

(2018) 08 P&H CK 0346

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 2382 Of 2009 (O&M)

Gurmej Singh Chauhan (Since Deceased) Through His Lrs	APPELLANT
Vs	
Ajit Singh And Others	RESPONDENT

Date of Decision : 06-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 419, 420, 467, 468, 471
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 4 RCR(Cri) 149

Hon'ble Judges : Arvind Singh Sangwan, J

Bench : Single Bench

Advocate : A.S. Gill, Zorawar Singh Chauhan, Joginder Pal Ratra

Final Decision : Dismissed

Judgement

Prayer in this revision petition is for setting-aside the judgment dated 10.02.2009 passed by the trial Court vide which the respondents were acquitted in FIR No.118 dated 08.07.2002 registered under Sections 419, 420, 467, 468 and 471 of the Indian Penal Code (in short 'IPC') at Police Station Phillaur.

Brief facts of the case are that on 04.06.2002, a complaint has been moved by the petitioner namely Gurmej Singh Chauhan son of Amar Singh wherein it is alleged by him that he is an NRI and was residing at Canada and at present, he is residing at village Nagar. He along with other co-sharers is owner in possession of the land measuring 17 kanals 02 marlas, situated in village Nagar, regarding which there was a litigation and an appeal is pending before this Court.

He along with Udham Kaur, Surinder Kaur, Harbans Singh, etc., are one party and Bhagwant Kaur, who has since expired is the other party. Bhagwant Kaur was the aunt (Chachi) of Ajit Singh and she filed a civil suit for possession bearing No.240 on 21.09.1987 through Ajit Singh as attorney, which was decreed on 25.02.1991 and thereafter, they have filed an appeal in the Court of District Judge, Jalandhar and during the pendency of the appeal, Bhagwant Kaur had

died on 05/06.10.1992. Thereafter, Ajit Singh has moved an application claiming that Bhagwant Kaur had executed a Will in his favour on 01.03.1988 and he be impleaded as her legal heir. As such, on 18.01.1994, the District has allowed the application and Ajit Singh was impleaded as LR of deceased - Bhagwant Kaur for defending the appeal, which was also dismissed on 23.12.1996. Ajit Singh claiming to be the legal heir of Bhagwant Kaur, although he was only allowed to contest the appeal, filed an execution application and has committed cheating with the Court as he had sought the possession of the property in question. Earlier Ajit Singh claimed himself to be the holder of a power of attorney of Bhagwant Kaur, but the said attorney ceased on the death of the person. Ajit Singh got the warrant of possession and Gurmail Singh, Jasbir Singh, Vidyadhar, Sukhwinder Singh, Sukhdev Singh, Kanungo, Surinder Pal Singh Patwari, Gurdev Singh and Parduman Singh, in connivance with each other got the possession of 11 kanals 06 marlas of land on 21.01.1997 delivered to Ajit Singh, although Bhagwant Kaur had died and attorney given by her ceased to be in operation. The petitioners filed a Regular Second Appeal before this Court, where the parties were directed to maintain status quo. An enquiry was got conducted on his application and after obtaining the opinion of the District Attorney (Legal), a case was registered against the accused. Thereafter, statement of the witnesses was recorded, accused were arrested and after completion of the investigation and other formalities, challan against the accused was presented in the Court.

Thereafter, the trial Court framed charge under Sections 419, 420, 467, 468 and 471 read with Section 120-B IPC against the accused persons, to which the accused persons did not plead guilty and claimed trial.

One of the accused namely Vidyadhar has expired during the pendency of the trial and proceedings against him were abated.

The prosecution in support of its version examined, PW1 - Sucha Singh, who tendered his statement Ex.PA, and deposed that Amar Singh and Bhajan Singh has purchased the land from Bhagwant Kaur in the year 1965 and after the death of Amar Singh, mutation was sanctioned in favour of Ajit Singh (the main accused). Udham Kaur and Bhajant Singh are the legal heirs of Amar Singh. Bhagwant Kaur through her attorney, Ajit Singh had filed a suit against the aforesaid persons, which was decreed in her favour. Later on, Udham Kaur filed the first civil appeal before the Additional District Judge. During the pendency of the said appeal, Bhagwant Kaur had died in the year 1992. After the appeal was dismissed, accused - Ajit Singh filed an execution application to execute the decree in favour of Bhagwant Kaur as her legal representative though, he was not entitled to.

In cross-examination, this witness has stated that he was not present at the spot when the possession was delivered to Ajit Singh by the Kanungo and Patwari, who were also impleaded as co-accused. PW2 - Ekam Ram proved on record the statement Ex.PB and deposed on the same line of PW1.

In cross-examination, this witness has stated that Bhagwant Kaur had no issue and Ajit Singh is the legal heir of deceased - Bhagwant Kaur being nephew of the husband of Bhagwant Kaur. This witness also admitted that after death of Bhagwant Kaur, Ajit Singh contested the appeal on her behalf, being her legal heir. This witness also admitted that Ajit Singh got the possession of the property of Bhagwant Kaur in execution.

PW4 - Raj Kumar proved the roznamcha Ex.PW4/A to show that the possession was delivered to Ajit Singh being legal heir of Bhagwant Kaur.

PW5 - Gurmej Singh, the complainant has deposed on the line of the version given in the FIR and stated that Ajit Singh had taken the possession of the land forcibly on 03.01.1997 by obtaining the forged power of attorney of Bhagwant Kaur, which was filed in a civil suit and the same was later on decided in favour of Bhagwant Kaur. This witness has further stated that his mother - Udham Kaur filed an appeal before the Lower Appellate Court, challenging the Civil Court decree and during the pendency of the appeal, Bhagwant Kaur died and Ajit Singh moved an application claiming him to be the legal heir of Bhagwant Kaur. This witness admitted in his cross-examination the pedigree table of the parties and stated that Ajit Singh is son of Darbara Singh. Bhagwant Kaur is widow of Gurnam Singh, the real brother of Darbara Singh.

PW6 - Krishan Puri proved the death certificate of Bhagwant Kaur.

PW7 - ASI Kewal Singh, deposed about the enquiry on the basis of which the FIR Ex.PW7/A was registered.

The accused persons, thereafter, denied all the incriminating evidence put to them under Section 313 Cr.P.C. and in defence examined DW1 - Balbir Kaur, who proved on record the Will executed by Bhagwant Kaur in favour of Ajit Singh. This witness has further stated that the Will was registered in the office of Sub-Registrar, Phillaur.

DW2 - Pawan Kumar, a Deed Writer deposed that he has scribed the Will on the asking of Bhagwant Kaur in favour of Ajit Singh and he had made an entry in his register, which is Ex.D1. This witness also proved the Will Ex.D2 on record. He further deposed that he had scribed the Will at the instance of Bhagwant Kaur and have read over the contents to her.

DW3 - Nirpal Singh, an attesting witness to the Will, also proved the Will, which was scribed by the Deed Writer Pawan Kumar.

The trial Court, thereafter, vide impugned judgment dated 10.02.2009, acquitted the accused persons holding that Ajit Singh filed the execution petition Ex.PW5/C, claiming himself to be legal heir of Bhagwant Kaur and obtained the possession of the land in execution of the Civil Court decree passed against Udham Kaur, the mother of the complainant. The trial Court also record a finding that even as per the Will Ex.D2, executed by Bhagwant Kaur in favour of Ajit Singh, being nephew of her husband, Gurnam Singh had a right to pursue the

execution petition. The trial Court also recorded a finding that the complainant never claimed that he is a legal heir of Bhagwant Kaur, in any manner and while recording a categorical finding that there is nothing on record to show that the accused persons have forged any document or have obtained the warrants of possession from the Civil Court by committing any forgery or cheating, Ajit Singh obtained the possession of the land as legal heir of Bhagwant Kaur and not the attorney of Bhagwant Kaur.

The present revision petition was filed in the year 2009 and is pending for the last 09 years. It is relevant to mention that during the pendency of the revision petition, the complainant - Gurmej Singh died and his LRs were impleaded as a party.

Counsel for respondents No.2 to 7 has also brought to the notice of this Court that respondents No.1 and 8, have died during the pendency of the present revision petition.

It is also relevant to mention that counsel for the parties have also supplied a photocopy of the Lower Court record.

Counsel for the petitioner has submitted that Bhagwant Kaur had died in the year 1992 and thereafter, when an application was moved by the accused - Ajit Singh for being impleading himself as LR in the appeal, the same was allowed vide order dated 18.01.1994 Ex.PX, limited for the purpose of deciding the appeal and therefore, Ajit Singh had no right to file the execution petition in the capacity of legal representative of Bhagwant Kaur. It is further submitted that at the time when warrants of possession were executed, the same were issued by the Court vide Ex.PW5/J, in favour of the decree-holder i.e. Bhagwant Kaur.

Counsel for the petitioner has further argued that in the proceedings/roznamcha, recorded by the Revenue Officer, the presence of Ajit Singh is marked as power of attorney holder of Bhagwant Kaur and not legal representative of Bhagwant Kaur and therefore, Ajit Singh by misrepresenting the facts that Bhagwant Kaur had died in the year 1992, the power of attorney having come to an end immediately after her death, was still representing himself before the Revenue Authorities that he is the power of attorney holder of deceased - Bhagwant Kaur in the year 1997, when the proceedings regarding warrants of possession were conducted. It is further submitted that, later on, when the mother of the complainant - Udham Kaur had filed Regular Second Appeal i.e. RSA No.82 of 1997, this Court has directed the parties to maintain status quo and the trial Court passed an order dated 15.02.1997 Ex.PW5/I that the restitution of possession of the suit property to the complainant/judgment-debtor, cannot be made as there is no order by this Court in the aforesaid RSA, to this regard as only status quo has been passed and, therefore, the delivery of possession of the remaining land was not given to the decree-holder. Counsel for the petitioner has, thus, argued that the accused persons in conspiracy with each other, have delivered the possession of the land in dispute to Ajit Singh, in capacity of a

power of attorney holder of Bhagwant Kaur, 05 years after she has expired and thus, have committed the offence punishable under Sections 419, 420, 467, 468, 471 read with Section 120-B IPC.

In reply, counsel for the respondents has submitted that, in fact, during the pendency of the civil appeal before the Additional

District Judge, Ajit Singh was permitted to defend the appeal filed by mother of the complainant - Udham Kaur in the capacity of legal representative of Bhagwant Kaur vide order Ex.PX and submits that though, restricted right was given to Ajit Singh for the purpose of deciding the appeal, the execution petition, which was filed to execute the aforesaid decree was, in fact, in continuation of the said proceedings.

Counsel for the respondents has further argued that the accused persons have led sufficient evidence to prove that, in fact, Ajit Singh is the only legal representative of Bhagwant Kaur, who had otherwise produced a valid Will Ex.D2 by proving it from a witness from the office of Sub-Registrar, the scribe and one of the attesting witness as DW1 to DW3 and, thus, it is submitted that the accused - Ajit Singh had obtained the possession of the land being legal representative of Bhagwant Kaur and not as a power of attorney holder, which was wrongly recorded in the proceedings of roznamcha, which was only for the purpose of handing over the possession of the status of the Ajit Singh is to be seen from the execution application wherein he has pleaded himself to be LR of Bhagwant Kaur as it is reflected in the documents Ex.PW5/H and Ex.PW5/J.

Counsel for the respondents has also submitted that mere fact that the presence of the accused - Ajit Singh was recorded as power of attorney holder in the roznamcha recorded by the Revenue Officer, will otherwise not prove any offence against any of the accused persons for the reasons that when the execution application was pending, the complainant who was the judgment-debtor was duly represented by his counsel and they have raised all the pleas/objections before the Executing Court before the order of delivery of possession was passed in favour of Ajit Singh and, therefore, the complainant had every right to raise this issue before the Civil Court/Executing Court that Ajit Singh was not the legal representative of Bhagwant Kaur and having failed to do so, the Civil Court has issued warrants of possession in favour of Ajit Singh and hence, mere recording of a wrong fact in the rapat roznamcha that the possession was delivered to Ajit Singh as GPA of Bhagwant Kaur, is apparently against the record.

After hearing the counsel for the parties, I find no merit in the present revision petition for the following reasons:-

(a) It is undisputed that during the pendency of the civil appeal filed by Udham Kaur against Bhagwant Kaur, before the Additional District Judge, she died in the year 1992 and thereafter, Ajit Singh - respondent No.1 moved an application for impleading himself as legal representative and the same was allowed vide order dated 18.01.1994 (Ex.PX). Though, in the order, it is observed that it is limited

for the purpose of deciding the appeal, however, the fact remains that this order was never challenged by the petitioner. Therefore, the execution application filed by Ajit Singh, for executing the decree as LR of Bhagwant Kaur, do not constitute the offence under Sections 419, 420, 467, 468 and 471 IPC. A perusal of the execution application also show that Ajit Singh has filed the same, in the capacity of legal representative of LR of Bhagwant Kaur.

(b) Mere fact that in the roznamcha entered by the revenue officials Sukhdev Singh, Kanungo and Surinder Pal Singh, Patwari that Ajit Singh was present at the spot as power of attorney holder of Bhagwant Kaur also do not constitute any offence as it is apparently, a wrong recording. Though, it is not disputed by the petitioner that during the lifetime of Bhagwant Kaur, Ajit Singh remained her general power of attorney holder, which came to an end after her death in the year 1992 and thus, the proceedings executed by the revenue officials for handing over the possession in pursuance of a Civil Court decree, in compliance of the order passed by the Executing Court directing the revenue officials to hand over the possession to Ajit Singh, no offence against revenue officials i.e. Sukhdev Singh, Kanungo and Surinder Pal Singh, Patwari, is made out.

(c) A perusal of the other evidence led by the petitioner also reveal that when the regular second appeal was filed before this Court, an order of status quo was passed. Thereafter, the Executing Court passed an order dated 15.02.1997 (Ex.PW5/I) and subsequent to this order, the petitioner has not placed on record any order of the Civil Court to show that the proceedings executed by the revenue officials in compliance of the directions given by the Civil Court were held to be bad in the eyes of law for the reasons that it is recorded that Ajit Singh was present not in the capacity of LR but as power of attorney holder of Bhagwant Kaur.

(d) The entire case of the petitioner/complainant is based upon the fact that in the execution proceedings, respondent No.1 - Ajit Singh is shown as power of attorney holder of Bhagwant Kaur and, therefore, he has committed the offence of cheating and forgery, however, a careful perusal of the lower Court record, the statement of the prosecution witnesses, the orders passed by the Appellate Court allowing the application of Ajit Singh for being impleaded as legal representative of Bhagwant Kaur and the defence evidence led by the respondents/accused persons show that Ajit Singh has, even otherwise, set up a Will executed by Bhagwant Kaur in his favour and proved the same even in this case.

(e) Counsel for the petitioner, during the course of the arguments, has submitted that the regular second appeal filed on behalf of Udham Kaur through her legal representative stands allowed by this Court and the petitioner has already filed an application for restitution of possession. Thus, it cannot be held that the possession, which was delivered to respondent No.1 - Ajit Singh in execution of the Civil Court decree, which was in vogue at that time, the offence of cheating or forgery is proved on record as admittedly, the parties were litigating before the Civil Court for their right over the property. Needless to say that the

possession was delivered to Ajit Singh in compliance of the order passed by the Executing Court.

(f) It has been held by the Hon'ble Supreme Court in "Mrinal Das and others vs The State of Tripura", 2011(9) SCC 479, that where 02 views are possible, the one which led to acquittal of the accused and the other to conviction, the Appellate Court may rule in favour of the accused persons and the order of acquittal should not be lightly interfered.

For the reasons recorded hereinabove, I find no illegality in the judgment dated 10.02.2009 passed by the trial Court acquitting the respondents/accused persons of the charges framed against them and accordingly, the present revision petition is dismissed.