



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved On: 16.10.2024
Pronounced on: 22.10.2024

1. CRM-M No.4200 of 2016

Radha Krishan Kuthiala through his LR Smt. Sarita Bhateja ...Petitioner

Versus

State of Punjab and Another ...Respondents

2. CRM-M No.4210 of 2016 (O&M)

Radha Krishan Kuthiala ...Petitioner

Versus

State of Punjab and Another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sunil Chadha, Sr. Advocate with
Ms. Taanvi Dhull, Advocate and
Mr. Paras Chander, Advocate
for the petitioner(s)
in CRM-M-4200-2016 & CRM-M-4210-2016

Ms. Jaspreet Kaur, Advocate for
Mr. Mohit Jaggi, Advocate
for respondent Nos.2 and 3 in CRM-M-4210-2016.

Mr. Bhanu Partap Singh, Advocate,
for respondent No.2 in CRM-M-4200-2016.

ANOOP CHITKARA, J.

CRM-8592-2021 in CRM-M-4200-2016

CRM-8669-2021 in CRM-M- 4210-2016

The present application(s) have been filed for bringing on record the sole legal heir of the sole petitioner as the petitioner-Radha Krishan Kuthiala, expired on 28.04.2020.



For the reasons stated in the application(s), the same are allowed and Smt. Sarita Bhateja, daughter of Radha Krishan Kuthiala (deceased) is impleaded as the petitioner.

Amended Memo of Parties is taken on record.

Registry to tag the same at its appropriate place in both the petitions.

Main case

FIR No.	Dated	Police Station	Sections
4	18.11.2010	NRI, District Hoshiarpur	420, 465, 467, 468 and 471 IPC

1. By this common order, two petitions are being decided. For brevity, facts are being taken from CRM-M-4200-2016 as both the petitions are arising out of the same order.
2. Seeking restoration of the order dated 29.10.2011 passed by the Chief Judicial Magistrate, Hoshiarpur, and setting aside the order dated 21.08.2015 passed by the Additional Sessions Judge, Hoshiarpur, vide which he had overturned the earlier order, the complainant came up before this Court in 2016 under Section 482 Cr.P.C.
3. Based on the complaint filed by the petitioner, an FIR No. captioned above, registered in Police Station NRI, Hoshiarpur, it is appropriate to refer to the complaint, which reads in FIR is extracted as follows:

“Complaint No. 2516-SSP-Dated 31-7-10 To SSP/HPR, Sir I had sent a power of attorney to Mr. Lakhwinder Singh s/o Charan Singh residence of Hejma PO Manak Dheri, The & Distt. Hoshiarpur, Mr. Lakhwinder Singh was introduced to me by Mr. Rattan Singh s/o Kartar Singh residence of village Dhugga Khurd, PO Khanpur Shotta. District Hoshiarpur, Mr. Rattan Singh vouched for Lakhwinder Singh. The power of attorney that I gave to Lakhwinder Singh authorized him only to get some lands vacated which are illegally occupied by using only legal means i, s police and Judiciary, He was also authorized to cultivate the said lands which are located in a few village near Bullowal Teh. & Distt Hoshiarpur. He was not authorized to sell or transfer any of my lands. Mr. Lakhwinder Singh connivance with Rtd. Brig. Satish C Kuthiala residence of house # 42 Sector 39 Noida District Ghaziabad (UP) Tel # 0120-2571349 and Rajan Kuthiala resident of Mani Majra Tel #098144-18408 and other, altered/forged the power of attorney that I had sent with the help of computer



technologies with the fake/altered power of attorney my properties located in Hoshiarpur Shimla New Delhi and Srinagar (J&K) have been sold for pennies. I have attached a copy of FIR# 167 dated 24.7.2010. I request that prompt action be taken to save my properties and deliver justice to me. Thank you very much. Respectfully SD- R.K. Kuthiala Radha Krishan Kuthiala I- Kuthiala Colony Hoshiarpur (Punjab) Tel # 244971, SHO/NRI (B/N) to enquiry & report SD SSP Hoshiarpur 31.7.10.”

4. An FIR against Lakhwinder Singh was registered for the commission of such offenses. After the investigation, a report under Section 173 Cr.P.C. was filed (Annexure P-2) in the concerned Court. However, Lakhwinder Singh could not be produced and was declared as a proclaimed offender. The petitioner, Radha Krishan Kuthiala, testified as PW1. In his statement on oath, he had leveled specific allegations against co-accused Satish Kuthiala, Deepak Kuthiala, Rajan Kuthiala, and Rattan Singh. After that, the petitioner filed an application under Section 319 CrPC to summon the accused.

5. Vide order dated 29.10.2011, the concerned CJM Hoshiarpur had allowed the said application and had ordered the summoning of the accused. For the sake of convenience, it would be appropriate to extract the said order, which reads as follows:

“Thereafter, complainant Radha Krishan Kuthiala examined as PW1, who reiterated his allegations of the complaint, but he remained very specific that he had given that that power of attorney to Lakhwinder Singh at the instance of his nephew. Deepak Kuthiala just to manage his entire properties in India That power of attorney was not for the purpose of sale of his properties. His entire litigation was taken care of by his nephew Deepak Kuthiala. Further his step nephew Satish Kuthiala was already having intention to grab properties of complainant. The complainant is residing in USA. He came to know that his nephew Deepak Kuthiala got withdraw his Ntignations pending at various courts and one of at Delhi High Court. Thereafter, they prepared forged and fabricated power of attorney sold his properties situated at Shri Nagar, Delhi, Shimla and at Hoshiarpur. The sale of that properties is just in connivance of that step nephew Satish Kuthiala, Deepak Kuthiala, Rajan and that Rattan Singh. Accordingly, he has made specific allegations against that persons regarding that cheating. Therefore, sufficient evidence has come on record to proceed against the above sald persons for the offence punishable under Sections 420/465/467/468/471 of Indian Penal Code.

5. Accordingly, above said accused namely Satish Kuthiala, Deepak Kuthiala, Rajan Kuthiala and Rattan Singh be summoned for the



above said offences, for 28.1.2012.”

6. Feeling aggrieved, two of the accused, Rajan Kuthiala and Deepak Kuthiala, approached the revisional Court and filed CRR No.18 of 2018 dated 29.08.2013 before the Additional Sessions Judge, Hoshiarpur. Vide judgment dated 21.08.2015, the said revision petition was allowed, and the application under Section 319 Cr.P.C. was dismissed.

7. The Learned Sessions Judge was of the opinion that the statement recorded under Section 299 CrPC regarding accused Lakhwinder Singh, who was declared a Proclaimed offender, could not have been used for any other purpose, including summoning the respondents as additional accused under Section 319 CrPC.

8. Feeling aggrieved, the petitioner came before this Court under Section 482 CrPC. During the pendency of the petition, he expired, and his LRs sought substitution as stated supra. The application was allowed, and the LR substituted the petitioner /Complainant.

9. I have heard counsel for the parties and gone through the record, and its analysis would lead to the following outcome.

10. The petitioner’s counsel argued that the statement of Radha Krishan Kuthiala, based on which application under Section 319 Cr.P.C. was allowed, was recorded under Section 299 CrPC but was substantive evidence under trial. On the contrary, counsel for the respondent argued that the statement was recorded because one of the accused had been declared as a proclaimed offender; the statement was recorded under section 299 Cr.P.C., and it cannot be used against other accused for any other purpose.

11. S. 299 of CrPC, 1973 reads as follows:

299. Record of evidence in absence of accused.—

(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try, or commit for trial, such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.



(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.

12. Thus, the evidence against a proclaimed accused, tendered during the an inquiry or during a trial, must be against such an accused.

13. Given the above, the impugned order should not have been based on the evidence recorded against a proclaimed person under S 299 CrPC. Consequently, the impugned order was rightly set aside, but, the Sessions Court must had remanded the matter back to the trial Court concerned, to decide the application on the other evidence but not referring to that evidence which was tendered under S. 299 CrPC against the proclaimed person Lakhwinder Singh .

14. Resultantly, the order passed by the Trial Court as well as the Sessions Court are quashed and set aside by directing the parties to appear before the trial court/concerned Chief Judicial magistrate on 10th November, 2024. The trial Court shall decide the application fresh by referring to or taking other evidence but by not referring to that evidence which was tendered under S. 299 CrPC against the proclaimed person Lakhwinder Singh.

(ANOOP CHITKARA)
JUDGE

22.10.2024
Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: YES.