sale deed deposing himself as owner and accused Kanta Devi as a purchaser of which the accused no.2 signed the sale deed being Mushtri on her behalf, whereas Ajaib Singh and Nirmal Singh Lambardar attested the said sale deed before the Sub Registrar Gurdaspur. This very fact came to know to the complainant on the day of demarcation of the land by the complainant on dated 17.3.2010, when the revenue authorities demarcated the land pertaining to killa no.100/2 and the revenue officials demarcated the land and declared that the accused no. 1 Kanta Devi is in illegal possession of land measuring 0-2 marlas and on being asking the accused No. 1 and 2 retaliated as a owner being purchaser from Nirmal Singh accused. The accused knowing the facts that the complainant is owner of the land created the sale deed being genuine one which may be used as genuine one in order to harm the interest and property of the complainant, thereby played cheating and mischief and created valuable documents being genuine one and committed an offence under sections 420/427/46/467/468/471 and 120-B IPC. The complainant approached to the police authorities and reported the entire matter to the police of police station Dorangla, but the police authorities did not lodge the report and linger on the matter, since the date of demarcation of the land and report thereof and yesterday finally refused to get the matter registered in the shape of First Information Report, hence this complaint.”

3. Learned counsel for the petitioner submits that complaint was wrongly dismissed by Learned Judicial Magistrate First Class, Gurdaspur vide order dated 19.08.2016 (Annexure P-1) by holding that the Court does not find any truth in the allegations levelled by the complainant and his witnesses as no offence has been committed by the accused against the complainant. It was also wrongly held that dispute, if any, between the parties is of civil in nature. Aggrieved against the said order, petitioner filed a revision which was also dismissed vide order dated 26.02.2018 (Annexure P-4).

3.1. Learned counsel for petitioner further submits that both the Courts below wrongly concluded that no offence of forgery can be said to be committed

by respondent and no prima facie offence punishable under sections 420, 427, 463, 467, 468, 471, 120-B is shown to be committed by respondent.

3.2 Learned counsel for the petitioner submits that learned Judicial Magistrate First Class while passing impugned order (Annexure P-1) dismissing the complaint has wrongly relied upon judgment passed in “*Md. Ibrahim and others Vs. State of Bihar and another*”¹. He also relies on Apex Court’s judgment rendered in case titled “*Shivjee Singh Vs. Nagendra Tiwary and others*”², in support of his arguments.

4. Arguments heard.

5. Order dated 26.02.2018 (Annexure P-4) passed by learned Additional Sessions Judge, Gurdaspur, assailed herein, is premised, *inter alia*, on the following reasoning:

“10. After due consideration to rival contentions and going through record of lower court, it is found that petitioner/complainant seeks action under Section 420, 427, 463, 467, 468, 471 and 120-B of Indian Penal Code chiefly contending that he is owner in possession of land measuring 1 kanal 14 marlas, comprised of khasra No. 100/2, Khewat No. 45. khatauni No 180, situated near village abadi of vill: Ali Nangal and accused in connivance with each other in order to cause unlawful loss to him have transferred 2 marlas of land out of aforesaid land to accused Kanta Devi through forged and fabricated sale deed dated 14.6.2010, which has come to his notice at the time when had got demarcated suit land through revenue authorities.

11. As per his version this property had come to his share in khangi vandi. private partition, but when evidence adduced by him is evaluated, it is found that he has failed to establish this fact. He refers to some mutation entry on basis of khangi vand, but no such document has seen light of the day. The vendee of Kanta Devi are shown to co-sharers in property in dispute and it is not his case that as per revenue record their share was less than the sold one Kanta Devi may take probable defence of bonafide purchaser even. Nobody has disputed that she has not paid sale consideration mentioned in the sale deed in her favor Karam Chand is husband of Kanta Devi and has nothing gained personally. Name of Nirmal Singh vendee was standing in revenue record as on day of sale deed and other accused/respondents have not gained any benefit, rather they have identified the parties to the transaction.

12. In the light of above facts and circumstances, I have gone through impugned order and it is neither found to be illegal nor perverse, \thus, does not call for any interference. No material

¹ 2010 (2) Cri LJ 2223

² Law Finder Doc ID #211401

has been shown to draw a contrary conclusion. Resultantly, revision in hand is dismissed with costs.”

6. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law.

6.1 As per pleaded case of the petitioner, the person cheated, if at all, is the buyer of the property, who has been sold the same allegedly by and at the behest of respondents and, therefore, it is for the buyer to proceed against the vendors, if at all, they are not the owners of the property.

6.2 To attract the offence of forgery of a document under section 465, it is a necessary to show that the document was/is false. Section 464 IPC shows that a person is said to make a false document, who dishonestly or fraudulently makes, signs or executes it with the intention of causing it to be believed that such document was made, signed or executed by a person by whom it was not made, signed or executed. From the complaint allegations, as they are, the offence of forgery ascribed to the respondents is not made out.

7. There is thus no room for interference in the aforesaid valid reasons recorded by learned Court below, with which I am in agreement. The petition *sans* merit and the same is hereby dismissed.

8. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

03.08.2023
vandana

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