



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

CRM-M-42406-2015
Reserved on 07.11.2024
Date of decision: 27.01.2025

Gurcharan Singh Bansal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Abhishek Chaudhary, Advocate for
Mr. Aayush Gupta, Advocate for the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

Mr. Hitesh Ghai, Advocate for respondent No.2.

KARAMJIT SINGH, J.

1. The present petition under Section 482 Cr.P.C is filed seeking quashing of FIR No.102 dated 23.08.2014 (Annexure P-1), registered under Sections 420, 447 and 120-B IPC, at Police Station Jamalpur, Ludhiana and all the subsequent proceedings arising therefrom.

2. The brief facts of the case are that complainant/respondent no.2 Partap Singh lodged complaint with the police to the effect that he purchased one plot measuring 15 marlas comprised of Khasra No.30//6/2, 7,13/2, 14/1, 15/1/1, 17/2 and 18/1 situated in village Tajpur, Tehsil and District Ludhiana, having specific boundaries, from Jasvir Kaur widow of Gurjit Singh vide registered sale deed dated 27.06.1997 Annexure R-1. The possession of the said plot was also handed over to the complainant by the vendor at the time of



execution of the sale deed. That petitioner and Dharampal were having no concern with the said plot which is owned and possessed by the complainant. The petitioner, Dharampal along with 5/6 unknown persons made an attempt to take forcible possession of the plot belonging to the complainant and they also threatened to eliminate the complainant. On the basis of the aforesaid complaint, FIR Annexure P-1 was registered against petitioner, Dharampal and 5/6 unknown persons under Sections 420, 447 and 120-B IPC.

3. The counsel for the petitioner while laying challenge to the impugned FIR, has *inter alia* argued that Jasvir Kaur sold 15 marlas of land out of joint khata to respondent No.2 vide registered sale deed dated 27.06.1997 (Annexure R-1). It has been further argued that it is settled law that the sale of a specific portion out of joint land will be considered as a sale of share out of the joint holding and as such, the petitioner cannot take any benefit of the fact that specific boundaries of the plot in question are given in the registered sale deed dated 27.06.1997. It has been further argued that there is no dispute regarding the fact that out of the said joint khata, the remaining share of Jasvir Kaur was purchased by the present petitioner. It is also settled position of law that a co-sharer cannot be held guilty of criminal trespass qua the land which is jointly possessed by all the co-sharers. In support of his arguments, the counsel for the petitioner has placed reliance upon the decision of this Court in ***Karamjit Kaur Singh Vs. State of Punjab and others 2014 (7) RCR (Criminal) 1201.***

4. The present petition is resisted by the respondents. Respondent No.1 State filed reply by way of affidavit of Gurmeet Singh, Assistant Commissioner of Police, Sahnewal, Ludhiana. Separate reply was filed on



behalf of respondent No.2, who also placed on record various documents Annexure R-1 to Annexure R-10.

5. The State counsel and the counsel for respondent No.2, while referring to sale deed Annexure R-1, have submitted that Jasvir Kaur was the owner in possession of plot in question measuring 15 marlas and she sold the same to respondent No.2 vide registered sale deed dated 27.06.1997 and the possession of the plot having specific boundaries as detailed in the sale deed, was handed over to respondent No.2. It has been further argued that petitioner is an influential person and he along with co-accused threatened to take illegal possession of the said plot and petitioner along with Dharampal accompanied by 5/6 unknown persons made an attempt to dispossess respondent No.2 illegally from the plot in question. The counsel for respondent No.2 while referring to revenue record Annexure R-3 to R-10 has further argued that the accused persons including the petitioner are having no right title or interest in the plot in question. The respondent No.2 has also filed civil suit Annexure P-2 seeking declaration to the effect that respondent No.2 is owner in possession of plot in question measuring 15 marlas having specific boundaries, which was purchased by respondent No.2 from Jasvir Kaur widow of Gurjit Singh vide sale deed dated 27.06.1997. It has been further submitted that civil Court restrained the petitioner and other accused persons from interfering into peaceful possession of respondent No.2 over the plot in question, vide order Annexure P-3. It has been further argued that on culmination of investigation, the police presented challan under Section 173 Cr.P.C. against the petitioner and his co-accused, as is evident from Annexure P-5. It has been further contended that no ground is made out to quash FIR



Annexure P-1 and final report Annexure P-5 and that the present petition deserves to be dismissed.

6. I have considered the submissions made by counsel for the parties.

7. The inter se rights and liabilities of the co-sharers were settled by a Division Bench of this Court in a very detailed judgment in ***Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram and Others AIR 1961 Pb. 528***, which were reiterated by the Full Bench of this Court in ***Bhartu Vs. Ramsarup 1981 PLJ 204*** wherein the following propositions, *inter alia*, were settled:

“(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is in the eye of law possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of other except by filing a suit for partition.

It is evident from the said propositions that when a co-sharer is in possession exclusively of some portion of the joint holding, he is in possession thereof as a co-sharer and is entitled to continue in its possession if it is not more than his share till the joint holding is partitioned. It is also undisputed that a vendor cannot sell any property with better rights than he himself has. Consequently when a co-sharer sells his share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession, what he transfers is his right as co-sharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all the co-



sharers. It was on this basis that a Division Bench of the Lahore High Court in Sukhdev v. Parsi Plaintiff and Ors. AIR 1940 Lah. 673; held that a co-sharer who is in exclusive possession of any portion of a joint khata can transfer that portion subject to adjustment of the rights of the other co-sharers therein at the time of partition and that other co-sharer's right will be sufficiently safeguarded if they are granted a decree by giving them a declaration that the possession of the transferees in the lands in dispute will be that of co-sharers, subject to adjustment at the time of partition. As is well-known, a declaratory decree is nothing but a judicial recognition of the existing rights and such a decree does not tend to create any rights. The passing of the declaratory decree, therefore, shows beyond doubt that what the vendee gets in the transfer from a co-sharer is the right of that co-sharer and not exclusive ownership of any portion of joint land. It is also undisputed that the right of pre-emption is available not only when a co-sharer sells the whole of his share but also when he sells a portion thereof. When a co-owner describes the land sold out of his share not in terms of a fractional share of the holding but in terms of measurement and khasra numbers even then he sells nothing but his rights as co-sharer in the joint holding i.e., portion of his share therein. The share in the joint holding according to the dictionary meaning also does not mean a fractional share and instead means a definite portion of property owned by a number of persons in common.

5. The rights of a transferee from a co-owner are not entirely dependent on judicial decisions but are regulated by Section 44 of the Transfer of Property Act which provides that where one or two or more co-owners of the immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property and to enforce a partition of the same but subject to conditions and liabilities affecting at the date of the transfer, the share or interest so transferred. According to this statutory provision also what transferee gets is the right of the transferor to joint possession and to enforce a partition of the same irrespective of the fact whether the property sold is fractional share or specified portion, exclusively in possession of the transferor. Again, it cannot be disputed that when a co-sharer is in exclusive possession of the specified portion of the joint holding, he is in possession thereof as a co-sharer and all the other co-sharers continue to be in its constructive possession. By the transfer of that land by one co-owner, can it be said that other co-sharers cease to be co-sharers in that land or to be in its constructive possession. The answer obviously would be in the negative because try of the other co-share is can either seek a declaration from the Court as held in Sukh Dev's case (supra) that the vendee is in possession only as a co-sharer or can initiate proceed-for partition of the joint holding including the land transferred. If the other co-sharers continue to be co-sharers in the land transferred even though comprised of specific khasra numbers how can it be said that what is sold is something other than the share out of the joint holding. That the sale of specific portion of land out of joint holding by one of the co-owners is nothing but a sale of a share cut of the joint holding, would be further elucidated if we take the example of a sale where a co-owner sells the land comprised of a particular khasra number which is not in his possession but is within his share in the joint holding. For example, "A" who is joint owner of one-fourth share in the joint holding measuring 100 bighas sells the land measuring 10 bighas bearing khasra numbers "X" and "Y" which are not in possession. On the basis of this sale, the vendee can neither



claim himself to be a transferee of the said land nor can he claim its possession from other co-owners in possession thereof. The effect in law of such a transfer would be only that the vendee shall be entitled to 10 bighas of land out of the share of his vendor at the time of partition or prior thereto to a decree for joint possession to the extent of the land purchased by him. Consequently, the effect in law of sale of even of specified portion of joint land is that it is only a sale of portion of share by one of the co-owners.

6. Take another example where "A" and "B" jointly own a khewat in equal share measuring 200 bighas. "B" is in separate possession of 100 bighas of land comprised of specific khasra numbers and transfers it to "C". This is not disputed that in spite of this sale, "A" continues to be a co-sharer in the land transferred by "B". If that is so how can it be disputed that "C" would necessarily be a co-sharer in the remaining 100 bighas of land in possession of "A" as otherwise it would mean that "A" is exclusively owner of 100 bighas of land in his possession and also a co-sharer with "C" in the remaining 100 bighas which obviously is not possible. The matter can further be illustrated by another example. "A" and "B" are co-sharers in the joint khewat, say of 100 bighas of land in equal shares. "B" who is in exclusive possession of land measuring 40 bighas of land comprised of khasra Nos. 1, 2, 3 and 4 transfers two khasra numbers, that is, 1 and 2, measuring 20 bighas to "C" specifically stating in the deed that he is in possession of these khasra numbers as a co-sharer and is transferring his interest as such. Can it be said on these facts that "C" has purchased anything except a co-sharer's interest in khasra Nos. 1 and 2 in spite of the fact that the sale is of specific numbers and of the specified area. The answer obviously would be in the negative and if so then the sale is obviously of a share by the co-sharer out of the joint land and nothing else.

7. The matter can be looked from another angle, also. If the interpretation, in Mst. Gurnam Kaur's case (supra) is accepted, the said clause u/s 15 of the Act would be liable to be rendered otiose and the purpose of the Legislature defeated by a simple device of describing the land sold by specific khasra numbers instead of fractional share. For example, if a co-owner to the extent of one-fourth share in the joint holding of 400 bighas sells land measuring 100 bighas described by specific khasra numbers, there would be no light of pre-emption of the sale according to the rule laid down in Smt. Gurnam Kaur's case (supra). However, if "A" sells one-fourth of his share measuring 100 bighas but without specifying any khasra numbers, there would be a right of pre-emption. In both cases, "A" has sold whole of his share in the joint holding but in one case the sale would be preemptible and in the other not depending on the manner how the land has been described in the sale deed. The intention to enact a provision of such illusory nature respecting the right of pre-emption by a co-sharer cannot be easily ascribed to the Legislature. If the purpose of the statute is to be carried out and the right of pre-emption to a co-sharer preserved then the words, "sale of share of joint land" have to be interpreted so as to include in its ambit any sale out of the joint holding by a co-sharer irrespective of the fact whether the land sold is fractional share or specified portion comprised of particular khasra numbers. Consequently the decisions in Mst. Gurnam Kaur's case and Bakhshish Singh's case (supra) are, hereby, overruled.

8. The learned Counsel for the Appellant, on the other hand, relying on [Radhakisan Laxminarayan Toshniwal Vs. Shridhar Ramchandra Alshi and Others](#), and [Bishan Singh and Others Vs. Khazan Singh and Another](#), , contended that the right of preemption being piratical in nature is a very



*weak right and can be defeated by all legitimate means. He, therefore argued that the interpretation of the said clause as enunciated in Mst. Gurnam Kaur's case (supra) cannot be rejected on the ground that the right of the co-sharer can be defeated by describing the land purchased in terms of specific khasra numbers because the vendee would have certainly a right to do so and he cannot be denied this right on the consideration that it would defeat the purpose of the Legislature. The argument, on the face of it, is quite attractive but has, in fact, no substance. What has been accepted by the Courts is the right of the vendee to defeat the claim of pre-emption of an individual but not the purpose of the Legislature. The purpose of the Legislature in accepting the right of a co-sharer obviously is to prevent the fragmentation of the holding, preserve the harmony among the co-sharers and avoid introduction of an undesirable person as a co-sharer. The legitimate means of a vendee to defeat the right of pre-emption of a co-sharer so far recognised by Courts is that he may transfer the land purchased by him prior to the suit to another co-sharer having an equal right of pre-emption with the pre-emptor. By doing so, no doubt, the right of the pre-emptor is defeated but not the purpose of the Legislature because the land reverts back to another co-sharer in the joint khewat and it serves all the purposes referred to above. Consequently, however weak the right of pre-emption may be, it cannot be accepted that it is so illusory that it can be defeated simply by describing the land purchased in terms of specific khasra numbers instead of fractional share. **We, therefore, answer the question in the affirmative and hold that the sale of a specific portion of land described by particular khasra numbers by a co-owner out of the joint-khewat would be a sale of share out of the joint land** and pre-emptible u/s 15(1)(b) of the Punjab Pre-emption Act. As the learned Counsel for the Appellant intends to argue the appeal on other points, this case would now go back to the learned Single Judge for final disposal.”*

8. In the present case, perusal of jamabandi Annexure R-9 for year 1987-1988 indicates that Randhir Singh father of Gurjit Singh was recorded to be co-sharer to the extent of 15/742 shares in joint land measuring 37 kanal 2 marlas comprised of khasra numbers 30//15/1(3-2), 6/2(2-0), 7 (8-0), 13/2 (4-0), 14 (8-0), 17 (8-0) and 18/1 (4-0). The share of other co-sharers was recorded as 727/742 and the land was self cultivated by all the co-sharers. As per said jamabandi, mutation of inheritance of Randhir Singh was sanctioned in favour of his sons Harjit Singh and Gurjit Singh. According to jamabandi Annexure R-10 for 1992-1993, Harjit Singh and Gurjit Singh sons of Randhir Singh were recorded to be co-owners of the said joint land measuring 37 kanal 2 marla to the extent of 15/742 shares and Harjit Singh and Gurjit Singh were recorded to be in joint possession of the said land along with other co-sharers



whose share was recorded as 727/742. From the perusal of jamabandi Annexure R-2 for year 1997-1998, it appears that on death of Gurjit Singh his wife Jasvir Kaur succeeded his estate. From the perusal of aforesaid revenue record, it appears that Gurjit Singh and thereafter, his wife Jasvir Kaur were not recorded to be in possession of any specific portion out of the aforesaid joint land measuring 37 kanal 2 marla and they were co-sharers in joint possession. Even as per jamabandi Annexure R-3, complainant is recorded to be co-sharer in joint possession of the joint holding along with other co-sharers.

9. It is admitted case of both the parties that out of the said joint land measuring 37 kanal 2 marla, Jasvir Kaur sold 15 marlas of land to respondent No.2 Partap Singh vide registered sale deed dated 27.06.1997. As per the reply submitted on behalf of respondent No.1-State, it appears that Jasvir Kaur also sold certain area to the petitioner, out of joint land.

10. The case of the complainant/respondent No.2 is that he purchased specific area in the shape of plot measuring 15 marlas out of aforesaid joint land measuring 37 kanal 2 marla vide registered sale deed dated 27.06.1997 (Annexure R-1) and that at the time of execution of said sale deed, the possession of aforesaid plot measuring 15 marlas having specific boundaries was also handed over by its owner Jasvir Kaur to complainant/respondent No.2 and since then complainant/respondent No.2 is exclusive owner in possession of aforesaid plot. There is no revenue record available on the file to show that at any point of time, Jasvir Kaur was in exclusive possession of specific area out of joint land as detailed above. It being so, there was no occasion for Jasvir Kaur to hand over possession of plot measuring 15 marlas having specific boundaries to respondent No.2/complainant, at the time of execution of sale deed (Annexure R-1).



11. In totality of the facts and circumstances as detailed above, coupled with the law laid down by Full Bench of this Court in ***Bhartu's case (supra)***, the sale of specific portion out of joint land measuring 37 kanal 2 marlas by a co-owner Jasvir Kaur in favour of respondent No.2-complainant would amount to be a sale of share out of joint land. From the perusal of the reply submitted on behalf of respondent No.1-State, it transpires that petitioner also purchased certain share out of the joint land from Jasvir Kaur. The final rights of the co-sharers have to be adjusted at the time of partition of the joint holding. The parties are already litigating in the civil Court, as is evident from Annexure P-2 which is a copy of the plaint of the civil suit filed by respondent No.2/complainant against petitioner and some other persons seeking declaration to the effect that he is owner in possession of plot in question measuring 15 marlas having specific boundaries, on the basis of sale deed 27.06.1997. The parties being co-sharers, no question of alleged criminal trespass arises, as all co-sharers are deemed to be in possession of every inch of joint property. In this context, reference be made to the decision of this Court in ***Karamjit Kaur Singh's case (supra)*** which is relied upon by the counsel for the petitioner and one another judgment of this Court passed in CRM-M-3217 of 2012 titled ***Joginder Singh and another Vs. State of Punjab and others***, decided on 16.08.2013.

12. No doubt, FIR is not a detailed chronicle of all the minute details of an offence, but in the instant case, the complainant who himself is stated to be a victim was expected to disclose to the police, at least date, month and year of the alleged incident of criminal trespass. However, the FIR Annexure P-1 is totally silent as to when the accused party made an attempt to interfere into the possession of complainant over the plot in question measuring 15 marlas. This



fact also creates doubt regarding the alleged incident of trespass.

13. Further, it is settled position of law that cheating is made out if there was fraudulent or *malafide* intention at the very inception of a transaction. In order to establish an offence of cheating punishable under Section 420 IPC, the complainant is required to show that the accused had dishonest intention at the time of making promise or representation, as is held by Hon'ble Supreme Court in ***Hridaya Ranjan Pd. Verma Vs. State of Bihar AIR 2000 SC 2341***. The same view has been recently reiterated by Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. and others Vs. State of Uttar Pradesh and Another 2024 INSC 626***. In the present case, there is nothing on the record to show that certain transactions took place between the complainant and the petitioner or that the petitioner made any such promise or representation or inducement to the complainant at any point of time. Infact, no transaction or contract has been entered into between the petitioner and complainant. In this manner, the question of any fraudulent or dishonest intention on the part of the petitioner qua the complainant, does not arise at all. Thus, the prosecution has *prima facie* failed to establish offence under Section 420 IPC against the petitioner. In this context, reference be made to the latest judgment of Hon'ble Supreme Court in Criminal Appeal No.393 of 2024 titled ***Jit Vinayak Arolkar Vs. State of Goa and others***, decided on 06.01.2025, wherein it is held that cheating case can only be filed by defrauded purchasers of the property, and not by the third parties who are not purchasers under the sale deed in question. The Hon'ble Supreme Court while passing the said judgment placed reliance on its earlier decision in ***Mohd. Ibrahim Vs. State of Bihar 2009 (8) SCC 751***.

14. Merely, leveling allegations of conspiracy, without mentioning how, where, when and which of the conspirators hatched the conspiracy, is not



sufficient to *prima facie* establish the liability of the petitioner under Section 120-B IPC. There is nothing on the record, which can be construed to show that there was a meeting of minds amongst the accused persons including the petitioner to commit an offence. Further, this Court has already held that the prosecution is unable to show that there is *prima facie* evidence to prosecute the petitioner under Sections 420 and 447 IPC.

15. After examining the entire record of the case, this Court is of the view that no offence under Sections 420, 447 and 120-B IPC is made out against the petitioner, even if, the allegations made against the petitioner by the complainant are taken at face value and accepted in entirety. It being so, the continuity of FIR Annexure P-1 will amount to miscarriage of justice and as such prosecution of the petitioner on the basis of Annexure P-1 will amount to an abuse of process of Court.

16. For the foregoing reasons, I find this a fit case where the Court should exercise its jurisdiction under Section 482 Cr.P.C to prevent the abuse of process of law. Accordingly, the petition is allowed and FIR No.102 dated 23.08.2014 (Annexure P-1), registered under Sections 420, 447 and 120-B IPC, at Police Station Jamalpur, Ludhiana and the proceedings emanating therefrom, are quashed qua the petitioner.

17. However, it is made clear that observations made herein above are limited for the purpose of disposal of the present petition only.

27.01.2025

YOGESH

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No