



THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1072-2013 (O&M)
Date of decision: 07.04.2025

Tara Singh and others ...Petitioners

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Navkiran Singh, Advocate and
Ms. Harpreet Kaur, Advocates
for the petitioners.

Mr. Kunwarbir Singh, AAG, Punjab,
for the respondent.

Mr. Malkeet Singh, Advocate,
for the complainant.

MAHABIR SINGH SINDHU, J.

Present petition has been filed, under Section 401 of Code of Criminal Procedure, 1973 (*for short “Cr.P.C”*) against judgment of conviction and order of sentence dated 21.07.2010 and 27.02.2013, passed by learned Judicial Magistrate First Class (*for short “JMIC”*) and upheld by learned Additional Sessions Judge, Shaheed Bhagat Singh Nagar (Nawanshahar) (*for short “ASJ”*), whereby petitioners were convicted and sentenced in the following manner:-

TARA SINGH

Offence	Sentence	Fine	In default
466/120-B IPC	RI for 01 year	Rs.500/-	RI for 01 month
467 IPC	RI for 03 years	Rs.1000/-	RI for 02 months
468 IPC	RI for 03 years	Rs.1000/-	RI for 02 months
471 IPC	RI for 02 years	Rs.500/-	RI for 01 month



BHAJAN SINGH, CHARAN DASS & DALBIR SINGH

Offence	Sentence	Fine	In default
467 IPC	RI for 03 years	Rs.1000/-	RI for 02 months
468 IPC	RI for 03 years	Rs.1000/-	RI for 02 months

All the substantive sentences were ordered to run concurrently.

2. The allegations, as noticed by learned ASJ, in para 2 of the judgment would be as under:-

“FIR No. 22 dated 25.06.1996 under Sections 419, 420, 467, 468, 471 and 120-B Indian Penal Code, 1860 (*for short “IPC”*), at Police Station Rahon, District SBS Nagar, was registered on the basis of statement made by Joginder Kaur wife of Harbans Singh that she is resident of Sheikhpur Bagh. Her marriage took place in 1941 with Harbans Singh son of Gujar Singh Saini, resident of Sheikhpur Bagh. Her husband after about one year of marriage had joined the Army and since after two years of marriage he did not come to her house; nor visited any relation. She does not know anything about him as to whether he is dead or alive. She has no issue. Her husband never met her after 1943. He owned 50 kanal 18 marlas of land in village Sheikhpur Bagh, which is being cultivated by her on batai through Bawa Singh @ Charan Singh son of Chhajju Singh, resident of Sheikhpur Bagh since long. Being old and having no issue, she is living in the house of Bawa Singh and he is providing her meals etc. and money for expenses. Charan Dass son of Dalipa Ram, resident of village Tajowal, who is working with co-operative society, Dopalpur forged a passbook of the society in the name of her husband and has been doing transactions on his (Harbans Singh’s) behalf by forging his signatures. Tara Singh, sarpanch of



her village and his brother Ajit Singh, both sons of Amar Singh had managed a person to impersonate Harbans Singh and created a forged Will in favour of above Tara Singh, fraudulently and dishonestly with an intention to grab his property and in this conspiracy they have associated some other persons also. This forged Will was attested by Bhajan Singh Lambardar son of Harnam Singh Rajput of village Jadla and Parkash Singh son of Amar Chand resident of village Sajjawalpur. They had made some other person to impersonate Harbans Singh, whose name she does not know and thus forged the Will dated 07.04.1992 and grabbed her land. Tara Singh and his brother Ajit Singh had further conspired with Chowkidar Partapa Ram son of Devi Ditta resident of village Bagh and had got entered a false date of death of Harbans Singh in the Chowkidara register of Partapa Ram in the year 1992, by Dalbir Singh son of Pritam Chand, ad-dharmi of Tajowal, but in fact Harbans Singh, never came back after 1943. Dalbir Singh was an employee of the Co-operative Society, Dopalpur and Tara Singh accused was its President in 1992. She has no relationship of any kind with Tara Singh; nor Harbans Singh was related to him in any way. Tara Singh, Ajit Singh residents of Sheikhpur Bagh, Charan Dass resident of Tajowal, Secretary Co-operative Society Dopalpur, Chowkidar Partapa Ram and Dalbir Singh, residents of Bagh, Bhajan Singh lambardar resident of village Jadla, Parkash Singh resident of Sajawalpur had conspired with each other by forging a passbook of her husband of the Co-operative Society, Dopalpur and effected transactions by getting a false entry of death of Harbans Singh made by Dalbir Singh in the Chowkidara register and by



forging a Will by impersonation and getting it falsely attested by Bhajan Singh lambardar Jadla and Parkash Singh resident of village Sajawalpur and by colluding with the revenue officials got a mutation of her land sanctioned on the basis of said Will and thus grabbed her land by playing a fraud and unfair means. She is a poor lady. She may be given justice.”

Subsequently, accused were arrested and after completion of investigation, report under Section 173 Cr.P.C. was presented before the Jurisdictional Magistrate.

3. On appearance of accused, in compliance of Section 207 Cr.P.C, copies of report under section 173(2) Cr.P.C. and other documents were supplied to them free of costs.

4. As the offences under Sections 120-B, 419, 468, and 471 IPC were, *prima facie*, made out, the accused were charge-sheeted on 27.03.1998 by the then Sub Divisional Judicial Magistrate, accordingly to which they did not plead guilty and claimed trial. Thereafter, the charge was amended by Criminal Revision No. 2 of 2006 vide order dated 10.12.2008 by learned ASJ and new charge framed against accused were under Sections 419, 467, 466, 468 and 471 IPC to which they did not plead guilty and claimed trial.

5. In order to prove its case, prosecution examined the following witnesses, the details of which are as under:-

PW-1 Udham Singh;
PW-2 Dilbagh Singh;
PW-3 Bikker Singh;
PW-4 Sudarshan Singh;
PW-5 Amrik Singh;
PW-6 Bawa Singh;
PW-7 ASI-Baldev Singh;
PW-8 Narinder Kumar Sharma;
PW-9 HC-Balkar Singh no.283;



PW-10 Vachittar Singh;
PW-11 Gurbaksh Singh;
PW-12 Sukhjinder Singh Patwari;
PW-13 SI-Charan Dass and
PW-14 SI-Lashkar Singh.

6. Records reveal that these witnesses were examined before the amendment of charge. Later on, the charge was amended and prosecution re-started its evidence, but learned JMIC passed an order dated 06.07.2009 that evidence, already led so far will be read in view of the charge framed afresh; but there is no necessity to examine witnesses afresh as the framing of charge is the duty of the court and the contents of the charge-sheet clearly do not give cause to lead fresh evidence. Thereafter the prosecution closed its evidence.

7. The statements of accused were recorded under Section 313 Cr.P.C. They claimed themselves to be innocent and alleged false implication due to party faction in the village and did not lead any defence evidence & closed the same.

8. After hearing both the parties and upon appraisal of the material placed on record, learned JMIC, convicted and sentenced the accused to undergo imprisonment as noticed in first paragraph of this order.

9. Feeling dis-satisfied, all the accused filed five separate appeals before learned ASJ which were dismissed vide common judgment dated 27.02.2013.

10. It is worthwhile to mention here that, during the interregnum i.e. after dismissal of aforesaid appeal and before the filing of present revision, one of the convict, namely Partapa Ram, died; therefore, revision has not been filed on his behalf.

11. Both the aforesaid judgments and order were challenged by the accused before this Court by filing present revision which came up for hearing



before the then Coordinate Bench of this Court on 16.07.2013 and the revision was disposed off in the following manner:-

“Notice of motion was issued only qua to quantum of sentence on 26.3.2013.

Learned counsel for the petitioners contends that the petitioners are facing agony of trial since registration of the FIR i.e. 25.6.1996 and they are in the age group of 45 to 58. Learned counsel further contends that the petitioners are first offenders, They are neither previous convicts nor are having any criminal background. Learned counsel prays that keeping in view the age of the petitioners and also the fact that they have already suffered a lot of mental agony as they are facing trial since 1996, their sentence, therefore, be reduced to the period already undergone by them. Learned counsel for the petitioners has also relied upon the judgments of Hon'ble the Apex Court in Gudu Ram Vs. State of Himachal Pradesh 2013 (121) AIC 6 and State of Punjab Vs. Balwinder Singh and others 2012 (1) RCR (Criminal) 424 and of this Court in Ravinder Kumar Vs. State of Punjab 2013 (2) RCR (Criminal) 807 in support of his contentions.

Learned counsel for the respondent-State has not disputed the custody period of the petitioners.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR.

Keeping in view the submissions made by learned counsel for the petitioners that the petitioners are first offenders and are not having any criminal background and are facing the agony of trial since registration of FIR i.e. 25.6.1996, the present petition is partly allowed. The judgments passed by Courts below qua conviction are upheld and sentence of the petitioners is reduced to the period already undergone by them.”

12. Feeling aggrieved, Jasbir Singh (bother-in-law of Joginder Kaur who died on 27.02.1998), approached Hon'ble the Supreme Court by way of Criminal Appeal No.1241 of 2015 and which was disposed off on 21.09.2015, while observing as under:-

“9. The prescribed maximum punishment for offence under Section 466 of IPC is seven years and fine; under Section 467 of IPC, it is imprisonment for life or imprisonment for ten years and fine; under Section 468 of IPC, it is seven years and fine and under Section 471 of IPC, it is two years or with fine or both. The trial court, having regard to the very same submissions made before the High Court, passed the sentence which we have extracted above.



10. *Though it is not possible for this court to lay down strict principles on sentencing in the absence of a sentencing policy for the State, certain indicators need to be born in mind by the Courts. The gravity of the offence, the mitigating factors and circumstances like parties buying peace, parties settling the disputes and getting reconciled, victim subsequently becoming part of the family, victim showing interest in getting monetarily compensated, etc., the motive for commission of the crime, the manner in which it was planned and committed, the prescribed punishment and the social abhorrence of the offences are but a few of them. These factors would help the court to discern and decipher the appropriate purpose of punishment and to enter a satisfaction that justice has been done. Unless there are mitigating circumstances which were omitted to be noted by the trial court, the appellate/revisional court will not be justified in arbitrarily reducing the sentence awarded by the trial court. And in any case, when the appellate/revisional court reduces the sentence, the factors leading to such reduction should be reflected in the order.*

11. *In this context, it would also be profitable to refer to **Jameel v. State of Uttar Pradesh**, wherethis Court held that the punishment should reflect the society's cry for justice against the criminals. To quote:*

"14. The general policy which the courts have followed with regard to sentencing is that the punishment must be appropriate and proportional to the gravity of the offence committed. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime."

12. *In the above circumstances, the appeal is allowed and impugned judgment is set aside. The matter is remitted to the High Court for passing an appropriate order in the case in accordance with law."*

13. In compliance of aforesaid order, Registry has listed the present revision.

14. At the outset, learned counsel for petitioners submits that one of the petitioners, namely, Charan Dass died on 03.09.2016 i.e. during pendency of present revision petition. He has produced Death Certificate of Charan Dass and the same is taken on record as Mark-X.



In view of above factual position, learned counsel for the petitioners does not press the petition *qua* Charan Dass and submits that same be disposed off as such.

15. Ordered accordingly.

16. Further submits that though initially, notice of motion was issued by the Coordinate Bench on 26.03.2013 *qua* quantum of sentence only and finally, revision was disposed off by another Coordinate Bench on 16.07.2013 while reducing the sentence of petitioners; but later on, the same was set aside by Hon'ble the Supreme Court vide order dated 21.09.2015. Now, learned counsel for petitioners contends that since order dated 16.07.2013 passed by the then Coordinate Bench has been set aside, therefore, petitioners be heard on merits and raised the following contentions:-

- i. There is no documentary evidence available on record to prove that Harbans Singh had joined Army and/or that he is no more alive. During trial, neither ID proof; nor pension card of Harbans Singh was produced by the prosecution;
- ii. Only 03 prosecution witnesses i.e. PW-2 Ex-Sarpanch Dilbagh Singh, PW6-Bawa Singh & PW11-Jasbir Singh deposed during examination-in-chief, that Harbans Singh had joined Army; but they had not seen him in the village since their age of discretion, which demonstrates that it was only a 'hearsay' evidence;
- iii. Findings of Civil Court are not binding on Criminal Court, as both these proceedings operate under different standards of proof and legal principles. Merely on surmises & conjectures, presumptions and assumptions, it cannot be inferred from the judgments of the Court below that Harbans Singh had joined Army



& thereafter, went on missing in the Second World War and/or he never came back to his native place;

iv. Complainant Joginder Kaur alleged in the FIR that after one year of their marriage, her husband (Harbans Singh) had joined Army and did not return to his house thereafter; nor visited any relation. Joginder Kaur specifically stated that she did not know whether Harbans Singh was dead or alive; therefore learned counsel contends that she has nowhere stated that Harbans Singh had died. This statement rather reinforces the plea of defence that Harbans Singh was living with petitioner No. 1- Tara Singh and not with his wife as she was not aware of his whereabouts;

v. Complainant-Joginder Kaur died before she could depose before learned trial court. Also contends that PW-11-Jasbir Singh (son of Bawa Singh) is the main beneficiary of the death of Harbans Singh; therefore, being an interested witness, his statement cannot be relied upon by the prosecution;

vi. PW-1 Udham Singh, PW-5 Amrik Singh, a member of Gram Panchayat Sheikhpur Bagh and PW-13 Joga Singh another member of Gram Panchayat Village Sheikhpur Bagh have not supported the prosecution version;

vii. Prosecution has miserably failed to prove beyond reasonable doubt that petitioner-Dalbir Singh, an employee of Cooperative Society, did commit forgery and/or played any role in the alleged crime; and

viii. There is not even an iota of evidence against petitioner-Bhajan Singh Lambardar, who had merely attested the Will dated 07.04.1992.



17. *Per contra*, learned State counsel opposes the prayer while submitting that sentence imposed by learned Courts below does not require any interference; rather petitioners deserve enhancement of punishment.

18. Learned counsel for complainant has also supported the judgment(s) and order(s) passed by both the Courts below while submitting that petitioners had waived off the right to challenge the conviction on merits vide order dated 16.07.2013; therefore, now it does not lie in their mouth to contend that after remand from Hon'ble the Supreme Court, petitioners can lay challenge to the conviction "at this stage".

18.1 Lastly submitted that sentence imposed by learned Magistrate is already on the lower side. In support of contention, he has placed reliance on ***Jaswinder Singh (Dead) through Legal Representative Versus Navjot Singh Sidhu and others, 2022(7) SCC 628.***

19. Heard learned counsel for the parties and perused the paper-book.

20. It transpires that there is no observation by Hon'ble the Supreme Court that matter is to be decided on merits regarding conviction also. Moreover, there is no quarrel that controversy had reached to Hon'ble the Supreme Court only regarding quantum of sentence. But even after hearing both sides and upon taking into consideration the material available on record, this Court does not find any illegality and/or perversity in the conviction recorded by both the Courts below due to the following reasons:-

(I) It is discernible that the Will dated 07.04.1992 in favour of petitioner-Tara Singh, propounded by petitioners to be genuine, was the subject matter of challenge in civil suit No. 575 of 1996 by Joginder Kaur (wife of Harbans Singh) and which was decreed in appeal by learned Additional District Judge vide judgment and decree dated 20.11.2006 (Civil Appeal No. 27 of 2004). For



reference, para Nos.19 & 21 which deals with the legality and validity of Will read as under:-

“19. In the light of these observations of the Hon'ble Supreme Court, it is to be seen whether the respondent has been able to dispel all the suspicious circumstances attached to the Will or not. At the outset, I will like to observe that law does not require that a Will to be registered. Mere fact that Will is a registered Will, it will not by itself be sufficient to dispel all the suspicions regarding the validity of the Will, where suspicions exist, Moreover, conscience of the Court must be satisfied that the Will in question was not only executed and attested in the manner required under law, it should also be found that the Will is the product of free volition of the executor who had voluntarily executed the same, after knowing and understanding the contents of the Will, whenever there is any suspicious circumstance, obligation is cast on the propounder of the Will to dispel the suspicious circumstances and I am supported by Gurdial Kaur and others Versus Smt. Kartar Kaur and others, 1998(i) Apex Court Journal- 657(SC) and this authority in also an answer to the authorities cited as Jambunatha Iyer Versus Sankari Ammal and others, 1995(2) Civil Court Cases-654 and Bachan singh and another Versus Bakshish Singh, 2000(3) Punjab Law Reporter-759. The case of the respondent is that Harbans Singh used to reside with him and out of love and affection and services rendered by him, Harbans singh had executed this Will, Ex. DI. Firstly for the sake of repetition, I would like to again emphasize that when Harbans singh was not alive on 7-4-1992, then the question of execution of this Will absolutely does not arise and this itself is such a serious circumstance, which proves that this Will, Ex.DI is the result of fraud, fabrication and a sham transaction. Respondent has examined, DW-1, Bhajan singh, one of the attesting witness of this Will, Ex.DI. He has falsely claimed that he personally knew deceased Harbans Singh testator inspite of the fact that



he did not belong to the caste of the testator Harbans Singh, who was of saini caste, whereas this witness DW-I, Bhajan Singh is Sikh Rajput. He is not related to the deceased. He is Lambardar of village Jadla, which is situated at a distance of four kilometers from the village of so called testator Harbans singh. He even could not tell the name or number of Lambardars in the village of the testator Harbans Singh. This witness has also appeared in the court of Sub-Divisional Magistrate, Nawanshahar, where he also made a statement on oath. Although in this court, he stated that the testator only executed this Will, on that day, yet when he was confronted with his statement. Ex. PA made in that court, he admitted that he had stated in that court of Sub-Divisional Magistrate, that the testator had also executed power of attorney alongwith the Will in favour of Tara singh. When two important documents were executed on the same date and time, how it could be believed that a person will remember the execution of one i.e. the Will and forget the other, is such a circumstance, which proves that this DWI, Bhajan singh is a tainted witness and rather connived with this respondent Tara singh in fabricating this false Will. In the trial court, when this DWI Bhajan Singh appeared, he pleaded ignorance about the fact from where the testator Harbans Singh came on the day of execution of the Will, but when he was confronted with his statement, Ex.PA, recorded before the Sub Divisional Magistrate, Nawanshahar, he made statement that Harbans Singh came from Gurdwara Charan Kanwal, Banga where he used to reside. Again in the trial court, this witness stated that Harbans singh died in village Sheikhupur Bagh, but when he was cross-examined, he admitted that in statement Ex.PA, made in the court of sub Divisional Magistrate, Nawanshahar, he stated that he did not know where Harbans singh died and these are the circumstances which prove that his evidence is not worthy of any credence and his testimoney is a tainted one and cannot be relied upon. DW-2, Taranjit Singh was also examined in this case



and he is the scribe of the Will, Ex. DI and his evidence is of no help to the respondent as he failed to prove the Identity of the testator when he stated that he neither knew the testator nor the attesting witnesses of the Will personally. The most Important evidence is the statement of respondent Tata singh, who appeared as DW4. It is an admitted fact that this respondent was not related to testator Harbans Singh. The relation which he has described was only as grand father from the brotherhood. This relation is unknown to law. The testator never resided with the respondent and was never served by him as falsely alleged by him. It is admitted fact that testator had never any dispute with his wife, Joginder Kaur plaintiff during their married life and if it is so, then how it could be believed that this testator Harbans Singh ever resided with the respondent, it is too remote to imagine because when there were very cordial relations between testator Harbans Singh-husband and Joginder Kaur plaintiff-wife, then how it can be sald that he was only served by this respondent Tara Singh, who appeared as DW4. If it is so, then why the wife, i.e.plaintiff Jogindet Kaur was disinherited without any reason. It has been admitted by this respondent Tara singh, while appearing as DW4 that this Harbans Singh was engaged in agriculture and used to parchise fertilizers from the shops and sold produce at the shops, but this DW4 Tara singh could not tell the names of the shops from where the testator used to purchase fertilizers and the name of the shop where he used to sell his produce. In the Will, Ex. DI, the age of the testator has been recorded as 75 years and in case the testator was attending his own affairs himself, then it cannot be accepted that the respondent rendered any services to him, which version automatically falsifies the tall claim of the respondent that this Will, Ex.DI is the outcome of the love and affection and services rendered to him by this respondent, what services this respondent is talking about, have not been detalled at all in his evidence. There is not an iota of evidence that he ever served the wife of



the testatory, i.e. Joginder Kaur-plaintiff. After all, from the Will, Ex. DI, it is also proved on record that the testator had love and affection for his wife when he has given half of the share of the usufruct of the produce of the land to her. This is again such a serious suspicious circumstance, which the propounder has failed to dispel. Moreover, both these witnesses, DWI Bhajan singh Lamberdar and Parkash singh belong to different villages than that of the village of the testator. There is no evidence on record to show that they were close friends, confidants or relations of the testator because normally when a Will is executed if the testator wants to keep the relations out of this Will, then certainly close friends or confidants are joined but here neither any close friend, confidant or relation is joined and this is such a grave suspicious circumstance, which casts a doubt on the genuineness of this Will Ex.D-1. The un-natural disposition of the property under this Will, Ex. D1 is again such a serious suspicious circumstance which discards the Will from its core. It is an admitted fact that testator had no issue. His wife, Joginder Kaur plaintiff was the only sole legal heir. In these circumstances, why the testator had bequeathed his entire estate in favour of the respondent who was not related to him in any way, nor to his wife, Joginder Kaur plaintiff, who has been given only right to get half share in the usufruct of the land without any right of alienation. Infact right as given above to Joginder Kaur plaintiff under this Will, Ex. DI is a illusory as she has been practically dis-inherited from his estate by the testator without assigning any reason and the propounder has not been able to dispel this serious circumstance attached to the Will, Ex.DI. Again keeping this Will, Ex.DI for more than four years secretly and not reporting the same, makes it a suspicious one. These were the suspicious circumstance which the propounder was required to dispel and the propounder has failed to dispel the same and it has not satisfied the conscience of the Court.”



“21. As an upshot of my above discussion, the trial court has committed grave illegality and irregularity while returning findings on Issues No. 1 to 3 against the appellants which has caused mis-carriage of justice because Will, Ex.DI propounded by the respondent is a sham, fabricated and false document prepared by respondent Tara Singh in connivance with Bhajan singh Lamberdar, Parkash Singh, the alleged attesting witnesses of this Will, Ex. DI, as well as, scribe Taranjit singh and the findings of the trial court on these issues are reversed and decided in favour of the appellant and against the respondent. Consequently this appeal is allowed with costs and the impugned judgment and decree are set aside and as its consequence, the suit of the plaintiff-appellant for declaration with consequential relief of permanent injunction as prayed for is decreed. Counsel’s fee assessed to Rs. 1,000/-. Decree-sheet be drawn accordingly. Trial court's record along with a copy of this judgment be sent back forthwith. File of this court be consigned.”

(II) The aforesaid findings attained finality upto Hon’ble the Supreme Court vide SLP (Civil) No. 10918 of 2010 decided on 04.01.2013. Thus, it is established by Civil Court that the Will dated 07.04.1992 is a forged and fabricated document.

(III) The question emerged as to whether the findings of Civil Court will have some bearing on the present criminal proceedings or not?

Hon’ble the Supreme Court in ***Iqbal Singh Marwah and another Versus Meenakshi Marwah and another (2005)4 SCC 370*** while placing reliance on Constitution Bench in ***M.S. Sheriff Versus State of Madras, AIR 1954 SC 397*** laid down the parameters to be followed in case of standard of proof required in



civil and criminal proceedings and paragraph 32 thereof, being relevant, is recapitulated as under:-

“32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a Constitution Bench in M.S. Sheriff v. State of Madras give a complete answer to the problem posed: (AIR p. 399, paras 15-16)

"15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its



end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.”

(IV) Of Course, in view of the above, legal position, the judgment passed by Civil Court is not binding upon the Criminal Court as nature of proof required for both Courts operate in different spheres. At the same time, it cannot be lost sight of the fact that a judgment passed by Civil Court is relevant to the Criminal Court in terms of Sections 40 to 43 of the Evidence Act.

(V) Records reveal that entire case of the prosecution hinges on the premise as to whether Harbans Singh remained unheard since 1945 or not? In this regard, it is profitable to recapitulate the provisions of Section 108 of the Evidence Act which reads as under:-

“108. Burden of proving that a person is alive who has not been heard of for seven years.

Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.”

A bare perusal of the above provision of law reveals that it carves out an exception to the settled principle of Evidence Act that burden to prove its case always lies upon the prosecution. However, if it is proved that a person has not been heard of for seven years by those who would naturally have heard of him if he had been alive, then the burden of proof that he is still alive, would rest upon the person who affirms the factum of his living.



(VI) In the present case, prosecution alleges that Harbans Singh was not heard after 1945; therefore, his wife Joginder Kaur filed a suit No. 575 of 1996 for seeking declaration *qua* his civil death and claimed consequential right of ownership upon his property being Class-I heir. On the contrary, the defence of the accused is that Harbans Singh was alive and had been staying with Tara Singh (petitioner No.1) in the same village and also executed a Will in his favour.

(VII) In such a fact-situation, the onus to prove that Harbans Singh was alive lies upon the accused/petitioners which they miserably failed to discharge; despite availing sufficient opportunities and ultimately, has chosen not to lead any defence evidence.

(VIII) The factual matrix of the case in hand is such that there cannot be any positive proof by the prosecution regarding death of Harbans Singh and as such it can be safely concluded beyond shadow of reasonable doubt that the Will in question was a forged document.

(IX) With regard to culpability of petitioners in the present case is concerned, the prosecution has duly established on record that Harbans Singh had gone to serve Army during “Second World War” but went missing. Thereafter, he was not heard by any one in the village since 1945. PW-2 Dilbagh Singh, PW-6 Bawa Singh and PW-11 Jasbir Singh have stated in unison that Harbans Singh was missing in action since 1945 and was not heard of for a period of more than 45 years. Petitioners Tara Singh, Charan Dass (since deceased) and Dalbir Singh in connivance with each other opened fake joint bank account in the names of Tara Singh and Harbans



Singh; forged and fabricated Will dated 07.04.1992 purported to be attested by petitioner Bhajan Singh Lambardar and mortgaged the land measuring 50 kanals, 18 Marlas left by Harbans Singh. Thereafter, the accused procured a wrong death entry of Harbans Singh on 23.12.1992 from Chowkidar of village, namely Partapa Ram (since deceased).

(X) Apart that, documentary evidence in the shape of CFSL report dated 14.07.1997 produced on record by the prosecution proves the fact that the “account opening form” alleged to be of the deceased was signed by accused Charan Dass (now deceased) along with Tara Singh.

21. The argument raised by learned counsel for petitioners that PW-11 Jasbir Singh cannot be relied upon being an interested witness is liable to be rejected for the reason that evidence of a witness cannot be brushed aside outrightly only because of interested person. It is settled law that evidence of an interested witness has to be evaluated with care and caution.

22. In *Masalti v. State of U.P.*, 1964 SCC Online SC 30, Hon'ble the Apex Court in paragraph 14 observed as under:

“14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.”

In the present case, PW-11 was cross-examined at length but his testimony could not be shaken and he stood his ground.

23. In view of the sufficient evidence on record, this Court is not persuaded by the pleas raised by the petitioners; therefore, the reasoning assigned



by both the Courts below do not require any interference by this Court while exercising revisional jurisdiction under Section 401 Cr.P.C.

24. Now adverting to the quantum of sentence, for the sake of repetition, it is observed that offence under Section 467 IPC entails imprisonment for life or imprisonment for ten years and fine. But, in view of the interdict under Section 29(2) Cr.P.C., learned JMIC could pass the maximum sentence of three years; which was imposed; the same had been upheld by learned ASJ. While entertaining revision petition, the then Coordinate Bench of this Court took a lenient view in the matter while reducing the sentence of the petitioners from three years to the period already undergone by them viz., less than six months for all the petitioners.

25. The offence is serious, inasmuch as, the petitioners have committed forgery with a soldier who had left his wife, house and property to serve in Second World War; but by taking the advantage of his absence, petitioners firstly opened a fake bank account in the name of Harbans Singh; manufactured a forged Will dated 07.04.1992 and thereafter, procured false entry of his death. Thus in the opinion of this Court, petitioners do not deserve any leniency on the quantum of sentence. The sentence of imprisonment and fine imposed by both Courts below cannot be said to be on higher side; rather the same commensurate with the proven guilt of petitioners.

26. In view of the above, present revision petition is dismissed. The judgment of conviction and order of sentence passed by both the Courts below are affirmed.

27. Consequently, petitioners shall surrender before learned Chief Judicial Magistrate, SBS Nagar (Nawanshahar) within 06 weeks from today and thereafter, they be sent to custody to undergo their remaining part of sentence.



28. In case there is a failure on the part of petitioners, the Court would be at liberty to take all possible legal steps to secure their presence and send them to judicial custody for the aforesaid purpose.

Pending criminal misc. application(s), if any, shall also stand disposed off.

07.04.2025
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No