2024:PHHC:044290

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-22992-2016
Date of decision : 02.04.2024

Chamkaur Singh ...... **Petitioner**

versus

State of Punjab and another ...... **Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Narinder Singh Lucky, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

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<u>PANKAJ JAIN, J. (Oral)</u>

1. Petitioner prays for quashing of FIR No.61 dated 23.02.2016, registered for the offences punishable under Sections 419/465/467/468/471/120-B of IPC at Police Station City Barnala, District Barnala.

2. FIR was registered on behest of Nirbhey Singh alleging as under:-

> "Sir, It is submitted that this land is situated near PWD, Barnala owned by Sham Lal S/o Mool Chand but he had already died and taking benefit of the same and with an intention to usurp the land, the same has been transferred in the name of Chamkaur Singh S/o Bhadur Singh R/o of village Aspal Kalan, Tehsil and District Barnala Vide Vasika No 2058 dated 19.08.2014 by Jasvinder Singh @ Binda Grewal s/o Jagtar Singh r/o Village Pharwali, M. no 9814304815. The sale deed was written by Vasika Navis Yashpal having licence no 30WL-97 who is

> working in Tehsil Barnala. In this forge sale deed Sukhwinder Singh, Lamberdar and Joginder Singh S/o Jang Singh R/o Barnala are witnesses. All these persons in connivance with each other have committed fraud. Against them case is liable to be registered.xxxx"

3. Counsel for the petitioner submits that it is a case wherein the petitioner himself has conned. He submits that he purchased property in question in good faith and was never in the knowledge that original owner Sham Lal was no more and the person executing sale deed in his favour was misrepresenting himself to be Sham Lal. He submits that the moment the legal heirs of deceased Sham Lal filed civil suit No.502 dated 31.10.2014 seeking decree of declaration with consequential relief of permanent injunction before Civil Court, the petitioner appeared and filed written statement admitting their claim specifically pleading that he was never aware of the fact that real Sham Lal son of Mool Chand son of Tirkha Ram has died and he himself has been cheated. The suit was decreed. Judgment has been placed on record as Annexure P-2. He further submits that after suffering that decree, the petitioner has also filed complaint before the police authorities asking them to enquire and investigate into impersonation of Sham Lal in executing sale deed bearing vasika No.2058 dated 19.08.2014. The same has been placed on record as Annexure P-3.

4. Status report by way of affidavit of Satvir Singh, PPS, Deputy Superintendent of Police (SD), Barnala, District Barnala has been filed. Though, the admission made by the petitioner is not disputed however reliance is being placed upon criminal antecedents of the

petitioner which have been spelled out in the status report as under:-

Sr. No.	FIR No. /Date	Offence	PS
1	38/12.05.2008	295-A IPC	Dhanaula
2	78/17.12.2011	323/324/148/149 IPC	Rureke kalan
3	34/12.04.2017	323/186/332/506 IPC	Rureke kalan
4	148/22.05.2005	323/506/341/380/148/149 IPC	Sunam
5	12/15.11.2007	302/34 IPC and 25/27 Arms Act	Dhanaula
6	173/31.12.2008	224/120-B/34 IPC	Sadar Raikot
7	139/21.04.2011	341/323/427/506/148/149 IPC	City Barnala
8	43/23.05.2015	61 Excise Act	Dhanaula
9	234/08.12.2014	61 excise Act	Sadar Dhuri
10	29/11.04.2017	323/341/506/148/149 IPC	Dhanaula
11	54/09.06.2017	61 Excise Act	Dhanaula
12	218/21.11.2018	61 excise Act	Phase-1 Mohali
13	59/17/04.2023	15/25 NDPS Act	Dhanaula

5. I have heard counsel for the parties and have gone through the records of the case.

6. Facts are not much in dispute. As per the allegations levelled in the FIR, it has been alleged that sale deed bearing vasika No.2058 dated 19.08.2014 executed in favour of the petitioner is result of impersonation. It is not disputed that the LRs of original owner Sham Lal filed suit for declaration with consequential relief of permanent injunction, wherein the petitioner filed written statement admitting their claim and also submitted that he was not aware of the fact that the vendor was not Sham Lal. Relevant part of the judgment reads as under:-

> “xx xx xx
>
> 3. Pursuant to the notice the defendant appeared and filed written statement wherein he admitted the case of the plaintiff and also submitted that the

defendant was not aware about this fact that the real Sham Lal son of Mool Chand has been died and the person who executed the sale deed no. 2058 dated 19.08.2014 by pretending himself as Sham Lal son of Mool Chand was committing fraud with him.

4. Statements of both the parties were also recorded in the court. As per the statement of defendant Chamkaur Singh, he has admitted the case of the plaintiff and has no objection to cancel the alleged sale deed bearing no. 2058 on dated 19.08.2014, since, the original Sham Lal son of Mool Chand son of Tirkha Ram has already been died on 31.10.1984. He also admitted the compromise Ex.CX after identifying his signatures over the same. Similarly, the plaintiffs also suffered a statement in the court and prayed to cancel the alleged sale deed and to pass a decree on the basis of compromise Ex.CX.

5. I have heard the Ld. Counsel for both the parties. The plaintiffs have alleged that they are an owners and in possession of the suit land, since they have inherited the same from their father Sham Lal son of Mool Chand son of Tirkha Ram who was died on 31.10.1084. However, alleged sale deed no. 2058 was executed by one Sham Lal son of Mool Chand son of Karta Ram in favour of defendant pertaining to suit property by fraudly pretending himself as father of the plaintiffs. The said fact has been admitted by the defendant Chamkaur Singh himself. The defendant Chamkaur Singh admitted the whole case of the plaintiff and arrived at a compromise Ex-CX wherein also he admitted the case of the plaintiff. The defendant also suffered a statement that he has no objection if the present

case of the plaintiff is decreed on the basis of the compromise Ex.CX and also submitted that he has no objection if the alleged sale deed is canceled.

6. Since, the defendant has admitted the claim of plaintiff and also arrived at a compromise Ex. CX with the plaintiffs, hence, there remains no issue of law or fact to be proved in this case. As such, the present suit of the plaintiffs is decreed with no order as to cost. The alleged sale deed bearing no. 2058 dated 19.08.2014 is accordingly set aside and further, the defendant is restrained from interfering or dispossessing the plaintiffs from the suit land and also restrained from alienating the suit property forcibly, illegally and except due course of law by claiming himself to be owner of the suit property. Decree sheet be prepared accordingly. The file be consigned to record room after due completion."

7. The issue with respect to cheating and forgery in such circumstances came up for consideration before Supreme Court in the case of ***Md. Ibrahim & Ors. vs. State of Bihar & Anr.*** reported as ***2010 (sup) AIR (Supreme Court) 347,*** wherein the Apex Court held as under:-

"13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or

the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

A clarification

15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term `fraud' is not defined in the Code. The dictionary definition of `fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines 'fraud' with reference to a party to a contract. In ***Dr. Vimla v. Delhi Administration, AIR 1963 Supreme Court 1572***, this Court explained the meaning of the expression 'defraud' thus:

> "The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm

> whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

The above definition was in essence reiterated in ***State of U.P. v. Ranjit Singh, 1992(2) RCR (Criminal) 40: 1992(2) SC 617***.

16. The Penal Code however defines 'fraudulently', an adjective form of the word 'fraud', in section 25, as follows :

> "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". The term "fraudulently" is mostly used with the term "dishonestly" which is defined in section 24 as follows : "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly". To `defraud' or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:
>
> (i) Fraudulent removal or concealment of property (sec.206, 421, 424)
>
> (ii) Fraudulent claim to property to prevent seizure (sect.207).
>
> (iii) Fraudulent suffering or obtaining a decree (sec.208 and 210)
>
> (iv) Fraudulent possession/delivery of

> counterfeit coin (sec.239, 240, 242 and 243).
> (v) Fraudulent alteration/diminishing weight of coin (sec. 246 to 253)
> (vi) Fraudulent acts relating to stamps (sec. 261-261)
> (vii) Fraudulent use of false instruments/weight/measure (sec.264 to 266)
> (viii) Cheating (sec. 415 to 420)
> (ix) Fraudulent prevention of debt being available to creditors (sec. 422).
> (x) Fraudulent execution of deed of transfer containing false statement of consideration (sec. 423).
> (xi) Forgery making or executing a false document (sec. 463 to 471 and 474)
> (xii) Fraudulent cancellation/destruction of valuable security etc.(sec. 477)
> (xiii) Fraudulently going through marriage ceremony (sec.496).
> It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law."

8. In view of aforesaid law, this Court finds that the contents of the FIR do not disclose any offence against the petitioner much less offences punishable under sections 419/465/467/468/471/120-B of IPC as there is no allegation that he cheated or impersonated or created any forged and fabricated document. The petitioner purchased land for valuable consideration through a sale deed which was executed by a

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person who was not actual owner of the property. In the lis filed by the LRs of the actual owner, the petitioner suffered a decree admitting that he was not in the knowledge of the fact that his vendor was not the actual owner and was in fact impersonating as actual owner.

9. Resultantly, the present FIR No.61 dated 23.02.2016, registered for the offences punishable under Sections 419/465/467/468/471/120-B of IPC at Police Station City Barnala, District Barnala is hereby quashed. However, the police parties are directed to enquire and investigate complaint Annexure P-3 and to find out the actual impersonated and to bring him to book.

10. With the aforesaid observations, present petition is disposed off.

(PANKAJ JAIN)
JUDGE

02.04.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No