

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40931-2018
Date of decision: 12.02.2024

Gurdev Singh and othersPetitioners

Versus

Jai Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K Jain, Advocate
for the petitioners.

Mr. Arvind Bansal, Advocate
for respondent-complainant.

HARPREET SINGH BRAR, J.

1. The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of the following: -

i. Criminal complaint No. RT-75 of 26.03.2014 (COMI/237/2014) titled '**Jai Singh vs. Gurdev Singh & Ors.**' filed under Sections 420, 467, 468, 471, 120-B and 34 IPC (Annexure P-1) pending before learned Judicial Magistrate Ist Class, Dera Bassi; as well as summoning order dated 08.05.2018 (Annexure P-10).

ii. Order dated 12.02.2018 (Annexure P-9) passed by learned Additional Sessions Judge, S.A.S Nagar (Mohali) in criminal revision No. 28 of 08.08.2017 (CIS No.00138/2017) vide which the order dated 03.06.2017 (Annexure P-8) passed by learned trial Court was set aside and the case was remanded back to the said court with

direction to hear the respondent-complainant on the question of summoning, afresh, as per the observations of the said revision Court;

iii.All subsequent proceedings pending before the learned trial Court qua the complaint case (Supra).

FACTUAL MATRIX

2. The facts, in brief, are that allegedly, a civil dispute regarding possession of land measuring 4 bighas and 14 Biswas is pending between the petitioners-accused and the respondent-complainant in the civil court. The said land is in possession of the present respondent and one Amar Kaur. A suit for permanent injunction was filed by the respondent against the petitioners which was decreed in his favour and the petitioners were restrained from interfering into the peaceful possession of the respondent qua the same. Thereupon, the petitioners-accused in collusion with each other forged a fictitious sale deed dated 08.05.2013 (Annexure P-3) for fictitious sale consideration of Rs.19,50,000/- in order to illegally grab the said land. In the said sale deed, petitioner no.1 Gurdev Singh has been shown as the vendor on behalf of the original owners who died before the execution of the said sale deed, whereas, petitioner no. 2 to 6 have been shown as vendees and petitioner no.7 & 8 as the witnesses. Pertinently, Gurdev Singh acted on the basis of Power of Attorney dated 30.06.1999. In the aforesaid sale deed, the petitioners have illegally mentioned khasra numbers of the aforesaid land which is in possession of the respondent, in order to show that the said land has also been sold and the possession has also been delivered. Aggrieved, the respondent preferred a complaint (supra) against the petitioners.

3. The learned trial Court after hearing arguments on the point of summoning of petitioners-accused, where the respondent-complainant examined 7 witnesses including himself as PW-6, recorded in its finding that complaint(supra) was devoid of merit and dismissed it as no offence was made out against the petitioners-accused vide order dated 03.06.2017 (Annexure P-8).

4. The respondent-complainant, aggrieved by the aforesaid order dated 03.06.2017 (Annexure P-8), filed a revision against the same before the Court of Additional Sessions Judge, S.A.S Nagar, Mohali. The said revision petition was allowed vide order dated 12.02.2018 (Annexure P-9) while setting aside the aforesaid impugned order and the learned trial Court was directed to hear the respondent-complainant on the question of summoning, afresh.

5. After taking into consideration the observations recorded by the Revision Court as well as the material on record, the learned trial Court observed that there is a prima facie case made out against the petitioners-accused and thereby, summoned them to face trial under Sections 420, 467, 468, 471 read with Section 120-B and 34 of IPC, vide order dated 08.05.2018 (Annexure P-10). Aggrieved by the same, the petitioners-accused have approached this Court in the present petition.

CONTENTIONS

6. The learned counsel for the petitioners *inter alia* contends that the petitioners-accused were not granted any opportunity to be heard by the Court of revision before passing the impugned order as dated 12.02.2018 (Annexure P-9) as they were not even summoned, thereby, making the aforesaid impugned order bad in the eyes of the law and liable to be set aside. Reliance is placed in this regard on the judgments delivered by the Hon'ble Supreme Court in

Sabitri Prasanna Banerjee vs. Smt. Tanim Banerjee, CRA-1216-1217 of 2002 (Arising out of SLP (Crl.) 2781-2782/2002), decided on 22.11.2002, P. Sundarrajan vs. R. Vidhya Sekar, 2004(13) SCC 472, Uma Nath Pandey vs. State of U.P., 2010(6) RCR (Crl.) 141, Manharibhai Muljibhai Kakadia and another vs. Shaileshbhai Mohanbhai Patel and others, CRA-1577 of 2012 (Arising out of SLP (Crl.) No. 446 of 2007) decided on 01.10.2012.

7. Learned counsel for the petitioners further submits that even on merits, the aforesaid impugned order is based on erroneous reasoning as the intention to cheat is completely missing solely on the ground that the sale deed dated 08.05.2013 was executed on the basis of General Power of Attorney dated 30.06.1999 with the consent and approval of the heirs of the original owners (deceased) as it is manifestly clear from the fact that the said legal heirs themselves approached the concerned police officials and submitted their respective joint affidavits stating that they had no objection to the sale of land and that the sale was made with their consent and that they had received their respective sale considerations. It is further contended that no additional documentary or oral evidence was examined by the learned trial Court before passing the impugned order dated 08.05.2018 (Annexure P-10) vide which a contrary view was taken from its order dated 03.06.2017 (Annexure P-8). It is further contended that the learned trial Court while initially dismissing the complaint (supra) observed that petitioner no.1 did not sell any share of the land belonging to the respondent-complainant Jai Singh or his mother-Amar Kaur.

8. Learned counsel for the petitioners further submits that since petitioner no.1-Gurdev Singh had simply acted on the basis of duly executed Power of Attorney qua the share of the original owners (deceased) with the

consent of their respective legal heirs, therefore, the offence of forgery is also not made out.

9. Learned counsel for respondent vehemently argues that the order dated 12.02.2018 (Annexure P-9) passed by the Court of revision is based on correct appreciation of the law. Since, the sale deed dated 08.05.2013 was executed in favour of petitioner no. 2 to 6 on the basis of power of attorney dated 30.06.1994 held by petitioner no.1 long after the death of all the executants of the aforesaid power of attorney, the consent of legal representatives of the said deceased did not carry any weight as the power of attorney goes with the death of the person executing it. It is further submitted that the petitioner no.1 was well aware of the deaths of the executants of the aforesaid power of attorney and still proceeded with the sale of the land in question, thereby, making him and other petitioners equally liable for commission of offence of cheating as well as forgery. It is further submitted that as the petitioners-accused were not appearing in the learned trial Court as they were not yet summoned, the Court of revision also did not find it necessary to cause their appearance.

ANALYSIS & OBSERVATION

10. Not delving into the question of disputed facts, this Court finds relevancy in discussing the following provisions of the Code of Criminal Procedure:-

“Section 399. Sessions Judge’s powers of revision

(1) In the case of any proceeding the record of which has been called for by himself the Sessions Judge may

exercise all or any of the powers which may be exercised by the High Court under Sub-Section (1) of section 401.

(2)Where any proceeding by way of revision is commenced before a Sessions Judge under Sub-Section (1), the provisions of Sub-Sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said subsections to the High Court shall be construed as references to the Sessions Judge.

(3)Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Section 400. Power of Additional Sessions Judge

“An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.”

Section 401. High Court's powers of revision

“ (1) In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly”.

11. The Hon’ble Supreme Court in the case of ‘**Manharibhai Muljibhai Kakadia and another versus Shaileshbhai Mohanbhai Patel and others, 2012(4) RCR (Criminal) 689**’, has held as under:-

“58. We are in complete agreement with the view expressed by this Court in P. Sundarrajan, Raghu Raj Singh Rousha and A.N. Santhanam. We hold, as it must be, that in a revision petition preferred by complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed crime is entitled to hearing by the revisional court. In other words, where complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition

before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the revisional court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled”.

12. A perusal of Section 401 Cr.P.C. as discussed by the Hon’ble Supreme Court in **Manharibhai Muljibhai Kakadia and another** (supra), would show that where a complaint has been dismissed by the Magistrate and the said order has been challenged by the complainant in a revision petition before the High Court or the Sessions Court, the accused in the complaint have a right to be heard in such a revision petition.

13. In the instant case, the impugned order dated 12.02.2018 (Annexure P-9) has been passed without hearing the petitioners-accused. Therefore, the impugned order dated 12.02.2018 (annexure P-9) passed by learned Additional Sessions Judge, S.A.S Nagar (Mohali) as well as order dated 08.05.2018 (Annexure P-10) passed in the complaint case (supra) vide which the petitioners have been summoned to face trial under Sections 420, 467, 468, 471, 120-B and 34 IPC, are liable to be set aside.

CONCLUSION

14. In view of the above discussion, the present petition is allowed and the case is remanded back to the Additional Sessions Judge, SAS Nagar (Mohali) and the same is directed to examine the matter afresh after hearing the petitioners/accused.

15. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

12.02.2024
Neha

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