

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-61851-2018 (O & M)

Date of decision:10.03 .2023

Naib Singh

..... Petitioner

V/s

The State of Punjab and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Satveer Singh Badal, Advocate,
for Mr. Himmat Singh Sidhu, Advocate,
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

Mr. P.K.S. Phoolka, Advocate,
for respondent No.2.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for the quashing of order dated 29.09.2018 (Annexure P-2) passed by the Additional Sessions Judge, Bathinda, whereby the order dated 12.01.2018 passed by the Judicial Magistrate Ist Class, Bathinda, framing charges under Section 420 IPC against respondent No.2 in FIR No. 87 dated 12.07.2017 under Section 420 IPC registered at Police Station Sadar, Bathinda.

2. The brief facts of the case as emanating from the pleadings are that the petitioner/complainant is stated to be the owner of some land comprising in Khewat No.240/210, Khatoni No.786, Khasra No.29//51(2-0), 5/2(5-11), 30 Min. (3-8), total 10K 19 Marlas as per jamabandi for the year 2009-2010 of Village Balluana, Tehsil and District Bathinda. He entered into an agreement to sell dated 26.06.2014 with one Gurdas Singh for land measuring 08 canals. The amount to be received was Rs.30 lac per acre and

earnest money of Rs.5 lac was received. The sale deed was to be executed on 26.06.2014. However, later on, with mutual consent the date was extended to 26.06.2015 and 26.02.2016. When the petitioner went for the execution of the sale deed, it came to his knowledge that the above said land had been mortgaged with the Bathinda Central Cooperative Bank Ltd., Branch Balluana.

3. Due to the mortgage of the land by respondent No.2, the petitioner could not get the sale deed executed and had to pay Rs.10 lacs to the proposed vendee-Gurdas Singh as a penal amount. Despite repeated requests to the respondent No.2 to clear the bank loan or to mortgage the land in his possession with the Bank in order to enable the petitioner to execute the sale deed, the respondent No.2 despite assurance did not do either. Under these circumstances, FIR No. 87 dated 12.07.2017 under Section 420 IPC registered at Police Station Sadar, Bathinda was registered at the instance of the complainant-petitioner after a due enquiry had been conducted by the Economic Offence Wings of the Police and opinion of the D.A. Legal.

4. Pursuant to the registration of the FIR, an investigation took place and ultimately, a report under Section 173(2) Cr.P.C. came to be submitted against the respondent No.2 under Section 420 IPC. The Trial Court vide order dated 12.01.2018 framed a charge under Section 420 IPC. The copy of the said charge-sheet is attached as Annexure P-1 to the petition.

5. Aggrieved against the order dated 12.01.2018 framing charges (Annexure P-1), the respondent No.2 preferred a revision petition, which was allowed vide order dated 29.09.2018 by the Additional Sessions Judge,

Vide order dated 29.09.2018 (Annexure P-2) the order dated 12.01.2018 (Annexure P-1) whereby the charges were framed has been set aside and the matter has been remanded back to the Trial Court to pass a fresh order in accordance with the law.

6. The learned counsel for the petitioner contends that from the revenue record, it was apparent that the petitioner was in possession of the land which was agreed to be sold by him vide agreement dated 26.06.2014. However, respondent No.2 had mortgaged the said land with the Bathinda Central Cooperative Bank Ltd., Branch Balluana. Because of the said mortgage, the sale deed could not be executed by the petitioner. In this situation, the offence in question was clearly made out, and therefore, the respondent No.2 ought not to have been discharged. Even otherwise, the Revisional Court had wrongly observed that the parties being co-sharers in the whole land, no offence was made out and the matter was of a civil nature. It is his contention that by remanding the matter to the Trial Court for a fresh adjudication after making the observations in favour of the respondent No.2 left the Trial Court with no alternative but to discharge the accused.

7. The learned counsel for the discharged accused-respondent No.2, on the other hand, contends that the petitioner and the respondent No.2 were co-sharers in a joint *khata*. As per the settled law, a co-sharers is deemed to be in possession of each and every inch of the joint *khata*. Any alienation in any manner from the portion of the joint *khata* can only be of a share and not of any specific khasra number. All these transaction were always subject to the final partition between the co-sharers. Since the accused was a co-sharer, he took the loan on the portion of the joint property.

a civil nature. However, all these facts have not been taken into consideration by the Trial Court while framing the charges, and therefore, the said order had rightly been set aside.

8. The learned counsel for the State, on the other hand, contends that the FIR had been registered after an opinion of the D.A. Legal had been obtained, and therefore, the charges had rightly been framed. Therefore, there was no question of the respondent No2.-accused being discharged.

9. I have heard the learned counsel for the parties.

10. As per the admitted case of both the parties, they were co-sharers in a joint *khata*. As per the findings of the Additional Sessions Judge, Bathinda, a co-sharer is deemed to be in possession of each and every inch of the joint *khata*. The alienation of any land from a portion of the joint *khata* can only be of a share and not of any specific khasra numbers. Transactions, if any, are always subject to the final partition between the co-sharers.

11. In view of the aforesaid discussion, I find no merit in the present petition. Therefore, the same is dismissed. However, the Trial Court is directed to independently apply its mind once again to the facts of the present case on the issue of framing of charges uninfluenced by the order dated 29.09.2018 passed by the Additional Sessions Judge, Bathinda and pass a reasoned order within a period of 04 weeks from the date of receipt of a copy of this order after giving adequate opportunities to the parties.

12. The present petition is disposed of.

(JASJIT SINGH BEDI)
JUDGE

March 10, 2023
sukhpreet

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