

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42596 of 2015 (O&M)

Reserved on: 16.01.2024

Pronounced on: 23.01.2024

Gurdeep Singh

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Mohinder Kumar, Advocate for the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

Mr. A.P.S. Sandhu, Advocate and Mr. Hari Pal,
Advocate for respondent No.2.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioner prays for quashing of FIR No.170 dated 01.06.2015 registered at Police Station Civil Lines, Amritsar City under Section 193, 467, 468, 471 IPC and all the subsequent proceedings arising therefrom.

2.1 FIR was lodged on the complaint of respondent No.2 – Manjit Kaur, as per which her mother Smt. Mohinder Kaur wife of Gurnam Singh had died on 24.08.1985, leaving behind five children, 2 sons - Gurdeep Singh (*petitioner*) & Amarjit Singh; and 3 daughters - Kuldeep Kaur, Manjit Kaur (*respondent No.2*) and Balbir Kaur. Smt. Mohinder Kaur was having ancestral land at her parental village Jethuwal. Mutation regarding inheritance of that land was sanctioned in favour of all the legal heirs in equal shares. It was alleged that her brother Gurdeep Singh (*petitioner*) got filed an appeal through some persons in the Court of SDM, Amritsar regarding mutation of inheritance, claiming that they were 7 brothers and sisters. During hearing of those proceedings before SDM, Amritsar,

Gurdeep Singh produced an affidavit to the effect that Mohinder Kaur was having seven children. On verification from the Village Patwari, it was found that Mohinder Kaur was having five children. It was alleged by the complainant that Gurdeep Singh had given a false affidavit before the SDM, Amritsar, who dismissed the appeal. Necessary inquiry was conducted and after taking opinion of the District Attorney, present FIR was registered

2.2 After concluding investigation, final report under Section 173 Cr.P.C dated 13.08.2015 (Annexure P.2) was filed to prosecute the petitioner under Sections 193, 467, 468, 471 IPC.

3.1 It is contended by learned counsel that the petitioner has been falsely implicated. Affidavit dated 04.02.2015 given by him in the appeal case No.103 titled "Mahender Pal Singh and others Vs. Sarabjit Singh and others", under Section 13 of the Punjab Land Revenue Act in the Court of SDM, exercising the powers of Collector, Amritsar, was not false, as Mohinder Kaur had died leaving behind five daughters, namely, Harjit Kaur, Kulwant Kaur, Kuldeep Kaur, Manjit Kaur and Balbir Kaur; and two sons, namely, Gurdeep Singh and Amarjit Singh. Learned counsel further submits that petitioner's two sisters, namely, Harjit Kaur and Kulwant Kaur had died and that their respective legal heirs had filed an appeal against the mutation of inheritance relating to Mohinder Kaur and Kuldeep Kaur. Learned counsel also contends that complainant- respondent No.2 concealed the material fact that Shri Gurnam Singh, the father of the parties, i.e. husband of Mohinder Kaur had executed a registered Will dated 17.02.2004 (Annexure P5) in favour of both her sons including petitioner - Amarjit Singh and in that Will, Gurnam Singh had mentioned that he was having five daughters, namely, Jeeti, Ghunu, Jaswanti, Kanti and Pappi, i.e. by giving the nick names of his daughters;

and two sons, namely, Gurdeep Singh and Amarjit Singh. Learned counsel contends that in view of the said registered Will of the father of the parties, the contents of the affidavit were not false.

3.2 Learned counsel further contends that against the order dated 06.02.2015 (Annexure P6) passed by SDM exercising the power of Collector, Amritsar-2, Mahender Pal Singh etc., i.e. legal heirs of Harjit Kaur and Kulwant Kaur had filed a revision before Commissioner, Jalandhar Division, Jalandhar and vide order dated 21.01.2021 (Annexure P.9), order of the Collector was set aside. Revision was accepted and the matter was remanded to the SDM -cum-Asst. Collector Ist Grade, Amritsar-II for fresh decision. It was observed in that order that Lambardar had not correctly verified the legal heirs of Mohinder Kaur and Collector had not visited the spot to ascertain the actual inheritance.

3.3 Learned counsel for the petitioner further submits that the afore-said order of the Commissioner, Jalandhar Division, Jalandhar was challenged by Sarabjit Singh son of Kuldeep Kaur before the Financial Commissioner (Appeals) Punjab, Chandigarh by filing a revision but the same was dismissed vide order dated 26.05.2023 (Annexure P11), wherein it was held that Gurnam Singh, husband of Mohinder Kaur had executed a registered Will in favour of his sons and had mentioned that he had five daughters by giving nick names of his daughters as Harjit Kaur @ Jaswanti and Kulwant Kaur @ Kanti, which showed that Mohinder Kaur had seven children but still the said fact needed to be verified and so, the matter was rightly remanded by the Commissioner, Jalandhar Division, Jalandhar.

3.4 Learned counsel contends further that though the contents of the affidavit produced by petitioner before SDM-cum-Collector, has been found to be

correct by the revenue authorities but even if it be assumed for the sake of arguments that a false affidavit was given by the petitioner as is alleged by the complainant, no criminal offence is made out, so as to invoke Sections 467, 468 or 471 IPC, because no forgery whatsoever was committed. Learned counsel contends further that as far as offence under Section 193 IPC pertaining to the perjury is concerned, for that complaint is required to be filed by the Court concerned as per Section 195 Cr.P.C and in the absence of any such complaint, no Court can take cognizance of offence under Section 193 IPC.

4. In reply to the afore-said contentions, learned State Counsel supported by counsel for the complainant submits that when the case involves one cognizable offence along with one non-cognizable offences, then it should be treated as a non-cognizable offence for the purpose of Section 155(2) Cr.P.C and Magistrate is competent to take cognizance of the offence. Learned counsel placed reliance upon a judgment of Hon'ble Supreme Court in ***A. Subash Babu Vs. State of A.P and another, 2011(7) SCC 616***, and contends that even if Section 193 IPC is non-cognizable, but the other offences being cognizable, so the Court can take the cognizance. Learned State Counsel further submits that whether any forgery was committed or not; and whether the contents of the affidavit were false or not, are the disputed questions, which cannot be looked into by this Court while considering a petition under Section 482 Cr.P.C. For this, learned State Counsel relied upon a judgment of Hon'ble Supreme Court in ***Ashfaq Ahmed Quereshi and another Vs. Namrata Chopra and others, 2014(1) RCR (Criminal) 528***. Prayer is made for dismissal of the petition.

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

6. Allegations of the prosecution in brief are that petitioner produced a false affidavit, during mutation proceedings, before SDM, Amritsar exercising the powers of Collector. Assuming the said allegations at its face value to be true, the question is that whether petitioner can be said to have committed the offence of forgery so as to invoke Section 467 or 468 or 471 IPC.

7. The relevant provisions are as under:—

“465. Punishment for forgery.—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

467. Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Forgery for purpose of cheating.— Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

471. Using as genuine a forged document or electronic record.—Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.”

8. To make out the offence of forgery as per Section 465, “whoever commits forgery shall be punished for the offence under Section 465”. Forgery is defined under Section 463, which reads as under:—

“463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

9. As is evident from the above definition of ‘forgery’, for committing the offence of forgery, there must be making of a false document with intent to cause damage or injury to the public or to any person. Making the false document is *sine qua non* to constitute the offence of forgery.

10. Making a false document is defined under Section 464 IPC, which read as under:

“Section 464. Making a false document. - A person is said to make a false document or false electronic record—

First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic

signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”

11. In ***Sukhbir Singh Badal vs. Balwant Singh 2023 SCC ONLINE SC 533***, Hon’ble Supreme Court dealt with similar question. Hon’ble Apex Court referred to ***Mohammed Ibrahim vs. State of Bihar (2009) 8 SCC 751***, wherein while interpreting Sections 464 and 471 IPC and other relevant provisions of IPC, in paragraphs 13 and 14, it was observed and held as under:—

“13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a “false document”, if

- i. he made or executed a document claiming to be someone else or authorised by someone else; or*
- ii. he altered or tampered a document; or*
- iii. he obtained a document by practising deception, or from a person not in control of his senses.”*

12. So far as the offences under Sections 467, 468 and 471 IPC are concerned, Section 467 is with respect to forgery of valuable security, Will etc. Section 468 relates to forgery for the purposes of cheating. Section 471 will be applicable in case of using as genuine a forged document.

13. Adverting back to the facts of present case, though the question pertaining to the contents of the affidavit of the petitioner as to whether Mohinder Kaur had left behind 7 children or 5, is still pending before revenue authorities and thus, it is disputed question but even if it be assumed that contents of the affidavit of the petitioner were false, the said affidavit cannot be stated to be a forged document within the meaning of Section 464 Cr.P.C., so as to attract Section 463, 467, 468 or 471 IPC. As such, Sections 467, 468 and/or 471 IPC have no applicability.

14. If it is found that contents of the affidavit were false, at the most Section 193 IPC is attracted and to take cognizance thereof, a complaint is required to be filed by the Court concerned as per Section 195 Cr.P.C., before whom the false statement was made by way of the affidavit. No Court can take cognizance except on the complaint in writing of the Court concerned, before whom the false statement was made.

15. In the present case, no such complaint has been made by the Court of SDM-cum-Collector, Amritsar, for producing a false affidavit and as such, the Court cannot take cognizance of the offence under Section 193 IPC.

16. Having considered all the aspects as per above discussion, whether FIR in question along with challan qua petitioner, deserve to be quashed. In ***State of Haryana and others Vs. Ch. Bhajan Lal and others***” 1992 AIR 604, Hon’ble Supreme Court has laid down the guidelines as to the cases in which High Court can exercise its extraordinary power to quash the FIR under Section 482 Cr.PC. It was held as under: -

“8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide of myriad kinds of cases wherein such power should be exercised:

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

- (e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*
- (f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;*
- (g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

17. In the light of aforesaid well settled principles, when the facts of the present case are examined, it is found that this case is covered under guidelines number (a) to (d) & (f) of **Bhajan Lal’s case (supra)** and so, the FIR in question deserve to be quashed. Consequently, FIR No.170 dated 01.06.2015 registered at Police Station Civil Lines, Amritsar City under Section 193, 467, 468, 471 IPC and all the subsequent proceedings arising therefrom are hereby quashed.

January 23, 2024	(DEEPAK GUPTA)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No