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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-6042-2015 (O&M)
Date of Decision:-24.07.2025

SANDHORIAN KHAN

......Petitioner

VERSUS

JAMEELA & OTHERS

......Respondents

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Deepak Aggarwal, Advocate
for the petitioner.

None for the respondent.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 14.07.2014 (Annexure P-9) passed by the Sub Divisional Judicial Magistrate, Nabha vide which the complaint bearing No.7 dated 14.01.2023 titled as *Sandhorian Khan Vs. Jameela and others* has been dismissed and further for quashing of order dated 06.01.2015 (Annexure P-10) passed by the Ld. Addl. Sessions Judge, Patiala vide which the revision filed by the petitioner has been dismissed.

2. The brief facts of the case are that the petitioner/complainant was the owner of a piece of land inherited from one Sulaman. Jameela (accused No.1) sold the said land to accused Nos.2 and 3. On a complaint being filed before the Police, no action was taken. Therefore, the petitioner preferred a criminal complaint under Sections 420, 467, 468, 120B, 148, 149

IPC.

3. The said complaint came to be dismissed by the Court of Sub Divisional Judicial Magistrate, Nabha vide order dated 14.07.2014 (Annexure P-9).

4. The aforementioned order was challenged before the Court of Addl. Sessions Judge, Patiala vide Criminal Revision No.97 dated 14.08.2014. Vide order dated 06.01.2015 the said revision petition was dismissed by the Court of Addl. Sessions Judge, Patiala.

5. The aforementioned orders are under challenge in the present petition.

6. The learned counsel for the petitioner contends that the petitioner had inherited the property but despite that fact the accused No.1 sold the said property to accused Nos.2 and 3. It is a case where the offence stands established beyond reasonable doubt. Civil proceedings have culminated in favour of the petitioner. Therefore, the impugned judgments be set aside and the accused be summoned to face trial.

7. None has put in appearance on behalf of the respondent Nos.1 and 2.

8. I have heard the learned counsel for the petitioner.

9. In ***Md. Ibrahim & others Vs. State of Bihar & another***, ***2009(4) RCR (Criminal) 369***, the Hon'ble Supreme Court held as under:-

> *"8. Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under section 467 or section 471 of Penal Code. Section 467 (in so far as it is relevant to this case)*

provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 470 defines a forged document as a false document made by forgery.

9. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below :

"464. Making a false document. - A person is said to make a false document or false electronic record -

First. - Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows

that it was not made, signed, sealed, executed or affixed; or

Secondly. - Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly. - Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note : The words 'digital signature' wherever it occurs were substituted by the words 'electronic signature' by Amendment Act 10 of 2009]."

The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories :

10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

10.2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

11. In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming *to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.*

Section 420 Indian Penal Code

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, 1999(2) RCR (Criminal) 40 : 1999(2) SCC 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 (section 206, 421, 424)

(ii) Fraudulent claim to property to prevent seizure (section 207).

(iii) Fraudulent suffering or obtaining a decree (section 208 and 210)

(iv) Fraudulent possession/delivery of counterfeit coin (section 239, 240, 242 and 243).

(v) Fraudulent alteration/diminishing weight of coin (section 246 to 253)

(vi) Fraudulent acts relating to stamps (section 261-261)

(vii) Fraudulent use of false instruments/weight/measure (section 264 to 266)

(viii) Cheating (section 415 to 420)

(ix) Fraudulent prevention of debt being available to creditors (section 422).

(x) Fraudulent execution of deed of transfer containing false statement of consideration (section 423).

(xi) Forgery making or executing a false document (section 463 to 471 and 474)

(xii) Fraudulent cancellation/destruction of valuable security etc. (section 477)

(xiii) Fraudulently going through marriage ceremony (section 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.

Section 504 of Penal Code

17. The allegations in the complaint do not also made out the *ingredients of an offence under section 504 of the Penal Code. Section 504 refers to intentional insult with intent to provoke breach of peace. The allegation in the complainant is that when he enquired with accused 1 and 2 about the sale deeds, they asserted that they will obtain possession of land under the sale deeds and he can do whatever he wants. The statement attributed to appellants 1 and 2, it cannot be said to amount to an "insult with intent to provoke breach of peace". The statement attributed to accused, even if it was true, was merely a statement referring to the consequence of execution of the sale deeds by first appellant in favour of the second appellant.*

Conclusion

18. The averments in the complaint if assumed to be true, do not make out any offence under sections 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under section 341 and causing hurt under section 323 of Indian Penal Code.

19. For the reasons stated above, the appeal is allowed in part. The order of the High Court is set aside. The order dated 14.12.2005 of the learned Sub-Divisional Magistrate is quashed insofar as offences under sections 420, 467, 471 and 504 Indian Penal Code. Consequently, the charges framed under those sections are also quashed. The order dated 14.12.2005 and the charges in so far as the offence under sections 323 and 341 Indian Penal Code are left undisturbed. The appeal is allowed in part accordingly.

Appeal allowed."

(Emphasis supplied)

10. A perusal of the aforementioned judgment would reveal that where one person is accused of selling the property of another to a third person, it is the purchaser of the property who has been cheated and not the actual owner.

11. In the instant case, taking the allegations to be correct, it was the accused respondent Nos.2 and 3 who had purchased the property from accused/respondent No.1, though the owner of the property was the petitioner. Therefore, the persons aggrieved were the purchasers and not the owner.

12. In view of the aforementioned discussion, I find no infirmity in the orders of the Sub Divisional Judicial Magistrate, Nabha and Addl. Sessions Judge, Patiala . Therefore, the present petition stands dismissed.

13. Needless to mention that this order shall have absolutely no bearing on the civil proceedings pending between the parties.

(JASJIT SINGH BEDI)
JUDGE

24.07.2025
JITESH

Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***