

2024:PHHC:135631-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-97-MA-2017 (O & M)

Date of decision: 16.10.2024

Mithu Singh Brar

..... Appellant(s)

V/s

Devinder Kaur and anr.

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Arnav Ghai, Advocate as Amicus Curiae
for the applicant.

JASJIT SINGH BEDI, J.

CRM-6044-2008

For the reasons stated in application, same is allowed. Delay of
32 days in filing the application for leave to appeal is condoned.

CRM-A-97-MA-2017 (O & M)

The present application under Section 378(4) of Cr.P.C. has
been filed for grant of leave to appeal against the judgment of acquittal dated
05.10.2007 passed by the Judicial Magistrate Ist Class, Patiala.

2. The instant complaint No.313-T came to be filed on 19.10.1996.

The accused came to be acquitted vide judgment dated 05.10.2007. The

present application for leave to appeal is dated 07.01.2008. The matter has come up for final hearing now after more than 28 years of the filing of the complaint.

3. The instant complaint was filed by complainant Mithu Singh Brar against the accused-Devinder Kaur and others under Sections 419, 420, 465, 467, 468, 470, 471, 474 and 477-A read with Section 120-B of the Indian Penal Code, with the allegations that the complainant had purchased a plot bearing No.7 situated at Village Jhill, Tehsil and District Patiala, bearing Khewat Khatauni No. 447/1041 and now comprising in Khewat Khatauni No. 682/1969/1 Khasra No. 65//12/2 (0-17) i.e. 17 Marlas (500 Sq. Yards) vide sale deed dated 16.10.1985 from Om Parkash son of Sh. Megh Raj, resident of Patiala. The complainant after the purchase of the plot had constructed a room and a boundary Wall and mutation was sanctioned in his name. He was in possession of the said plot. The complainant was also living at Mandi Dabwali, District Sirsa and the accused knowing about this fact, hatched a conspiracy to commit an offence with an intention to usurp his property. Accused No.1 got prepared a forged power of attorney dated 29.12.1993 in her favour and the same was got signed by accused No.2 or some other person by impersonating the complainant and it was falsely witnessed by Gurdeep Singh son of Chanan Singh and Gurdial Singh of village Wazidpur. The same was got registered with the Sub Registrar, Patiala vide Wasika No.1448 dated 29.12.1993. The complainant had never executed the said General Power of Attorney and the same did not bear his signatures. The document was false, forged and a fabricated document and

had been falsely got prepared by Devinder Kaur accused in her favour as accused No.1 was never appointed as General Attorney by him. In fact accused No. 1 had no right, title or authority to deal with the property in any manner. Accused No.2 & 3 were his real brothers whereas the accused No. 1 was the sister-in-law of the complainant.

Devinder Kaur accused No.1 in connivance with the other accused in order to usurp the property of the complainant falsely executed a sale deed dated 24.01.1994 in favour of Bhola Singh, Balwinder Singh, Sinder Singh and Nishan Singh sons of Jagir Singh for an amount of Rs. 75,000/-, which was witnessed by Devinder Singh and Sarwan Singh-accused. The same was also got registered with the Sub Registrar, Patiala vide Wasika No. 6360 dated 24.01.1994. The accused No.1 had no right, title or authority to execute the sale deed dated 24.01.1994 in favour of accused No.4 to 7 as Devinder Kaur was never appointed as an Attorney by the complainant. The accused Bhola Singh and others derived no right or title in the property. No consideration passed to Devinder Kaur or him. The complainant filed a suit for permanent injunction titled as Mithu Singh Vs. Jagraj Singh etc. as the accused intended to forcibly occupy the property illegally, un-lawfully and also intended to sell the same. The suit was filed on 16.08.1994. In the said civil suit, the accused disclosed about the General Power of Attorney alleged to have been executed by the complainant in favour of Devinder Kaur and the sale deed in favour of Bhola Singh etc. and the complainant came to know about the illegal acts, mischief done by the accused. The accused No.4 to 7 during the pendency of the suit forcibly

occupied the plot of the complainant without any right, title or authority. He had never executed any General Power of Attorney and also did not receive the sale consideration. The complainant had requested the accused to surrender the possession and get the sale deed cancelled but to no avail. He had also approached the police, but to no avail. The accused had got prepared the Power of Attorney by impersonation in order to cheat him. The same was a false, forged and fabricated document. Hence, the complaint had been filed on 1/6/1996.

4. On the presentation of the complaint, a request was made by the counsel for the complainant for entrusting the complaint to Police Station Kotwali, Patiala and accordingly vide order dated 01/06/1996 passed by the then CJM, Patiala, the complaint was forwarded to Station House Officer, Police Station Kotwali, Patiala for investigation under section 156 (3) of the Code of Criminal Procedure. The report from Station House Officer, Police Station Kotwali, Patiala was received on 19.09.1996 with the opinion that a case under Section 420, 467, 468, 471 and 120-B IPC had been made out from the statements of Mithu Singh and Om Parkash.

5. The said report was considered and thereafter, the complainant was also directed to produce preliminary evidence, upon a perusal of which accused No.1, 2 & 8 were ordered to be summoned to face trial for the offences punishable under Section 467 and 471 IPC. The remaining accused No. 3 to 7, 9 & 10 were not summoned.

6. Accused No.1 , 2 & 8 put in appearance and were released on bail. Since it was a warrants case, the case was adjourned for pre-charge

evidence of the complainant. In the pre-charge evidence, the complainant got examined CW-1 OM Parkash Nagpal, PW-2 Bhagwan Singh, PW-3 Mithu Singh complainant, PW 4 Lal Chand (DSP retired) and Sh. Navdeep Gupta also inadvertently numbered as PW 4. The complainant, thereafter, closed the pre-charge evidence.

7. On perusal of the pre-charge evidence produced by the complainant, vide order dated 22.05.2004 a charge-sheet was served upon the accused No.1 & 8 for the offences punishable under Section 120-B, 465, 467 and 471 IPC. The accused No.2 Jagraj Singh was, however, discharged vide said order dated 22.05.2004. Against the said order dated 22.05.2004 the complainant preferred a revision petition before the court of Addl. Sessions Judge, Patiala and the same was dismissed vide order dated 07.06.2005.

8. After the framing of the charges, the complainant produced the witnesses the and the witnesses were further cross-examined by the defence counsel. The complainant thereafter closed the evidence.

9. The statements of the accused were recorded under Section 313 of the Code of Criminal Procedure on 10.05.2007, wherein the incriminating evidence appearing against them accused was put to them. They denied all the allegations and stated that they were innocent. Mithu Singh complainant was the elder brother of Jagraj Singh and was residing with him. Jagraj Singh helped the complainant in getting the business started. Thereafter, wife of Mithu Singh pressurized him to get Devinder Kaur and others involved in a false criminal case and prior to the marriage of Devinder Kaur

with Jagraj Singh, the wife of complainant wanted that Jagraj Singh should marry her younger sister. The complainant Mithu Singh shifted to Bathinda and executed a Power of Attorney in favour of Devinder Kaur and she disposed off the plot and the total sale consideration was handed over to the complainant against a receipt. Later on, with a malafide intention, the complainant instituted civil and criminal proceedings. The civil suit filed by the complainant had already been dismissed.

10. The details of the complainant/prosecution evidence are as under:-

CWI Sh. Om Parkash Nagpal, Advocate deposed regarding the sale of the plot in dispute to the complainant vide sale deed dated 16/10/1985 and proved on the file as ExP1. However, this witness was not produced for cross-examination after the framing of the charges and therefore, the statement of this witness cannot be read in evidence.

PW2 Bhagwan Singh is the Registry Clerk with the office of Sub-Registrar, Patiala and he brought the summoned record pertaining to the General Power of Attorney dated 29.12.1993 and the sale deed dated 24.1.1994 and proved the certified copies thereof as Ex.P5 and Ex.P6 respectively.

PW3 Mithu Singh is the complainant himself and he deposed that earlier he was residing with his brother Jugraj Singh at House No.382, Dashmesh Nagar, Patiala. He purchased a plot vide sale deed dated 16/10/1985 from Sh.O.P. Nagpal and the mutation was also sanctioned in his favour. The original sale deed was Ex.P1. The site plan annexed with the

said sale deed was proved on the file as Ex.P2. The complainant further deposed that he constructed a boundary wall around the said plot and used to sow vegetables. He asked his brother Jugraj Singh to look after the same. Devinder Kaur was his sister-in-law and wife of Jugraj Singh. Mohan Singh was also his brother. He was now residing at Dabwali and taking advantage of this fact, the accused persons forged a Power of Attorney dated 29/12/1993, impersonated him and produced some other persons as Mithu Singh. He had never signed the said Power of Attorney dated 29/12/1993 and never appeared before Sub Registrar, Patiala. The witness also connived with the accused Devinder Kaur and Jugraj Singh. On the basis of said forged Power of Attorney, a sale deed dated 24/1/1994 was executed by Devinder Kaur. The said plot had been sold for a consideration of Rs.75.000 whereas its market value was more than Rs.6 lacs at that time. The Power of Attorney had been forged by the accused persons with an intention to grab the plot of the complainant and he came to know about the same and approached the police and thereafter, filed the complaint. He got the signatures on the Power of Attorney compared from an Expert and the same were found to be forged vide report Ex.P8.

PW4 Sh. Lal Chand was a retired DSP and he deposed that he was posted as SHO, P.S. Kotwali, Patiala on 15/8/1996 and received a complaint on the basis of which he made an inquiry and also recorded the statement of Mithu Singh and others and submitted his report Ex.PW4/A. He further proved the statement of Mithu Singh and Om Parkash recorded during the investigation as Ex.PW4/B and Ex.PW4/C.

PW5 Sh. Navdeep Gupta was a Document Expert, Patiala and he deposed about his qualifications and further stated that in this case, he examined the disputed signatures of Mithu Singh in English mentioned as Q1 to Q4 on the certified Photostat copy of General Power of Attorney in civil suit No.670 of 24/10/1996 and compared these signatures with the standard signatures marked as S1/A, S2/A on the Photostat copy of sale deed dated 10/10/1985, S3/A on Vakalatnama dated 23/10/1996, S6 on Vakalatnama in favour of Sh.S.K.Sharma, Advocate and S7 on another Vakalatnama in favour of Sh.S.K.Sharma, Advocate and S7 on another Vakalatnama. He opined that the disputed signatures had not been written by the same person, who wrote the standard signatures. Rather the disputed signatures were forged signatures by impersonation. He proved the report Ex.P9 and Ex.P10 and the photographic charts Ex.P11 to Ex.P30 including the negatives.

The counsel for the complainant further tendered into evidence certified copy of judgment dated 7/6/2005 and copy of challan report Ex.PX and PY respectively.

11. The accused, on the other hand, got examined DWI Sh.R.V. Vashista, an Handwriting and Finger Prints Expert and he deposed about his qualifications and further stated that he examined the disputed, standard and admitted signatures of Mithu Singh after obtaining the permission from the Hon'ble Court in separate litigation i.e. the Civil Suit titled as "Mithu Singh Vs. Devinder Kaur". In the present complaint, the signatures were examined by him critically and minutely and he opined that the questioned signatures and the standard signatures had been written by one and the same person.

The copy of report was proved on the file as Ex.DWI/A, photographs were proved on the file as Ex.DW/1B to Ex.DW1/N and the negatives were Ex.DW1/O-1 to Ex.DW1/O-6. The certified copy of statement recorded earlier was proved on the file as Ex.DW1/P.

12. Based on the evidence led, the respondent-accused came to be acquitted vide judgment dated 05.10.2007 passed by the Judicial Magistrate Ist Class, Patiala.

13. The aforementioned judgment is under challenge before this Court.

14. The learned amicus curiae for the applicant contends that the Trial Court had misread the deposition of Navdeep Gupta as well as the deposition of R.V. Vashista, both of whom had given contrary findings regarding the forgery of Power of Attorney dated 29/12/1993. The Court was obligated to examine the reasoning given by the experts and ought to have come to a finding after a proper examination. The Trial Court had erroneously come to the finding that as the Civil Court findings had culminated in favour of the accused, they were liable to be acquitted. In fact, the findings in the civil case were not binding on the criminal Court. He, therefore, contends that the impugned judgment was liable to be set aside and the accused ought to be convicted for the offences in question.

15. We have heard the learned amicus curiae for the applicant and examined the record.

16. The present complaint had been filed by the complainant on the ground that the Power of Attorney dated 29/12/1993 had been forged by the

accused persons. The only question to be determined is regarding the forgery and fabrication of Power of Attorney dated 29/12/1993. Admittedly, on the basis of similar facts, a civil suit impugning the Power of Attorney dated 29/12/1993 as well as the sale deed dated 24/1/1994 was also filed by the present complainant. The said civil suit already stood decided vide judgment and decree dated 3/1/2006 passed by the Court of Ms.Jatinder Kaur, PCS, Addl. Civil Judge, Sr. Division, Patiala. The copy of the judgment and decree dated 3/1/2006 were proved on the file by the accused as Ex DA and Ex.DB respectively. A perusal of the judgment dated 3/1/2006 would reveal that issue No.1 was framed in the said civil suit as under:-

"1. Whether the General Power of Attorney dated 29/12/1993 in favour of defendant no.1 is forged and fabricated document?"

17. The findings on the said issue framed regarding the forgery of Power of Attorney dated 29/12/1993 were returned against the plaintiff Mithu Singh in the said Civil suit. Mithu Singh is the complainant in the present case. It has clearly been observed that the present complainant (plaintiff in the said suit) had produced inconsistent evidence and had not been able to prove the alleged forgery in execution of the Power of Attorney dated 29/12/1993.

18. In order to prove the forgery of the Power of Attorney dated 29/12/1993. the complainant-Mithu Singh himself stepped into the witness box and also got examined an Expert witness Sh.Navdeep Gupta. On the other hand, the accused got examined Sh.R.V. Vashista, Handwriting and

Finger Prints Expert. The statements of both these expert witnesses were also recorded in the civil litigation and those statements were produced in the instant case. A perusal thereof reveals that it has been suggested by the complainant that Devinder Kaur had signed as Mithu Singh on the Power of Attorney dated 29/12/1993. The Power of Attorney dated 29/12/1993 is a registered document and there are no allegations leveled by the complainant against the Sub-Registrar, before whom the said Power of Attorney was registered. It is highly improbable that a female would impersonate a male person for creation of a document before a Public Servant. Such an allegation cannot be believed. It has also come in the evidence of the complainant that the accused No.1 & 2 were related to him. The complainant was earlier residing with accused No.1 & 2 and thereafter, shifted to Dabwali. Hence, there was every occasion for the complainant to execute the said General Power of Attorney dated 29/12/1993 in favour of accused no.1.

19. The science of handwriting comparison is not a perfect science. The expert witness produced by the complainant namely Sh. Navdeep Gupta has stated during his cross-examination that some person have two or more styles of signing their signatures. One style of signatures can have marked variation from another style of writing. Same persons can also change the writing slant of their signatures knowingly. Natural variations in the standard signatures also occur. The accused, on the other hand, produced Sh. R.V. Vashista, an Expert Witness and he has opined that the signatures of Mithu Singh, complainant are there on the Power of Attorney dated 29.12.1993.

Therefore, the opinion of both private experts in favour of their respective

parties would have little evidentiary value and the attending facts and circumstances are to be seen.

20. The accused also proved on record a copy of order dated 17.05.2006 passed by the court of Sh. A.K. Singal, Sub Divisional Judicial Magistrate Dabwali, in complaint case No. 314-T/10-09-1998/18-082003/6-12-2005 and the same was also decided in favour of the accused and against the present complainant.

21. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

22. In view of the aforementioned discussion and keeping in view

to interfere with the well reasoned judgment dated 05.10.2007 passed by the Judicial Magistrate Ist Class, Patiala has been acquitted. Therefore, the application for seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

October 16, 2024
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No