

(2003) 05 P&H CK 0084

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 921 of 1989

Lakha Singh and others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: May 14, 2003

Citation: (2006) 3 RCR(Criminal) 933

Hon'ble Judges: S.S.Saron, J

Advocate: Mr. Minishwar Puri, Advocate. Mr. I.S. Gehlot, Asstt. Advocate General, Punjab.,
Advocates for appearing Parties

Judgement

S.S. Saron, J.

1. This criminal revision petition has been filed by the petitioners Lakha Singh son of Manna Singh, Wassan Singh and Ram Singh sons of Lakha Singh against the judgment and order dated 5.10.1989 passed by the learned Additional Sessions Judge, Amritsar whereby the appeal preferred by the petitioners along with one Sardul Singh son of Bahadur Singh against the order of conviction dated 4.12.1987 passed by the learned SubDivisional Judicial Magistrate, Tarn Taran has been dismissed.

2. Vir Singh son of Jawahar Singh owned agricultural land in the revenue estate of village Bhail Dhawal. Said Vir Singh executed a gift deed dated 7.6.1955 whereby he gifted his land in equal shares to his daughters Mst. Jowali and Mst. Achhro. After the demise of Mst. Jowali and Mst. Achhro, the land was mutated in the name of their sons and daughters. Lakha Singh complainant (PW1) and Mukha Singh (PW5) are the sons of Mst. Achhro. Mohinder Kaur (PW12) and Giano (PW6) are the daughters of Mst. Achhro. lakha Singh son of Manna Singh petitioner is the son of Mst. Jowali. It is alleged that the petitioners entered into a conspiracy and in pursuance thereof a saledeed dated 26.8.1980 in respect of the aforesaid land belonging to the sons and daughters of Mst. Achhro was fabricated for a sum of Rs. 33,000/-. The same was got registered by impersonating the owners before the Sub Registrar. Sardul Singh (accused/nonpetitioner) was the attesting witness of the said

saledeed. The accused, who impersonated the owners were identified by Bachan Singh Lambardar of Village Khela, who has since died. When the fact of impersonation came to the notice of Lakha Singh complainant son of Mst. Achhro, he approached the accused and requested them to have the said saledeed cancelled. However, the accused failed to pay any heed to the requests made by the complainant. Lakha Singh complainant then filed a criminal complaint. Lakha Singh complainant then filed a criminal complaint in the Court of the learned Judicial Magistrate Ist Class, Tarn Taran, who forwarded the same to the police of Police Station City Tarn Taran. On the basis of the same, formal FIR was registered against the petitioners and Sardul Singh (nonpetitioner) in respect of offences under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code (IPC, for short). After completion of the investigation, police report (challan) in terms of Sections 173 of the Code of Criminal Procedure (Cr.P.C., for short) was filed in the Court of the Judicial Magistrate Ist Class, Tarn Taran. The petitioners and Sardul Singh (nonpetitioner) were charged for having committed the offences under Sections 420, 467 and 471 IPC. They pleaded not guilty and claimed trial. The learned Sub Divisional Judicial Magistrate after considering the evidence and material on record found that the prosecution has established the guilt of the petitioners for having committed an offence punishable under Section 467 IPC inasmuch as the accused had fabricated the saledeed, which was a valuable security. Accordingly, the petitioners were convicted for the offence under Section 467 IPC. However, the offences punishable under Sections 420 and 471 IPC were held to have not been made out against them. For the offence under Section 467 IPC, the petitioners were sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 2,000/ each. In default of payment of fine, the convicts were to undergo further imprisonment of six months each. In appeal, the learned Additional Sessions Judge, Amritsar in terms of order dated 5.10.1989, dismissed the appeal of the petitioners and Sardul Singh (nonpetitioner). The said order dated 5.10.1989, as already noticed, is assailed in this revision petition.

3. I have heard Mr. Munishwar Puri, Advocate for the petitioners and Mr. I.S. Gehlot, A.A.G., Punjab.

4. Learned counsel appearing for the petitioners has contended that before filing of the complaint by Lakha Singh complainant on 4.5.1981, Lakha Singh and Mukha Singh sons of Arjan Singh and Mst. Achhro as also Smt. Giano and Mohinder Kaur daughters of Arjan Singh and Mst. Achhro had filed a suit for possession against the petitioners and Sardul Singh (nonpetitioner). It is contended that the saledeed dated 26.8.1980, which is in dispute in the present case, was set up by the defendants in the suit, who are the present petitioners. In terms of the judgment and decree dated 15.4.1985, passed by the learned Sub Judge Ist Class, Tarn Taran, the saledeed dated 26.8.1980 was not held to be proved in favour of the petitioners Wassan Singh and Ram Singh. The same was held to be false and the property in dispute measuring 26 kanal 8 marlas situated in Village Bhail Dhaiwala was held to be in

possession of the plaintiffs, who are the sons and daughters respectively of Mst. Achhro. Against the judgment and decree dated 15.4.1985, an appeal was filed before the District Judge, Amritsar which was dismissed. Thereafter, RSA No. 3411 of 1986 was filed in this Court in which it is contended that the matter was compromised and the terms of the compromise were reduced into writing and were placed on record on 13.8.1999. In terms of the compromise, the said Regular Second Appeal No. 3411 of 1986 was disposed of. The suit of Lakha Singh, Mukha Singh, Smt. Giano and Smt. Mohindro sons and daughters of Smt. Achhro and Arjan Singh was dismissed and appeal of the appellants was disposed of in terms of the compromise, which was directed to form part of the decree. In view of the said compromise and the order of this Court dated 13.8.1999 passed in RSA No. 3411 of 1986, it is contended that the matter having been compromised, the revision petition is liable to be accepted. Besides, the report of the hand writing expert is not shown to have been proved in accordance with law and a conviction is not liable to be recorded on the basis of a report which has not been proved. It is also contended that the sale deed dated 26.8.1980 was in any the subject matter of the aforementioned civil suit and therefore, the criminal complainant in respect of the same filed by Lakha Singh complainant on 4.5.1981 was barred in view of the provisions of Section 195(i)(b)(ii) Cr.P.C. Therefore, it is contended that the finding of guilt recorded in respect of the offence under Section 467 IPC is liable to be set aside.

5. Learned Assistant Advocate General appearing for the State, however, contends that the Courts below have recorded a clear finding of guilt against the petitioners and there is no such mitigating circumstance, which would warrant their acquittal from the case.

6. I have considered the respective contentions of the parties and gone through the orders passed by the Courts below.

7. Mr. Munishear Puri, Advocate, learned counsel for the petitioner has submitted a photocopy of the compromise entered into in the case titled Wassan Singh v. Lakha Singh, RSA 3411 of 1986. In terms of the said compromise, the complainant Lakha Singh as also his brother Mukha Singh and his sisters Mohindro and Giano sons and daughters of Arjun Singh and Smt. Achhro received a sum of Rs. 5,00,000/ from the appellants in the RSA, i.e. the present petitioners. In consideration of having received a sum of Rs. 5,00,000/, they gave no objection if the appeal of the appellants was accepted regarding land measuring 26 kanals 8 marlas situated in the village Bhail Dhaiwala Tehsil Tarn Taran District Amritsar. It was also agreed between the parties that they shall not pursue any pending litigation and shall withdraw the pending cases against each other. Learned counsel for the appellants has also placed on record a photocopy of the order dated 13.8.1999 passed in the pending RSA whereby it was stated by the parties that they had compromised the matter in terms of compromise Annexure 'C' and the appeal be disposed of and the

suit of the plaintiffsrespondentsLakha Singh, etc. (i.e. the present petitioners) be dismissed. To this effect, an application under JUDGMENT 23 Rule 3 read with Section 151, CPC had also been moved and they had also prayed in the compromise Annexure 'C' that the appeal be decided in terms of the said compromise. In consequence of the same, the suit of Lakha Singh, etc. was dismissed and the appeal was disposed of in terms of the compromise. After considering the matter, in my view, this petition cannot be allowed and the respondents acquitted only on the ground that the matter has been compromised. The offence under Section 467 IPC for which the petitioners have been convicted by the Courts below is not an offence which can be compounded between the parties in terms of Section 320 Cr.P.C. Therefore, the ground that there has been a compromise between the parties in the civil litigation would not be a ground for acceptance of the criminal revision petition on the ground that a compromise has been effected between the parties.

8. The contention that needs to be considered is as regards the thumb impression of the accused on the document in question being not proved. A perusal of the order passed by the learned Additional Sessions Judge would show that sample finger impressions of the petitioners were obtained and were got compared with the disputed thumb impressions appearing on the copy of the sale deed retained in the office of Sub Registrar, Tarn Taran which were purported to be the thumb impressions of the owner of the land. The learned Additional Sessions Judge held that the Finger Print Bureau, Phillaur, expressed its opinion that the sample thumb impressions of the accused tallied with those appearing on the sale deed. Besides, sample finger print impressions of the real owners of the land namely Giano and Mohindro daughters of Mst. Achhro and Arjan Singh and also Lakha Singh and Mukha Singh sons of Mst. Achhro and Arjan Singh were compared with those appearing on the sale deed. The opinion of the Finger Print Bureau, Phillaur, was that these were different from those on the sale deed. The said report, however, has not been corroborated by other evidence on record. Section 293(4) Cr.P.C. which relates to reports of certain government scientific experts applies to the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or State Forensic Science Laboratory. The report that has been submitted is in reference to Finger Print Bureau, Phillaur, and the findings of conviction are based on the said report which is not shown to have been given by the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or State Forensic Science Laboratory. In the absence of the same the report of the Finger Print Bureau Phillaur cannot be said to be per se admissible in evidence in terms of the provisions of Section 293(4) Cr.P.C. In State of Maharashtra v. Damu, 2000(2) RCR 781 (SC) in respect of one of the documents Ex. 64, it was observed, is only the opinion of the Assistant State Examiner of Documents and from that description alone, it could not be gathered whether his office would fall within the purview of Section 293 Cr.P.C. Hence, without examining the expert as a witness, it was held, no reliance could be placed on Ex. 64 alone. Therefore, the said report of Finger Print

Bureau, Phillaur in the present case cannot be said to be per se admissible and without corroboration of the same and without indicating the level of the officer who has given the opinion i.e. whether it is one of the officers as mentioned in Section 293(4) Cr.P.C., it would be unsafe to record a finding of guilt against the petitioners. Besides, the report of the Finger Print Bureau, Phillaur, by itself without the expert having been examined as a witness by the Court is not sufficient proof of the fact of fabrication of the document in question.

9. The other contention of the petitioners regarding the bar of taking cognizance of an offence punishable under Section 467 IPC in view of the provisions of Section 195(i)(b)(ii) Cr.P.C. may be noticed. The said section reads as under :

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence

(1) No Court shall take cognizance

(a) xxx xxx xxx

(b) xxx xxx xxx

(i) xxx xxx xxx

(ii) of any offence described in Section 463 or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) xxx xxx xxx

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate."

10. A perusal of the above shows that no Court is to take cognizance of an offence described under Section 463 or punishable under Sections 471, 473 or 476 Cr.P.C. when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court. The applicability of Section 467 IPC for which the petitioners have been convicted is to be considered on the facts and circumstances as available. It is not in dispute that the saledeed for which Lakha Singh complainant had initiated the criminal proceedings by filing a complaint in the Court of Judicial Magistrate Ist Class, Tarn Taran was initiated on 4.5.1981 whereas the civil suit in respect of the same saledeed was filed by the plaintiffs including Lakha Singh complainant earlier. It was alleged by the plaintiffs in their suit, which includes Lakha Singh complainant that Smt. Achhro had mortgaged the suit land measuring 26 kanals 8 marlas situated in village Bhail Dhaiwala with the mortgagees and that defendant Nos. 1 and 2 in the suit i.e. Wassan Singh and Ram Singh son of Lakha Singh son of Manna Singh have no interest in the suit land. The said defendant Nos. 1 and 2, however, alleged that they had purchased the suit

land from the plaintiffs through a registered sale deed and they have redeemed the suit land from the mortgagees. The plaintiffs denied this fact and stated that they never sold the suit land. One of the issues in the suit was whether the defendants (i.e. the present petitioners) had purchased the suit land vide sale deed dated 26.8.1980, which is the subject matter of dispute in the present case. Therefore, the document in respect of which forgery is alleged to have been committed has been produced before the Civil Court. The bar of taking cognizance in terms of Section 195(1)(b)(ii) Cr.P.C. gets attracted in respect of a document after it has been submitted in Court by way of evidence. In case the document has been forged before it was produced in the Court, a criminal complaint would be maintainable at the instance of a private complainant. However, if the forgery is committed while the document is in the custody of the Court, the complaint would have to be initiated by the Court or with its permission, in accordance with Section 340(1) Cr.P.C. In the present case, a perusal of the orders passed by the Courts below would show that it has not been examined with regard to the question as to whether the sale deed which is stated to have been forged was prepared before or after the filing of the civil suit by the plaintiffs including Lakha Singh complainant. The object of the bar under Section 195 Cr.P.C. to take cognizance of the offences which are mentioned therein is to enable the parties to produce evidence in their possession without being intimidated by criminal prosecution in respect of the same. Therefore, the question whether the bar for taking cognizance under Section 195(1)(b)(ii) Cr.P.C. gets attracted or not, has not been taken into consideration. However, in the case in hand, it has already been held that it would be unsafe to record a finding of guilt against the petitioners in view of the unclear position with regard to the officer giving the expert report. This would be another circumstance, the benefit of which is to go to the petitioners as regards the bar under Section 195(1)(b)(ii) Cr.P.C. getting attracted. It is well known that in case of a criminal offence the guilt of the accused is to be proved beyond shadow of reasonable doubt and a conviction is not to be recorded on mere preponderance of probabilities. The guilt of the petitioner having not been proved beyond doubt, the petitioners are entitled to the benefit of the same.

11. For the foregoing reasons, the revision petition is allowed and the order dated 5.10.1989 passed by learned Additional Sessions Judge, Amritsar is set aside and the petitioners are acquitted of the offence under Section 467 IPC.