

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(1) CRM-M-43470-2017 (O&M)
Reserved on 15.09.2023
Pronounced on: 25.09.2023

Rajinder Singh and othersPetitioners

Versus

Sant Parkash Singh SandhuRespondent

(2) CRM-M-18049-2017
Pronounced on: 25.09.2023

Saleena SinghPetitioners

Versus

State of Punjab and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Prashant Bansal, Advocate
for the petitioners in CRM-M-43470-2017.

Mr. Sanjeev Sharma, Sr. Advocate with
Ms. Shubhreet Kaur, Advocate and
Mr. Vikram Vir Sharda, Advocate
for the petitioner in CRM-M-18049-2017.

Mr. Sartaj Singh Gill, Advocate and
Dr. Amarpreet Sandhu, Advocate
for the private respondent-complainant.

Mr. Pankaj Khullar, AAG, Punjab.

MANJARI NEHRU KAUL, J.

1. This order shall dispose of above referred two petitions as they arise out of the same complaint and identical issues are involved therein.

2. The petitioners are invoking the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. for quashing of Complaint

No.11RT/2013 dated 20.01.2011 pending before the learned Sub Divisional Judicial Magistrate, Rajpura for the offences under Sections 420, 463, 467, 468, 471 and 120-B of the IPC (Annexure P-1) and all consequential proceedings arising therefrom including summoning order dated 25.03.2015 (Annexure P-4 in CRM-M-43470-2017) for offence under Section 420 of the IPC passed by learned Judicial Magistrate First Class, Rajpura.

3. Learned senior counsel for the petitioner in CRM-M-18049-2017, while giving a brief background of the case inter alia submits that the dispute essentially revolves around the land of the grand father of the petitioner, late Faujdar Singh, measuring 67 bighas and 9 marlas (hereinafter referred to as 'land'), out of his total estate measuring 149 bighas and 2 biswas. Late Faujdar Singh had performed two marriages. From his first marriage with Balwant Kaur, two children were born i.e. late Surinder Pal Singh (father of the petitioner) and Sukhbir Kaur. After Balwant Kaur's death, Faujdar Singh married again. Two sons, Kuldeep Singh and Sant Parkash Singh Sandhu (complainant) were born from his second marriage with Satwant Kaur. It has been alleged in the complaint (Annexure P-1) that petitioner Saleena and her mother in connivance with the other accused, transferred share in the land to the extent of 1/4th to the other accused (petitioners in CRM-M-43470-2017), even though their entitlement was only to the extent of 1/5th share. After the demise of the petitioner's grandfather, the complainant propounded his father's Khangi Will of the year 1985 and claimed ownership of land measuring 67 bighas and 9 marlas as per the Will and applied for sanctioning mutation in his

favour accordingly. Further, it was a matter of record that the authenticity of the aforesaid Khangri Will was challenged by the petitioner and her mother and learned Assistant Collector First Grade, Rajpura, who, after questioning the genuineness of the Will, ordered mutation to be sanctioned by way of natural succession. Accordingly, Halka Patwar, Banur recorded mutation No.10424, on the basis of inheritance of property through natural succession, wherein petitioner Saleena and her mother were held entitled to 1/4th share. In support, learned senior counsel has drawn the attention of this Court to the jamabandi of the year 2001-02 (annexed as Annexure P-3 in CRM-M-18049-2017), which reflects that the petitioner and her mother were held entitled to share to the extent of 1/4th and it was on the basis of this they had then sold their share to the accused i.e. petitioners in CRM-M-43470-2017.

4. Learned senior counsel in the aforesaid context prays for quashing of the complaint (Annexure P-1) by urging that a perusal of the allegations levelled in the complaint does not disclose the commission of any offence and thus, it deserves to be quashed. In fact, a civil dispute pertaining to a family property between members of the family i.e. petitioners on one side and the complainant on the other side has been given a criminal colour, just to exert pressure upon the petitioners. The petitioner has been summoned to face trial under Section 420 of the IPC by the Trial Court, however, it has been asserted that the essential ingredients to attract the mischief of offence for cheating under Section 420 of the IPC is clearly amiss in the case in hand, even if for the sake of arguments, averments made in the

complaint are taken to be gospel truth. Still further, learned Trial Court has also erred in passing the summoning order without holding a preliminary inquiry as envisaged under Section 202 of the Cr.P.C. which is a mandatory requirement. Learned senior counsel has contended that the summoning order violates the provisions of Section 202 of the Cr.P.C. which mandate a preliminary inquiry in case an accused resides beyond the jurisdiction of the Court. Since it is a matter of record that the petitioner is a resident of Bhopal (Madhya Pradesh), thus, it was imperative for the learned Trial Court to adhere to the provisions of Section 202 of the Cr.P.C., however, since the Court had failed to conduct any preliminary inquiry as envisaged under the aforementioned Section, the summoning order deserved to be quashed on this ground alone.

5. Furthermore, it has been submitted that it is also an admitted fact that on the date of registration of the sale deed, the share of petitioner Saleena Singh and her mother stood recorded to the extent of $1/4^{\text{th}}$, therefore, it could not be alleged that they had sold land in excess of their share. The appeal filed by the petitioner and her mother was allowed by the learned Additional District Judge, Patiala vide judgment dated 10.09.2011 (Annexure P-4 in CRM-M-18049-2017), and they were held entitled to $1/4^{\text{th}}$ share in the property in question measuring 67 bighas 9 biswas. Still further, it was also a matter of record that the RSA which was preferred by the respondent-complainant against the said judgment was dismissed by this Court vide order dated 19.05.2014 (Annexure P-5 in CRM-M-18049-2017). Thus, the entitlement of the petitioner and her mother to the extent of $1/4^{\text{th}}$

share had since attained finality. Still further, as far as allegations qua transfer of property after the expiry of General Power of Attorney (GPA) is concerned, the complainant had no locus as he was neither the purchaser nor beneficiary and, therefore, could not have been aggrieved by the said transfer.

6. Learned counsel for the petitioners in CRM-M-43470-2017 has adopted the submissions made by learned senior counsel for petitioner Saleena Singh.

7. Learned counsel appearing for the private respondent-complainant has vehemently controverted the submissions made on behalf of the petitioners by urging that the petitioner and her mother after colluding with the revenue officials, in order to usurp the land of the respondent-complainant had made a wrongly entry in the jamabandi showing their share to the extent of 1/4th instead of 1/5th. The said fact stands duly substantiated from a perusal of a communication dated 08.04.2011 of the Deputy Commissioner to respondent No.2 wherein it was communicated that a wrong entry had been made and the petitioner and her mother were in fact entitled to only 1/5th share and not 1/4th. Therefore, necessary corrections were carried out in the jamabandi by way of Fard Badra. Therefore, it was apparent that the petitioner and her mother despite being fully aware of their actual share, still went ahead and sold the land beyond their share. Furthermore, the sale deed was registered on the basis of an expired GPA; the GPA on the basis of which the sale deed dated 03.12.2009 was registered had expired two days prior to it i.e. on 01.12.2009. Thus, the intent to cheat upon the petitioners was clearly discernible. It has also been asserted that since

the petitioner and other accused after playing a fraud upon respondent No.2 had illegally transferred her share of property, ingredients of Section 420 of the IPC were made out as wrongful loss had also been caused to the complainant. The judgment dated 22.12.1998 (Annexure P-2 in CRM-M-18049-2017) whereby a mutation was sanctioned as per natural succession was challenged by the respondent-complainant before the Civil Court which had stayed the mutation, however, still the petitioners succeeded in fraudulently executing the sale deed. Furthermore, the judgment dated 10.09.2011 passed by ADJ Patiala was after the commission of the offence and would not in any manner help the petitioners as the date on which the sale deed was executed, the share of petitioner Saleena and her mother is just 1/5th.

8. With respect to non-compliance of Section 202 of the Cr.P.C., learned counsel has urged that at best it was an irregularity, which would not in any manner vitiate the proceedings, and to overcome the said objection, the matter could be remanded back to the Trial Court for compliance. A prayer has, therefore, made for dismissal of the instant petition or in the alternative to remand the case back to the learned Trial Court for issuing fresh summons, after due compliance of Section 202 of the Cr.P.C.

9. I have heard learned counsel for the parties and perused the relevant material on record.

10. The gist of the averments made by respondent No.2-complainant in the complaint in question (Annexure P-1) is that the petitioner and her mother in collusion with the revenue officials illegally, despite having the knowledge that their entitlement was only

to the extent of 1/5th share, had got their share entered to the extent of 1/4th and thereafter, taking benefit of the error in the entries in the *Jamabandi* had fraudulently alienated the land to the extent of 1/4th to the petitioners in CRM-M-43470-2017.

11. The learned Trial Court after finding sufficient material to proceed against the petitioners, summoned them vide order dated 25.03.2015 (Annexure P-7 in CRM-M-18049-2017) to face trial under Section 420 of the IPC.

12. Before proceeding further, it would be relevant to reproduce Section 420 of the IPC which reads as under:-

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

13. The essential ingredients thus to attract the mischief of Section 420 of the IPC are :-

- (i) the accused must have intentionally deceived someone;
- (ii) by the said deception, the accused must have induced the person so deceived (a) to deliver any property (b) to make alter, or destroy the whole or part of the valuable security or anything which is signed or sealed and which is being capable of being converted into a valuable security;
- (iii) the accused had dishonest intention at the inception.

14. In the instant case, a bare perusal of the averments made in the complaint reveal that the essential ingredient to attract the mischief of Section 420 of the IPC is clearly amiss. It has nowhere been alleged either in the complaint or even for that matter argued before this Court that the petitioners ever deceived respondent-complainant and on account of such deception, the complainant was induced to deliver any property. In fact, it is a matter of record that respondent-complainant has not even delivered any property in the instant case, rather, the property was transferred and delivered by petitioner Saleena and her mother to petitioners in CRM-M-43470-2017. Therefore, once the complainant has not parted with the property, by virtue of any false representation made by the accused, the petitioners could not have been summoned to face trial as evidently the necessary ingredients to constitute an offence under Section 420 of the IPC were not even prima facie made out.

15. Further, it is a matter of record that the day on which the sale deed was executed, the share of both petitioner Saleena and her mother rightly or wrongly, in the jamabandi was, reflected to the extent of 1/4th. Leaned ADJ Patiala vide judgment dated 10.09.2011 (Annexure P-4 in CRM-M-18049-2017) while allowing the appeal filed by petitioner Saleena and her mother also held them entitled to 1/4th share. The said judgment attained finality as the RSA preferred by the respondent-complainant was dismissed vide order dated 19.05.2014 (Annexure P-3 annexed with CRM-M-43470-2017) of this Court. Therefore, once the entitlement of the petitioner Saleena and her mother to the extent of 1/4th share was upheld by the Ld. ADJ, it cannot be said

that the petitioner and her mother had cheated the complainant by selling land in excess of their share.

16. This Court does not find any force in the submissions made by the counsel for the respondent-complainant that since the land was sold by petitioner Saleena and her mother, despite there being a stay in operation, and the GPA having expired, they would, thus, be criminally liable. The sale of the land, during the time when the stay was in operation, would at best give rise to action for contempt of Court and similarly, registration of sale deed on the basis of expired GPA, would not attract the mischief of Section 420 of the IPC.

17. As a sequel to the above, this Court concurs with the submissions made by the learned senior counsel for the petitioner that the Court below erred in summoning the petitioners to face trial under Section 420 of the IPC. Accordingly, the petitions are allowed and the complaint in question (Annexure P-1) along with all consequential proceedings arising therefrom including summoning order dated 25.03.2015 (Annexure P-4 in CRM-M-43470-2017 Annexure P-7 in CRM-M-18049-2017) are quashed qua the petitioners.

25.09.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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