

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

SR. No.245

CRR-50-2023 (O&M)
Date of decision:11.09.2023

Kunti Devi

...Petitioner

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Vishal Munjal, Advocate
for the petitioner.

N.S. SHEKHAWAT, J.

1. The present revision petition has been preferred against the impugned judgment dated 02.09.2022 passed by the Additional Sessions Judge, Pathankot, dismissing the appeal filed against the judgment dated 10.05.2017 passed by Judicial Magistrate 1st Class Pathankot, whereby the respondents were ordered to be acquitted for the offence under Section 420/120-B IPC.

2. As per the case of the prosecution, an application was moved by Kunti Devi, Sarpanch, Gram Panchayat, Darshopur by alleging that the land of *Mustarka Malkan* was illegally sold by the accused-private respondents. It was stated that on the basis of opinion received from Deputy Commissioner, Pathankot and District Attorney, Gurdaspur for registration of F.I.R., a request for registering the case against Ex-Sarpanch Tara Singh, Himmat Singh, Balwan Singh and Pardeep Singh was made. Another letter from

Block Panchayat Officer bearing No.673 dated 27.07.2012 was moved with the subject regarding illegal sale of *Mustarka Malkaan* land in Gram Panchyat, Darshopur Block Narot Jaimal Singh and for conducting inquiry. It was stated that a resolution dated 15.07.2012 was passed by Gram Panchyat, Darshopur regarding the land bearing Khasra No.140 measuring 4 Marlas, Khasra No. 141 measuring 4 Marlas, Khasra No.143 measuring 4 Marlas and Khasra No.144 measuring 5 Marlas total 01 Kanal 6 Marlas, whereby. Chajju Ram, Sarvan Singh and Ram Singh sold the said land in favour of Pardeep Singh. On the said land, community hall had been raised by Gram Panchayat, which was under the possession of the Panchayat and to that effect, mutation was also entered in the Jamabandi. This building was used by Tara Chand, when he was Sarpanch and it was also used during the course of Gram Panchayat elections. On 14.06.1994, sale was effected, when Tara Singh was Sarpanch and he had also witnessed the sale deed. Keeping in view the above facts a request for taking action against Tara Singh. Himmat Singh, Balwan Singh and Pardeep Singh was made for misappropriating the Panchyat property. Therefore, report was received, wherein resolution dated 15.07.2012 was admitted. The fact regarding the sale of the above-said Khasra number was also found correct. Block Development and Panchyat Officer, Narot Jaimal Singh stated that a community hall was built in said Khasra number regarding which mutation had also sanctioned. The Community Hall was raised during the tenure of Tara Singh, Sarpanch and Tara Singh witnessed the sale deed. Section 42-A of the East Punjab Holdings (Consolidation) Act 1948 (for short 'the Act') was amended vide notification dated 22.05.2007 as per which any land

made Rapat No.325 dated 17.02.2012 to the effect that the above persons had illegally sold the land. A similar case was registered in village Karnal, Gurdaspur on 06.03.2009 and the said case was pending in the Court of Chief Judicial Magistrate, Gurdaspur.

3. After the conclusion of the investigation, a report under Section 173(2) Cr.P.C. was presented by the police before the court of Judicial Magistrate 1st Class, Pathankot. Thereafter, the respondents were ordered to be charge-sheeted for the offences punishable under Sections 420/120-B IPC.

4. The prosecution examined seven witnesses to prove the case against the respondents. The prosecution examined PW-1 Hardeep Singh, PW-2 Dhani Ram, PW-3 Kunti Devi, PW-4 Inspector Vipin Kumar, PW-5 Amarjit Singh, ASEPO, PW-6 Balraj Singh, DDPO and PW-7 Jagir Singh, BDPO-cum-Panchayat Skatter, Narot Jaimal Singh.

5. Learned counsel for the petitioner submits that both the courts below had completely overlooked the testimonies of all the prosecution witnesses, who proved the charge against the respondents. Still further, PW-3 Kunti Devi, Ex-Sarpanch, clearly stated that the entire area vested in Gram Panchayat of the village and the community hall was raised by the Gram Panchayat in the early 1994. The building was being used by Tara Singh, when he was the Sarpanch and was put to use in the panchayat elections. Apart from that, the testimony of PW-7 Jagir Singh, BDPO was also fully ignored, who had supported the version of the prosecution. In fact, the suit property vested in shamlat deh and was the exclusive property of the Gram Panchayat, Darshopur. At the time, when Tara Singh, vendor was the

deeds in favour of Pardeep Singh, Himmat Singh and Balwan Singh regarding the land in question. Still further, the appellate court had wrongly relied upon the judgment of **Jai Singh Vs. State of Haryana 2003(2) PLR, 685**, passed by the Hon'ble Supreme Court, which has already been reversed. From the said judgment, it is evident that the entire land reserved for common purposes by applying the pro-rata cut had to be used by the Gram Panchayat for the present and future needs of the village community and it could not be re-distributed amongst the proprietors.

6. I have heard learned counsel for the petitioner and perused the record.

7. In support of the prosecution, Hardeep Singh was examined as PW-1. As per him, the respondents had illegally sold the land of Gram Panchayat, falling under the category of *Jumla Mushtarka Malkan* without any legal right. The entire area vested in Gram Panchayat of village Darshopur, Tehsil and District Pathankot. Even the community hall was constructed in the land and the boundary wall was also constructed in the year 2010. He further deposed that in the year 1994, all the accused in furtherance of their common intention had executed the sale-deeds of the land in the name of Balwan Singh, Himmat Singh and Pardeep Singh and Tara Singh was the witness of the same. PW-3 Kunti Devi also deposed on similar lines and proved the application Ex.3/A, the resolution dated 15.07.2012 passed by Gram Panchayat of Village Darshopur as Ex.PW-3/B and the resolution passed by Gram Panchayat on 15.05.2010 as Ex.PW-3/C. She also deposed that on 22.05.2007, one notification was passed by the government for amendment of Section 42-A of the Act, in which, it was

partitioned the land and can only be used the land for common purposes of the village Ex.PW3/D. She proved application of the DDPO EX.PW3/E, certified copy of Sh. Rakesh Kumar, ACJM Ex.PW3/F, certified copy of sale-deed illegally executed by accused Ex.PW3/G and resolution dated 26.02.1997 Ex.PW3/H. She also proved the certified copy of the suit filed for permanent injunction titled as Hardeep Singh and Others Ex.PW3/I and Ex.PW3/J, copy of writ petition under 13525 of 1999 Ex.PW3/K. Jamabandi for the year 2008-2009 Ex.PW3/J. She admitted in her cross-examination that the land of community hall was owned by the proprietors of the village including Chaiju Ram, who was original proprietor in the Bachat Shamlat Land. She also admitted that Himmat donated the land for community hall to panchayat through resolution. She also admitted that Gram Panchayat got the land from Himmat Singh, who was the owner of the said Bachat Land at that time. She also admitted that no objection was raised by the Panchayat at the time of execution of the said sale-deed. She also admitted that three more election of Panchayat was conducted and thrice the fresh Panchayat was formed. No objection was raised by any of the said panchayat. She also admitted that Himmat Singh, Balwan Singh and Pardeep Singh were only the purchasers vide registered sale deed and Tara Singh was the attesting witness of the sale deed. PW-4 Vipran Kumar was the marginal witness, who proved the record of application Ex.PW3/A, inquiry report Ex.PW4/A, FIR EX.PW4/B, site plan Ex.PW4/C, revenue record taken into police possession vide recovery memo Ex.PW4/D and arrest memo of the accused Ex.PW4/E. PW-5 Amarjit Singh admitted in his cross-examination that he had no knowledge that the land of the community hall was donated by

during inquiry. PW-6 Balraj Singh, DDPO, admitted in his cross-examination that the suit land was recorded as ownership of ***Jumla Mushtarka Malkan*** land *Ba Didar Haqdaran Hasab Rasab Khewat*. He also admitted that the original owner Chajju Ram had executed the sale deed Ex.PW6/A in favour of Tara Singh.

8. First of all, the appellate court had rightly observed that in the present case, the prosecution could not lead any evidence to show that the criminal conspiracy was hatched by all the accused. In fact, the offence of criminal conspiracy has to be proved like any other offence and the evidence led by the prosecution was completely lacking in this regard. Apart from that, the main charge in the present case was that the land, which vested in the Gram Panchayat, was sold by the respondents illegally. In fact, even if the case of the prosecution is admitted to be correct, still no offence is made out against the respondents, in view of the law laid down by the Hon'ble Supreme Court in the matter of **Md. Ibrahim versus State of Bihar 2009(4) RCR Criminal, 369**, wherein it has been held as under:-

“13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows : (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of

such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.”

9. Thus, it is apparent that in the present case, the purchaser could lodge a complaint under Section 420 IPC and the panchayat/the then Sarpanch of the Gram Panchayat was not competent to lodge the complaint

Supreme Court in the above mentioned case. Even otherwise, I have gone through the findings recorded by the learned courts below and there is no irregularity or perversity in the impugned judgments.

10. In view of the above discussion, the present petition is hereby dismissed, being devoid of any merits. Pending application(s), if any, shall also stand disposed of, accordingly.

11.09.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO