

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.

CRM-M-36102-2012
2024:PHHC: 042245

NARANJAN SINGH JANDU

. . . . Petitioner

Vs.

STATE OF PUNJAB AND OTHERS

. . . . Respondents

2.

CRM-M-36103-2012
2024:PHHC: 042247

NARANJAN SINGH JANDU

. . . . Petitioner

Vs.

STATE OF PUNJAB AND OTHERS

. . . . Respondents

Reserved on: 12.03.2024
Pronounced on : 22.03.2024

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. G.C. Dhuriwala, Advocate, for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

Mr. Tushar Sharma, Advocate, for respondents No.2 to 5.

DEEPAK GUPTA, J.

This order shall dispose of two petitions titled above, as in both of them filed under Section 482 CrPC, petitioners pray for setting aside the order dated 13.08.2012 (Annexure P4) passed by Id. Additional Sessions Judge, Barnala vide which order dated 05.03.2012 (Annexure P2) of Id. Chief Judicial Magistrate, Barnala in Criminal Complaint No.460 dated 28.09.2004 framing charges under Sections 420, 467, 468 and 120-B IPC against the accused-respondents, has been set aside.

2.1 Concededly, complainant Naranjan Singh Jhandu (*petitioner herein in both the petitions*) and accused No.1 to 3 namely, Darshan Singh, Amar Singh and Satwinder Singh are the brothers. They are the sons of accused No.4 Puran Singh.

Criminal complaint was filed by the petitioner seeking prosecution of his brothers i.e., accused-Darshan Singh, Amar Singh and Satwinder Singh, besides father Puran Singh (arrayed as accused N: 4) & one Surinder Kumar (arrayed as accused N: 5) under Sections 420/467/468/120-B IPC. According to him, he along with Darshan Singh, Amar Singh and Puran Singh had purchased 2 kanals of land vide registered sale deed dated 01.04.1968, in which he was having 1/4th share. Later on, by virtue of decree dated 19.03.1994 passed in Civil Suit No.1218 of 1993, accused Puran Singh gave his share to the complainant and this way, complainant became owner in possession of that part of the property, which was earlier owned by Puran Singh. It was alleged that said Puran Singh was under the control of accused No.1 to 3 i.e. Darshan Singh, Amar Singh and Satwinder Singh and they in connivance with accused No.5 Surinder Kumar got executed sale deed dated 09.09.2003 from Puran Singh regarding the same land, which had been earlier transferred in the name of the complainant on the basis of decree dated 19.03.1994. Accused No.5 Surinder Kumar is the attesting witness of the sale deed.

2.2 After recording evidence under Section 244 CrPC, accused was chargesheeted by the trial Magistrate to face prosecution under Section 420/ 467/ 468/120-B IPC. Since Puran Singh had died, so trial against him stood abated.

2.3 Against framing of the aforesaid charge, the accused No.1 to 3 i.e. Darshan Singh, Amar Singh and Satwinder Singh filed one revision; whereas, accused No.5-Surinder Kumar i.e. attesting witness to the sale deed, filed separate revision. Both revisions were considered by Id. Additional Sessions Judge, Barnala and vide order dated 13.08.2012 (Annexure P4), both the revisions were accepted. Order passed by the Id. Trial Magistrate, charge-sheeting the accused-revisionist, was set aside.

2.4 Against the aforesaid order dated 13.08.2012, the complainant of the case has now approached this Court by filing these two petitions, one against accused No.1 to 3 and other against accused No.5.

3. Reiterating the allegations of the complaint, it is contended by ld. counsel that ld. Additional Sessions Judge, wrongly observed that accused No.5-Surinder Kumar was only an attesting witness, as it was the specific case of the complainant that the other accused were conniving with the accused No.5-Surinder Kumar in getting the sale deed executed. Still further, it is contended that ld. Additional Sessions Judge wrongly observed that Puran Singh had never raised any accusing finger because said Puran Singh was not the owner in possession of the land in question and so, was not competent to execute any sale deed and even otherwise, he was under the domination of the other accused and this way, said Puran Singh was not the victim and rather, it is the petitioner-complainant, who was the victim, in whose favour decree had already been suffered. Ld. counsel further contended that ld. ASJ has not correctly appreciated the legal position and that the order charge-sheeting the accused-respondents, has been wrongly set aside.

4.1 Strongly opposing both the petitions, ld. counsel for the respondents contend that entire claim of the petitioner-complainant is based upon decree dated 19.03.1994. However, bare reading of the plaint of that suit would reveal that the said suit was filed qua 10 marlas of land in respect of the own share of the complainant. That suit did not pertain to the share of Puran Singh, which will be evident from the fact that in the plaint, the land situated in the west side of the suit property was shown to be that of Puran Singh. Ld. counsel contends further that petitioner never acquired any right in respect of share of Puran Singh by virtue of

the decree dated 19.03.1994 and that Puran Singh had sold the land of his ownership to accused No.1 to 3 vide sale deed dated 09.09.2003.

4.2 Still further, ld. counsel for the respondents submits that petitioner-complainant had filed a civil suit challenging the sale deed dated 09.09.2003 executed by Puran Singh, in favour of accused No.1 to 3, but that suit was dismissed on 04.04.2018 by holding that Puran Singh had never given his share to the complainant by virtue of the decree dated 19.03.1994 and thus, complainant had not acquired any right over the share/property of Puran Singh by virtue of the said decree. Ld. counsel for the respondents has also placed on record copy of the judgment and decree dated 30.10.2023 passed by ld. District Judge, Barnala, so as to contend that even the appeal filed by the complainant-Naranjan Singh Jhandu (petitioner herein) against the judgment and the decree of Civil Court dated 04.04.2018 has already been dismissed.

4.3 Defending the impugned order passed by ld. Additional Sessions Judge, prayer is made for dismissal of both the petitions.

5. I have considered submissions of both the sides and have appraised the record carefully.

6. Sale deed dated 09.09.2003 has been admittedly executed by Puran Singh in favour of accused No.1 to 3 i.e. Darshan Singh, Amar Singh and Satwinder Singh (*respondents No.2 to 4 in CRM-M-36102-2012*). Surinder Kumar-accused No.4 (*respondent No.5 in CRM-M-36102-2012*) is the attesting witness to the sale deed. Puran Singh, who had executed the sale deed way back in September 2003, never challenged the said sale deed on any ground whatsoever like fraud, undue influence or duress etc. during his life time, though Puran Singh expired only after filing of present complaint. Rather, it is the complainant-Naranjan Singh

Jhandu (petitioner herein), who filed the civil suit challenging the sale deed in favour of accused No.1 to 3 and that civil suit has been dismissed by the Additional Civil Judge by way of judgment and decree dated 04.04.2018 (Annexure R1). Even the appeal against that judgment and decree has been dismissed by Id. District Judge, Barnala on 30.10.2023.

7. Complainant claims that a decree dated 19.03.1994 had already been suffered in his favour by Puran Singh regarding the same property in respect of which sale deed dated 09.09.2003 was subsequently executed by Puran Singh in favour of accused No.1 to 3. Though the respondents have refuted the said contention on the basis of the judgments passed by the Civil Courts dismissing the suit of complainant-Naranjan Singh Jhandu (petitioner herein), but assuming for the sake of arguments that the allegations of the complainant-petitioner are true, it does not make out any criminal case against the accused. As rightly observed by the Court of Id. Additional Sessions Judge, in its impugned order dated 13.08.2012 that there is no presumption that an attesting witness of document must be assumed to be aware its contents. There was nothing on record to suggest that accused No.5-Surinder Kumar was in any manner aware that Puran Singh had already suffered a decree of the land in favour of the complainant, which was being sold by way of sale deed dated 09.09.2003. As such Id. ASJ rightly placed reliance upon ***Smt. Chandrakantaben etc. vs Vadilal Bapalal Modi & Others, 1989 AIR 1269.***

8. Coming to the case against respondents-accused Darshan Singh, Amar Singh and Satwinder Singh, they are the purchasers as per sale deed dated 09.09.2003. In case Puran Singh has sold property to these accused by virtue of sale deed dated 09.09.2003, which property had already been transferred by Puran Singh in favour of complainant-Naranjan Singh Jhandu (petitioner herein), then it

is obvious that it is the accused-Darshan Singh, Amar Singh and Satwinder Singh, who are the victims of fraud and not the complainant. It has been so held by Hon’ble Supreme Court in *Md. Ibrahim Vs. State of Bihar, 2009(4) RCR (Criminal) 369* to the effect that it is only the subsequent purchaser, who can file a complaint under Section 420 IPC on account of cheating with him. It was held that if an accused has sold property of another person claiming himself to be the owner, then it is the purchaser, who has been cheated and not the owner of the property. Purchaser may lodge a complaint under Section 420 IPC to the effect that he was cheated by the accused by making false representation of ownership to him though the accused actually was not the owner. Sale deed was not a forged , having been admittedly executed by Puran and so, Sections 467 & 468 IPC are not attracted at all.

9. In view of the legal position as above, this Court does not find any illegality in the impugned order dated 13.08.2012. Consequently, finding no merit in any of the petitions, the same are hereby dismissed.

Pending application (s), if any, also stand disposed of.

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

22.03.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Whether reportable?

Yes

No