

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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Date of Decision: 13.03.2024.

(1) CWP-5611-2019 (O&M).

KAMALJIT KAUR .. Petitioner

Versus

STATE OF PUNJAB AND OTHERS ... Respondents

(2) CWP-5628-2020 (O&M).

VARINDER SINGH RAI .. Petitioner

Versus

STATE OF PUNJAB AND OTHERS ... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Ms. Sukhpreet Kaur, Advocate,
for the petitioner(s) in both the petitions.

Ms. Niharika Sharma, AAG, Punjab
for respondents No.1 to 5.

Mr. Sukhjit Singh, Advocate, for
Mr. Damanjeet Bhiriwal, Advocate, for respondent No.6.

VINOD S. BHARDWAJ, J. (ORAL)

CM-2808-CWP-2024 IN CWP-5611-2019
CM-2773-CWP-2024 IN CWP-5628-2020

Both the applications are allowed subject to all just exceptions.

Replication in each case is taken on record.

The Registry is directed to tag the same at an appropriate place in the respective writ petition.

Main cases

Both these writ petitions emanate from a common order dated 05.02.2019 passed by the Punjab State Commission for NRIs, hence, the same are being decided by a common judgment.

2 For the facility of reference facts are extracted from CWP5611-2019 titled as ‘Kamaljit Kaur Vs. State of Punjab and others.’

3 It is averred that one Nirmal Singh, (since deceased)/Jeth (brother-in-law) of the petitioner, was earlier living in Bulgaria and he returned to India in the year 2008 and started living with the family of the petitioner. He never visited Bulgaria since after and his PAN Card, Voter Card, Aadhaar Card and other necessary licenses were got issued and were renewed in India. It is also averred that in the year 2004, a partition of ancestral property had taken place between the brothers at the family level and an agreement/family settlement was reduced into writing on 21.2.2004. Since Nirmal Singh used to reside in Bulgaria, he had also performed his marriage in Bulgaria and was having three children out of the wedlock who all live in Bulgaria and they all used to visit India. It is further averred that Nirmal Singh had purchased different landed properties vide registered sale deeds dated 09.05.2011, 25.09.2012 and 10.05.2016 which were in his

possession. A Will was later executed by Nirmal singh in favour of the petitioner on 29.01.2015. It is also averred that wife of Nirmal Singh namely Ekaterina Arthurova Singh died in Bulgaria on 13.08.2022. After the death of Nirmal Singh, his younger brother Kulwant Singh started filing false and frivolous applications to the police against the petitioner which were duly inquired into by SHO, Police Station NRI and forwarded to the Senior officers on 05.01.2018. The AIG, NRI, Ludhiana, recommended consigning of the said applications after inquiry and not finding any merit in the complaint. Since the said attempt failed to yield the desired results, Kulwant Singh obtained power of attorney from daughter of deceased Nirmal Singh and moved various application to the Punjab State NRI Commission. The same were again inquired into by the DSP, NRI, Ludhiana and even he recommended the complaint to be consigned to the AIG, NRI, Ludhiana. The said report dated 20.09.2018 was also forwarded to the DGP NRI after taking opinion from the DA (Legal) and the same was also filed vide order dated 01.11.2018. Notwithstanding that the inquiries were already conducted, a written application was submitted by Kulwant Singh to the Punjab State Commission for NRIs, whereupon the impugned order dated 05.02.2019 was passed. It is averred that vide said order, the Punjab State Commission for NRIs has issued directions to the respondent-State of Punjab to register a criminal case and to file a police report thereafter. Aggrieved thereof, the present petition has been filed averring that the Punjab State Commission for NRIs has transgressed its jurisdiction in directing registration of criminal case notwithstanding the matter had been inquired into earlier on two occasions by the different authorities and

they did not find any illegality at any point of time on the part of the petitioner.

4 Reply by way of affidavit of Ramninder Singh Deol, PPS, DSP, NRI Wing, Ludhiana, had been filed on behalf of respondents No.1, 3 and 5 wherein the said factual aspect had not been disputed. It is pointed out that the inquiry into the allegations was earlier conducted by ASI Joginder Pal and the report was received in the office of DSP, NRI, Ludhiana, with respect to the registration of Will vide Wasika No.477 dated 02.02.2015 and a civil suit is also pending. A report in this regard was thereafter sent by the DSP, NRI Ludhiana to AIG, NRI, Ludhiana, who agreed with the said report. It is further averred that the ADGP, NRI and Women Wing, Mohali constituted a SIT consisting of AIG NRI, Mohali and AIG (Head Quarter) Mohali, for inquiring into the case. The said SIT submitted its report which revealed that the dispute was civil in nature and the same had already been decided in favour of Kamaljit Kaur, the petitioner herein. The opinion of the Law Officer was also obtained and it was recommended that there is no necessity of any further action to be taken in the said case.

5 It is further averred that the allegations in the said complaints alleged that the petitioner Kamaljit Kaur had got prepared the Will by taking advantage of the disturbed mental state of Nirmal Singh. The complainant and her sister were shown to be married and wrong entries were secured in the revenue record. It is also stated that a civil suit in relation to the Will bearing Vasika No.477 dated 02.02.2015 was also pending. The report has been seen till the highest level and was corroborated by the recommendation of SIT.

6 Learned counsel for respondent No.6 has, however, reiterated his grievance as noticed in the reply and has alleged that the petitioner and her family members took undue benefit of the situation of his father and in connivance they hatched a conspiracy to transfer the personal land of the father by way of execution of will vide Wasika No.477 dated 02.02.2015. Counsel for the respondent No.6 further contends that father of respondent No.6 had been allured to execute the said will by exercising undue influence and in a well hatched conspiracy.

7 No other argument has been raised.

8 I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition, with their able assistance.

9 The dispute primarily relates to the due execution of the Will and the counsel for the petitioner contends that the issue has already been inquired into on two occasions and that civil suits are also pending amongst the parties. The operative part of the impugned order of the NRI Commission, however, reads as under:-

“From the inquiry report of ASI Joginder Pal PS NRI Ludhiana (Rural) and SHO, PS NRI Ludhiana, it is very clear that Nirmal Singh, after the death of his wife became addict of the over and went into depression and thereafter, returned to India to live in his 'kothi' in village Rasulpur Malla. Kamaljit Kaur, taking advantage of Nirmal Singh's mental condition as also alcohol addict, got the will find with the malafide intention of usurping the property of Nirmal Singh. As a part of conspiracy. It was wrongly mentioned in the text of will that

both daughters of Nirmal Singh, who are living in Bulgaria were married, whereas, actually they were not married on the particular date. Bhajan Singh son of Chanan Singh who signed the will, as a witness, has also stated that when he signed the will, as a witness, Kamaljit kaur and her son Varinder Singh, had informed him that children of Nirmal Singh, are already married and have received their share of property. It was only after this assertion he agreed to sign the will made by Nirmal Singh, as a witness.

Sarbjeet Kaur, 'Bua' of Lilia Nirmal Singh (complainant), had filed an application before SDM, Jagraon for not making the "intkal" as soon as she came to know that Kamajit Kaur, has obtained will from Nirmal Singh, by hatching conspiracy. The said application is still pending for consideration in the O/o SDM, Jagraon.

Enquiry of ASI Joginder pal, PS NRI Ludhiana (Rural) also mentioned that Kamaljit Kaur and her son Varinder Singh, did not inform the children of Nirmal Singh, who are living in Bulgaria and other local relatives when Nirmal Singh passed away on 27.05.2017.

All of these evidences make very strong case for registration of criminal case, as recommended by ASI Joginder Pal, PS NRI Ludhiana (Rural) and SHO PS NRI Ludhiana. However, DSP, NRI Wing Ludhiana without conducting a fresh enquiry has reached to the conclusion that it is a case of civil nature. Further, AIG, NRI wing Ludhiana has simply relied on the report of DSP, NRI Wing Ludhiana. DSP, NRI wing Ludhiana, report dated 07.08.2018 is verbatim repetition of the report prepared by ASI Joginder Pal, PS NRI Ludhiana (Rural) and SHO PS NRI Ludhiana. It is only the last para, where he has concluded that it is a case of civil nature, without collecting

any lota of evidence in support of his conclusions. Even AIG, NRI Ludhiana, approved the report of DSP, NRI wing Ludhiana, without examining the records.

In view of the above facts and circumstances, the commission recommends registration of case, as recommended by SHO, PS NRI Ludhiana and thereafter, filing of police report in court after completing investigation in a fair manner.

Let all the orders of Commission along with the records of the complainant be sent to DGP, Punjab for his consideration and the necessary action.”

10 Having heard the learned counsel for the respective parties and perusing the record of the case, I am of the opinion that the issue as regards the criminality and/or civil rights between the parties are required to be examined in different perspective. The power of the Punjab State Commission for NRIs is confined to make a recommendation and not to issue a direction for initiation of criminal action.

11 The Commission has recorded a finding as regards the mental capacity of Nirmal Singh, without any evidence, other than a self declaration by the complainant. Based on the said finding it has commented adversely on the due execution of the Will notwithstanding that civil proceedings were already pending as on the said date. The Commission uses a recommendatory expression while issuing a direction. The intent is corroborated from the second part of the penultimate where filing of final report has been ordered. A question of investigation and filing of report under Section 173 Cr.P.C. does not arise unless an FIR is registered.

12 The Commission has thus directed for registration of FIR after disagreeing with the report filed. It surely would amount to power under Section 156 Cr.P.C. to be exercised by a Court. It is trite law that one cannot do indirectly what cannot be done directly.

13 This Court refrains from commenting on the merits of respective claims since it may prejudice civil rights of the parties. Respondent No.6 would, however, be at liberty to take recourse to the alternative remedies to seek enforcement of its rights that she claims over the ancestral land held by Nirmal Singh and/or may alternatively pursue other remedies available to respondent No.6.

14 Both the petitions stand allowed accordingly.

15 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

16 A photocopy of this order be placed on the file of connected case.

March 13, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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