
(2015) 09 P&H CK 0129

In the Punjab And Haryana At Chandigarh

Case No : Criminal Rev. No. 2181 of 2005 and Crl. Misc. No. M-10627 of 2006

Jai Pal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 419, 420, 423, 464, 467

Citation : (2015) 09 P&H CK 0129

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : S.S. Nara, for the Appellant; Baljinder S. Virk, DAG, Advocates for the Respondent

Judgement

Daya Chaudhary, J—This order of mine shall dispose of two petitions i.e. Crl. Revn. No. 2181 of 2005 and Crl. Misc. No. M-10627 of 2006. However, for the sake of convenience, facts have been extracted from Crl. Revn. No. 2181 of 2005.

2. The present revision petition has been filed by accused- petitioner-Jai Pal against judgment of conviction and order of sentence dated 10.11.2003 passed by Judicial Magistrate Ist Class, Kurukshetra, whereby, the petitioner was convicted for offences punishable under Sections 420,467,468,471 and 423 IPC and sentenced to undergo rigorous imprisonment for a period of two years with fine of Rs. 500/- under Section 420 IPC, rigorous imprisonment for a period of three years with fine of Rs. 500/- under Section 467 IPC, rigorous imprisonment for a period of two years with fine of Rs. 300/- under Section 468 IPC, rigorous imprisonment for a period of one year with fine of Rs. 200 under Section 471 IPC, rigorous imprisonment for a period of six months under Section 423 IPC. In case of default of payment of fine, accused was ordered to undergo further imprisonment for a period of six months. Aforesaid judgment of conviction and order of sentence was challenged by the petitioner before Additional Sessions Judge, Kurukshetra, which was dismissed on 16.11.2005 and judgment of conviction and order of sentence passed by the trial Court was upheld.

3. After losing before both the Courts below, the petitioner has filed the present revision petition to challenge the judgments of conviction and orders of sentence passed by both the Courts below.

4. Briefly, the facts of the case are that a complaint was made by complainant-Jagat Ram against his four brothers including the present petitioner on 1.12.1993 before the Illaqa Magistrate, Kurukshetra alleging therein that after the death of their father Sh. Ram Nath on 5.5.1992, the petitioner in conspiracy with his three brothers forged the signatures of said Ram Nath on an affidavit dated 14.2.1991 and other documents and got transferred a Tractor bearing registration No. HRQ-9842 Model 1983 in his own name. Complainant-Jagat Ram died on 30.11.1995 and thereafter the complaint was pursued by his son Naresh. On the basis of preliminary evidence, the petitioner and his three brothers were summoned for the commission of abovementioned offences and vide judgment dated 10.11.2003 passed by Judicial Magistrate Ist Class, Kurukshetra, all his brothers were acquitted of the charges framed against them but the petitioner was convicted for offences punishable under Sections 420,467,468,471 and 423 IPC and was sentenced to undergo the abovementioned sentence. Aggrieved by the judgment of conviction and order of sentence passed by trial Court, the petitioner filed an appeal before the Additional Sessions Judge, Kurukshetra, which was dismissed on 16.11.2005. The judgments passed by both the Courts below are subject matter of challenge in the present petition.

5. Learned counsel for the petitioner contends that the admitted signatures of deceased-Ram Nath on the mortgage deed with which the disputed signatures were compared by handwriting expert were not proved on record. Learned counsel further contends that Bal Krishan (CW-7) and Raj Kishan (CW-8), who had got the mortgage deed executed had specifically stated in their statements that they did not remember as to whether Ram Nath had signed the mortgage deed or not. Learned counsel also submits that affidavit Ex. CA, which was prepared and forged by the petitioner was not proved by the prosecution beyond doubt as the case of the petitioner is that the said affidavit was handed over to him by his father Ram Nath along with the certificate issued by the Patwari of the Village, which was countersigned by the Tehsildar, Thanesar. Both these documents were handed over to the concerned authority for verification. Madho Ram, Patwari while appearing as CW-4 has admitted that application Ex. CW-4/A was brought before him by Ram Nath and present petitioner was not accompanying him at that time. He has also stated that the said document was for transfer of Tractor in the name of Jaipal. It is also the argument of learned counsel that Piara Lal (CW-11) has also admitted in cross-examination that there were two persons in the village by the name of Ram Nath and he cannot say as to who had brought the documents before him at the time of registration. Even he was unable to explain or to testify that Ram Nath had put his signatures in his presence. As per the case of the complainant, the Tractor in dispute was purchased by his father Ram Nath by obtaining a loan from the Nationalised Bank by mortgaging his land. It was, therefore, the duty of the prosecution to

compare the signatures of Ram Nath with the signatures put by him at the mortgage deed while taking the loan but said signatures were not compared and as such it cannot be said that the petitioner had forged the signatures of his father Ram Nath alongwith some other documents. Learned counsel also submits that the complainant had earlier filed a complaint regarding transfer of the tractor by means of forged documents before the police, upon which, the matter was investigated into and a categoric finding was given in the inquiry that it was a case of civil nature and as such no FIR was registered. Thereafter, the present private complaint was filed. In the end, learned counsel for the petitioner submits that it has been admitted by Som Nath (CW-13), brother of the complainant-Jagat Ram that Jagat Ram was residing separately since 1986 and prior to that his father Ram Nath had distributed three acres of land among his six sons but Jagat Ram was left out. The statement of Som Nath (CW-13) finds Corroboration from the statement of Naresh Kumar (CW-16), son of the complainant, who has also stated that his grandfather-Ram Nath had transferred 161 kanals and 14 marlas of land by way of court decree in the year 1969 between his six sons but his father Jagat Ram was left out. It is also the argument of learned counsel that the charges were not framed under Sections 419 or 464 IPC and as such in the absence of forgery, commission of offence of Section 420 IPC penalising the commission of cheating cannot be invoked. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in the cases of Magan Bihari Lal Vs. The State of Punjab, AIR 1977 SC 1091 : (1977) CriLJ 711 : (1977) 2 SCC 210 : (1977) 2 SCR 1007 : (1977) 9 UJ 235 , Chatt Ram Vs. State of Haryana, AIR 1979 SC 1890 : (1979) CriLJ 1411 : (1980) 1 SCC 460 , Guru Bipin Singh Vs. Chongtham Manihar Singh and Another, AIR 1997 SC 1448 : (1997) CriLJ 724 : (1996) 9 JT 516 : (1996) 7 SCALE 694 : (1996) 11 SCC 622 : (1996) 7 SCR 611 Supp : (1997) AIRSCW 135 : (1996) 7 Supreme 678 , State of U.P. Vs. Ranjit Singh, AIR 1999 SC 1201 : (1999) CriLJ 1830 : (1999) 1 Crimes 127 : (1999) 1 JT 626 : (1999) 1 SCALE 580 : (1999) 2 SCC 617 : (1999) 1 SCR 786 : (1999) 1 UJ 473 : (1999) AIRSCW 863 : (1999) 2 Supreme 291 , Asraf Ali Vs. State of Assam, (2008) CLT 1053 : (2008) CriLJ 4338 : (2008) 13 JT 598 : (2008) 10 SCALE 278 , of this Court in Sunder Lal Vs. Smt. Raj Kumari and others 2011 (1) Law Herald (P&H) 906 and of Madras High Court in Vembu Ammal Vs. Esakkia Pillai, (1949) 1 MLJ 71 , in support of his contentions.

6. Learned counsel for respondent No. 2 submits that the judgments of trial Court as well of lower appellate Court are well reasoned and are based on proper appreciation of evidence. Learned counsel further submits that offence under Section 420 IPC has been proved as the petitioner had forged affidavit Ex. CA purporting to be valuable security and as such has committed an offence punishable under Section 467 IPC and he is also liable to be punished for offence under Section 468 IPC for forging the said document. The dishonest and fraudulent action of transfer of the document was with an intention to cheat the complainant for gainful purpose. The statements of the prosecution witnesses were consistent and there was no contradiction or discrepancy and as such it

cannot be said that some of the witnesses have not corroborated the statement of the complainant. The complainant has been able to prove that the accused-petitioner had committed the offence with an intention for wrongful gain to him and wrongful loss to complainant-Jagat Ram and Ram Nath. The fulfillment of all the ingredients of dishonesty is the pre-requisite for the commission of offence of cheating. The forging of an affidavit by the petitioner for gainful purpose has been proved. The petitioner was also a party to the affidavit for transfer of ownership of said tractor from the name of Ram Nath in his own name on the basis of false statement. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in the case of Sahab Singh and others Vs. State of Haryana, AIR 1990 SC 1188 : (1990) CriLJ 1202 : (1990) 2 Crimes 97 : (1990) 1 SCALE 243 : (1990) 2 SCC 385 : (1990) 1 SCR 512 , V. Kishan Rao Vs. Nikhil Super Speciality Hospital and Another, (2011) ACJ 500 : (2010) 4 JT 630 : (2010) 4 SCALE 662 : (2010) 5 SCC 513 , Ankush Shivaji Gaikwad Vs. State of Maharashtra, (2013) 4 ABR 648 : (2013) 9 AD 294 : AIR 2013 SC 2454 : (2013) CriLJ 3044 : (2013) 7 JT 26 : (2013) 2 RCR(Criminal) 1036 : (2013) 6 SCALE 778 : (2013) 6 SCC 770 , Hazara Singh Vs. Raj Kumar and Others, (2014) 2 AD 137 : AIR 2013 SC 3273 : (2013) CriLJ 2299 : (2013) 6 JT 529 : (2013) 2 RCR(Criminal) 851 : (2013) 6 SCALE 142 : (2013) 9 SCC 516 and State of M.P. Vs. Najab Khan and Others, (2014) 2 AD 194 : AIR 2013 SC 2997 : (2013) CriLJ 3951 : (2013) 8 SCALE 190 : (2013) 9 SCC 509 , in support of his contentions.

7. Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

8. Admittedly, the petitioner faced trial in the complaint instituted on 1.12.1993 against him as well as against his three brothers. As per the case of the complainant, after the death of his father Ram Nath on 5.5.1992, the petitioner in connivance with his three brothers, forged the signatures of his father on an affidavit dated 14.2.1991 and certain other documents for transfer of Ford Tractor bearing No. HRQ 9842 Model 1983 in his own name. It is also not disputed that complainant-Jagat Ram also died on 30.11.1995 and thereafter the complaint was pursued by his son Naresh. Only the petitioner was convicted for offences punishable under Sections 420, 467, 468, 471, 423 IPC and sentenced to undergo maximum sentence for a period of three years under Section 467 IPC but all his brothers were acquitted. It is also not disputed that the appeal filed by the petitioner was also dismissed by Additional Sessions Judge, Kurukshetra. As per allegations levelled in the complaint, the documents were submitted to the concerned authority for transfer of tractor in the name of the petitioner but the signatures in dispute were not compared with the standard signatures of Ram Nath. The signatures on the affidavit Ex. CA have been denied by CW-6 Ramesh Chander but inspite of that it was not compared with the admitted signatures. A civil suit was also filed by complainant-Jagat Ram on 25.8.1993, which was withdrawn on 4.10.1993 after filing of reply by the petitioner. Thereafter no suit was filed. Even it has been admitted by Som Nath (CW-13) brother of the complainant that Jagat Ram was residing separately since 1986 and the land was

distributed by his father among the petitioner and his six sons and Jagat Ram-complainant was left out, who was his seventh son. The statement of Som Nath (CW-13) finds corroboration with the statement of Naresh Kumar (CW-16), who has also stated that his grandfather Ram Nath had transferred 161 canals and 14 marlas of land in the year 1969 between his six sons but his father was left out. It is a settled proposition of law that opinion of hand writing expert will not be the conclusive proof and only the comparison of disputed signatures with the admitted signatures will be useful failing which it will be a case of blind leading the blind as has been held by Madras High Court in Vembu Amal's case (supra). It is also relevant to mention here that the forgery is the principal allegation and cheating the consequential offence and as such in case forgery goes, the cheating cannot stand. Accordingly without proving the offence of forgery, cheating cannot be there.

9. In view of the facts as well as law position as mentioned above, there is merit in the contentions raised by learned counsel for the petitioner. Accordingly, the judgments of conviction and orders of sentence passed by both the Courts below are set aside and the petitioner stands acquitted of the charges framed against him. The petitioner is discharged from his bail bonds already furnished.