

For the reasons mentioned in the application, the same is allowed and the delay of 28 days in filing the revision petition, is condoned.

CRR-2922-2018 and CRR-3050-2018

1. This common order shall dispose of both the above mentioned cases as they arise from identical factual matrix. However, for the sake of brevity, the facts are taken from CRR-2922-2018.

2. The present revision is preferred against judgment dated 27.04.2018 passed by learned Additional Sessions Judge, Gurdaspur vide which the judgment of conviction dated 05.03.2015 passed by learned Judicial Magistrate Ist Class, Batala in criminal complaint no. 46 dated 14.03.2009 filed under Sections 420, 467, 468, 471, 120-B of the IPC, was set aside and the respondents-accused were acquitted of charges framed against them.

3. The facts, in brief, are that respondent-Gurkmukh Singh and the petitioner were in joint possession out of joint khata of land measuring 21 kanals 1 marla bearing khasra no. 41R/8(1-12), 18/2(3-9), 23/1(6-0), 17(8-0) situated at village Harchowal, Tehsil Batala. In furtherance of his conspiracy to grab the entire land for himself, Gurmukh Singh executed a false mortgage deed dated 01.06.2000 in favour of his son respondent-Navtej Singh qua 12 kanals of land for a term of 19 years. The mutation to this effect was sanctioned however, the khasra girdawari remained in the name of the petitioner-complainant and Gurmukh Singh till Rabbi, 2024, since the Halqa Patwari had no authority to make entries regarding change in possession. Respondents-Gurmukh Singh, Navtej Singh, in connivance with Halqa Patwari respondent-Satanism Singh, got the entries reflecting name of Navtej Singh in column of cultivation qua khasra no. 41R/18/2/1(3-0) and khasra no. 41R/8(1-12), 41R/23/1(2-0) and

41R/23/2(6-0), without any orders from a revenue court or a civil court. The petitioner-complainant found out about the said changes in the *jamabandi* when Gurmukh Singh filed a civil suit qua the joint land.

4. The prosecution examined 3 witnesses in pre-charge stage, following which the respondents-accused were summoned to face charges under Sections 420,467,468,471,120-B of the IPC. All the incriminating material was put to the accused and their respective statements under Section 313 Cr.P.C. were recorded wherein they pleaded innocence and examined 1 witness in their defence. On assessing all the material available on record, the learned trial Court convicted the respondents-accused vide judgment dated 05.03.2015 and sentenced them to rigorous imprisonment of 1 year 6 months. Aggrieved by the same, the respondents preferred an appeal before the learned lower Appellate Court which was allowed vide judgment dated 27.04.2018 and the respondents-accused were acquitted of the charges framed against them.

5. Learned counsel for the petitioner assails the impugned judgment on the ground that the learned lower Appellate Court has erred in ignoring Rule 9.9 of Punjab Land Record Manual which requires the Patwari to obtain signatures of all interested parties in the roznamcha, when specific orders to that effect have been passed by a competent authority for an alteration in the khasra girdawari. CW3-Lakhwinder Singh, Girdawar Halqa has categorically admitted on re-examination that no order from any competent authority were received for making the disputed change in the girdawari. As such, the act of changing the entries in the Girdawari in favour of respondent-Navtej Singh amounts to forgery, especially when execution of the mortgage deed dated 27.04.2018 has been specifically denied by the petitioner-complainant. Furthermore, Gurmukh

Singh has also failed to prove that he was in exclusive possession of the disputed land, which would allow him to mortgage it.

6. Learned counsel further contends that the order sanctioning the mutation was passed in an arbitrary manner without going into the merits of the case and considering that Gurmukh Singh has been retained as a co-sharer and mortgaggee and the remaining $\frac{1}{2}$ share was to remain *badastoor* i.e. per previous record, a perusal of which would reflect the petitioner as a co-sharer in the disputed khara. Finally, the civil suit instituted by Gurmukh Singh for declaration and permanent injunction qua the disputed land has been dismissed by the learned trial Court vide judgment and decree dated 31.01.2014.

7. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner and respondent-Gurmukh Singh are real brothers. Admittedly, a registered mortgage deed dated 01.06.2000 with regard to a specific portion, measuring 12 kanals 0 marlas, out of the joint land was executed by Gurmukh Singh in favour of his son Navtej Singh. The mutation to this effect was sanctioned by Assistant Collector Ist Grade, Batala and duly incorporated in the 'remarks' column of the *jamabandi*. It is trite law that if a specific portion is alienated out of the joint property, the alienation shall be considered qua the share and not the specific portion. Therefore, the sanctity of the mortgage deed dated 01.06.2000 remains untainted and the same cannot be considered to be an illegal document.

8. Further, there is nothing on record to indicate any dishonest intention on the part of the respondents-accused qua entry of Navtej Singh's name in the cultivation column. Respondent-Satnam Singh, Halqa Patwari, had made entries regarding mutation in the remarks column in the *jamabandi* for the

year 1998-99 and the subsequent *jamabandi* for the year 2003-04 reflects Navtej Singh's name in the cultivation column. In his cross-examination, the petitioner-complainant has admitted that Navtej Singh was in possession of the land that was mortgaged in his favour. Therefore, the allegation of forgery of *jamabandi* for the year 2003-2004 remains unfounded.

9. This Court is of the considered opinion that the present case is an instance of a civil dispute being given the cloak of a criminal offence. The sole test to ascertain whether the initiation of criminal proceedings in a cheating case is merited is to assess whether a culpable intention can be attributed to the accused since the very beginning. Unless and until the dishonest intention right at the inception for the performance or the entrustment in terms of any transaction of civil nature is present, the criminal proceedings are totally unwarranted and the remedy lies in civil law. A two Judge bench of the Hon'ble Supreme Court in **Vesa Holdings P. Ltd. v. State of Kerala (2015) 8 SCC 293**, Speaking through Justice C. Nagappa, observed as follows:

“ 9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 I.P.C. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.”

10. In view of the facts and circumstances of the case, this Court finds no perversity or illegality in findings recorded by the learned Additional

Sessions Judge, Gurdaspur in the impugned judgment dated 27.04.2018 which warrants interference. Hence, the instant revision petition stands dismissed.

11. The connected revision petition is also disposed of in the aforementioned terms.

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

(HARPREET SINGH BRAR)
JUDGE

14.03.2024
Neha

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