



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-42737-2016
Reserved on 10.03.2025
Date of decision: 02.04.2025

Gulshan Rai and others

...Petitioners

Versus

Charanjit Singh through his LRs and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Parvinder Singh, Advocate for the petitioners.

Mr. H.K. Aurora, Advocate for
respondent No.1/complainant.

Mr. J.S. Dhaliwal, AAG, Punjab for
respondent No.2-State.

KARAMJIT SINGH, J.

1. The instant petition under Section 482 Cr.P.C. is filed by petitioners/accused namely Gulshan Rai, Rakesh Rai and their father Harbans Lal seeking quashing of criminal complaint (protest petition) Annexure P-1, filed by respondent No.1 and the summoning order dated 13.07.2016 Annexure P-2 passed by the Court of Judicial Magistrate Ist Class, SBS Nagar vide which the petitioners have been summoned under Sections 420, 467, 468, 471 and 120-B IPC to face trial in criminal complaint No.28/2015 RBT/CRM-3776-2013 titled as Charanjit Singh Vs. Gulshan Rai and others.

2. The brief facts of the case are that complainant Charanjit Singh was son of Mehar Singh and was permanent resident of United Kingdom. Complainant reported to the police that property in question situated on



railway road Banga was owned by his father Mehar Singh who purchased the same in a Court auction. The said property consisted of two portions. The eastern portion comprised of two rooms, bathroom and a kitchen, which was taken on rent by accused Harbans Lal from Mehar Singh in 1972-1973. The western portion comprised of three shops abutting the railway road, which were rented out to three different tenants but two of the shops were later on vacated. Mehar Singh executed 'Will' with regard to his entire estate including the aforesaid property in favour of his son Charanjit Singh. On demise of Mehar Singh, the property in question was succeeded by complainant Charanjit Singh. Taking benefit of the absence of complainant Charanjit Singh, accused Gulshan Rai, Rakesh Rai and Harbans Lal illegally occupied aforesaid two vacant shops, while the third shop is still in possession of a tenant under the complainant. After taking illegal possession of the aforesaid two shops, Gulshan Rai, Rakesh Rai and Harbans Lal started claiming that they have purchased the said shops through registered sale deeds. The complainant alleged that the concerned four sale deeds Ex.CW-5/95, Ex.CW-5/97, Ex.CW-5/99 and Ex.C-5/100 are forged and fabricated documents. The alleged vendors of the said sale deeds, were having no right, title or interest in the property in question. The alleged sale deeds were in favour of Gulshan Rai and Rakesh Rai sons of Harbans Lal. The revenue authorities wrongly sanctioned mutation No.16427 in favour of Gulshan Rai and Rakesh Rai on the basis of aforesaid alleged sale transactions. However, subsequently, the said mutation was cancelled by Assistant Collector Ist Grade, Nawashahar. The aforesaid vendees also gave false affidavit to Municipal Committee Banga, with regard to their



ownership. On the basis of the said complaint, police registered FIR No.125 dated 29.04.2004 under Sections 420 and 120-B IPC in Police Station Banga against the petitioners, the vendors and the attesting witnesses of the afore-stated registered sale deeds. The matter was investigated by the police and the accused persons joined the investigation. On completion of investigation, police presented cancellation report dated 18.01.2006 before the Court concerned. However, the same was rejected with direction to the police to further investigate the matter. Even after further investigation, police presented another cancellation report dated 19.11.2006 but the same was also rejected with direction to further investigate into the matter. Thereafter, third cancellation report was submitted by the police on 21.02.2009 and the same was accepted by the Court concerned. However, the protest petition filed by the complainant was treated as a private criminal complaint.

3. In the preliminary evidence, complainant examined CW-1 Yashpal Singh who produced summoned record maintained by Municipal Committee Banga and he proved documents Ex.CW-1/A to Ex.CW-1/C and documents Ex.CW-1/D and Ex.CW-1/E and copy of affidavit Ex.CW-1/F. CW-2 Harpreet Singh, Alhmad of the Court of Additional Sessions Judge, SBS Nagar produced the summoned record and proved documents Ex.CW-2/1 to Ex.CW-2/6. CW-3 Kashmiri Lal, Patwari Circle Banga, District SBS Nagar produced the record relating to concerned jamabandis and he proved jamabandis Ex.CW-3/A of 1982-1983 and Ex.CW-3/B of 1987-1988. CW-4 ASI Prem Lal official of SSP office, SBS Nagar produced the summoned record and proved documents Ex.CW-4/1 to Ex.CW-4/21. CW-5 Gurcharan



Singh attorney of complainant Charanjit Singh reiterated the averments made in the protest petition. He proved power of attorney Ex.CW-5/1. He also proved documents Ex.CW-5/2 to Ex.CW-5/53. He also tendered documents Ex.CW-5/54 to Ex.CW-5/100.

4. On completion of preliminary evidence, the Court of Illaqa Magistrate concerned dismissed the protest petition (criminal complaint) against the vendors and the attesting witnesses of the sale deeds in question but at the same time, summoned petitioners Gulshan Rai, Rakesh Rai and Harbans Lal as accused, to face trial under Sections 420, 467, 468, 471 and 120-B IPC, vide order Annexure P-2 dated 13.07.2016.

5. The petitioners being aggrieved have filed the present petition under Section 482 Cr.P.C. laying challenge to protest petition Annexure P-1 and summoning order dated 13.07.2016 Annexure P-2.

6. Counsel appearing on behalf of the petitioners has submitted that after the registration of FIR No.125 dated 29.04.2004 under Sections 420 and 120-B IPC in Police Station Banga against the petitioners and other persons, the investigation was conducted by the police and police presented cancellation report but the same was not accepted twice by the Court concerned with direction to further investigate the matter. However, the third cancellation report submitted by police was accepted. The protest petition Annexure P-1 filed by the complainant was treated as a private criminal complaint. The counsel for the petitioners has further submitted that the said protest petition was filed by the complainant by concealing the material facts from the Court concerned. In the protest petition, it was highlighted by the complainant that mutation sanctioned in favour of the



petitioners No.1 and 2, on the basis of alleged sale deeds was later on cancelled by the revenue authorities. However, the complainant did not disclose the fact that the said order with regard to cancellation of mutation was stayed by the Hon'ble High Court vide its order dated 08.08.2006 Annexure P-3 passed in CWP-5688-2006, which was later on admitted vide order Annexure P-4 dated 15.05.2008, in the protest petition Annexure P-1 dated 20.02.2009 which was filed much after the passing of order Annexure P-3 by the Division Bench of this Court.

7. The counsel for the petitioners has further argued that petitioners are bonafide purchasers for valuable consideration and got verified the ownership of the vendors from the concerned official record, before entering into the sale transactions in dispute. The counsel for the petitioners further submits that the case of the petitioners is on better footing than that of the vendors, as the petitioners are the actual victims in the present case. However, the trial Court while passing the impugned order Annexure P-2, dismissed the criminal complaint (protest petition) Annexure P-1 against the vendors but wrongly summoned the petitioners.

8. The counsel for the petitioners has further submitted that in the light of the law laid down by Hon'ble Supreme Court in ***Mohd. Ibrahim and others Vs. State of Bihar and another 2009 (4) RCR (Criminal) 369***, as the petitioners never made any false representation to the complainant knowing fully well that the said representation is not true and thereby the petitioners induced the complainant to deliver any property to them or to any other person, at the time of execution of sale deeds in question, no offence of cheating under Section 420 IPC is made out against the



petitioners. It has been further submitted that at the time of execution of said sale deeds, petitioners No.1 and 2 signed the same in their personal capacity and they did not impersonate anyone and thus, no forgery was committed by the petitioners. Thus, there is nothing on the record to prima facie establish that the petitioners were party to the execution of any false document as defined in Section 464 IPC.

9. The present petition is resisted by counsel for respondent No.1 who submits that the petitioners were fully aware that the property in question was owned by Mehar Singh/complainant Charanjit Singh, at the time of execution of sale deeds in question. The petitioners knowingly, in collusion with the vendors got executed the aforesaid sale deeds in their favour just to defeat the rights of the complainant with regard to property in question. It has been further submitted that petitioners were not bonafide purchasers of the property in question. That the petitioners prepared the fake documents by describing the property wherein shops were existing, as a taur (a vacant plot). The petitioners were rightly summoned by the trial Court to face trial under Sections 420, 467, 468, 471 and 120-B IPC, vide order Annexure P-2.

10. It is apparent that in the summoning order dated 13.07.2016, there is no reference to the judgment of Hon'ble Supreme Court in ***Mohd. Ibrahim's case (supra)***, wherein it was held that in case, the accused has sold a plot of land not owned by him, to another person claiming himself to be the owner of the same, no offence of forgery is made out and further as the accused cheated the purchaser and not the owner, it is purchaser who may lodge a complaint under Section 420 IPC alleging that he was cheated,



as accused made false representation of ownership but such complaint is not maintainable against the accused (vendor), on behalf of the owner of the said property.

11. This Court is also taking judicial notice of orders Annexure P-3 and Annexure P-4 passed by the Division Bench of this Court in CWP-5688-2006 dated 08.08.2006 and 15.05.2008, respectively which were not disclosed by the complainant in his protest petition despite the fact that order Annexure P-4 was passed in presence of the counsel for the complainant. The aforesaid judicial notice is being taken, in the interest of justice and otherwise also with coming into force of Bharatiya Nagarik Suraksha Sanhita (BNSS 2023), it is pertinent to note that proviso to Section 223 of BNSS 2023 mandates that an opportunity of hearing is to be given to the proposed accused before the Magistrate takes cognizance of a private complaint. The intent of the legislature is that the aforesaid statutory provision affords an opportunity to the proposed accused to put forth his case at the outset and prevent the Court from wrongly taking cognizance of the private complaint in his absence.

12. In light of the above discussion, the present petition is partly allowed and impugned order Annexure P-2 dated 13.07.2016 passed by the learned trial Court is set aside and the said Court is directed to pass a fresh order, on the basis of the preliminary evidence available on the record, in the light of the law laid down by Hon'ble Apex Court in ***Mohd. Ibrahim's case (supra)*** which is later on relied upon in ***Jit Vinayak Arolkar Vs. State of Goa 2025 INSC 31*** and the plea raised by the petitioners in the present petition to the effect that certain material facts were not disclosed by the



complainant. Before passing the fresh order, opportunity of hearing is to be given to the complainant/his counsel. The complainant is to appear through his counsel before the learned trial Court on 07.05.2025.

13. However, the present petition with regard to quashing of criminal complaint (protest petition) Annexure P-1, qua the petitioners stands dismissed.

14. Any observations made herein above are not to be construed as an expression of opinion on the merits of the case and the same are limited only for the purpose of disposal of the present petition.

02.04.2025

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No