

(2017) 07 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : 13447 of 2017

Nirbhai Singh

APPELLANT

Vs

Financial Commissioner (Revenue), Punjab, & Ors.

RESPONDENT

Date of Decision : 11-07-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#),
[Section 304](#) - Punishment for murder - Punishment for
culpable homicide not amounting to murder
[Hindu Succession Act, 1956](#), [Section 25](#)

Citation : (2017) 07 P&H CK 0021

Hon'ble Judges : Rakesh Kumar Jain

Bench : SINGLE BENCH

Advocate : Sanjeev Goyal

Final Decision : Dismissed

Judgement

1. The question involved in this case is as to whether "a person can succeed to the property of a person killed by him even if he is convicted under Section 304 (Part-1) and not under Section 302 of the Indian Penal Code, 1860 and can claim non-application of Section 25 of the Hindu Succession Act, 1956?

2. The dispute in this case is in respect of mutation of the estate of Maghar Singh S/o Kartar Singh, who died unmarried and issue-less. After the death of Maghar Singh, mutation no.3744 in respect of his estate was sanctioned in favour of the private respondents on the basis of natural succession. The order of sanctioning the mutation dated 18.01.2008 passed by the Assistant Collector 2nd Grade was challenged in appeal before the Collector by the petitioner on the ground that the private respondents could not have succeeded to the property of the deceased as it had already been bequeathed by the deceased in favour of the petitioner by way of a registered Will dated 10.02.2003. The appeal was, thus, accepted by the Collector on 05.11.2008 and order dated 18.01.2008 was set aside and the matter was remanded back to the Assistant Collector 1st Grade for fresh orders.

After the remand, the Assistant Collector 1st Grade sanctioned the mutation of inheritance of the estate of Maghar Singh in favour of the petitioner on the basis of the registered Will. During the said proceedings, the Assistant Collector 1st Grade was informed that a case arising out of FIR No.169 dated 27.12.2007, registered under Section 302 IPC at Police Station Sadar, Sangrur is pending against the petitioner with the allegation that the petitioner had killed the testator Maghar Singh. The Assistant Collector 1st Grade, thus, also observed in his order dated 29.07.2009 that in case the petitioner is convicted by the Criminal Court, then his order may be challenged in appeal on the said ground.

3. The private respondents filed the statutory appeal against the order of the Assistant Collector 1st Grade dated 29.07.2009. During the pendency of the said appeal, the petitioner was convicted by the Sessions Judge, Sangrur for the offence under Section 302 IPC for the murder of testator Maghar Singh vide his judgment dated 08.09.2009 and vide his order dated 09.09.2009, sentenced the petitioner to suffer imprisonment for life with no order as to fine. Consequently, the Collector, Sangrur reversed the order of the Assistant Collector 1st Grade dated 29.07.2009 and the mutation in favour of the private respondents was restored. It was now the turn of the petitioner to file appeal against the order of the Collector before the Divisional Commissioner, Patiala. Since the matter of conviction and sentence of the petitioner in the murder case was pending in appeal before this Court, therefore, the appeal was adjourned sine die, subject to the outcome of the criminal appeal and the parties were restrained from alienating the suit property till the decision of the criminal appeal by this Court. It was also observed therein that as soon as the criminal appeal is decided, the parties may approach the Court to hear the matter. Criminal Appeal No.D-925-DB of 2009 titled as "Nirbhai Singh vs. State of Punjab" was decided by this Court on 11.08.2015. It was found by the Court that Maghar Singh was killed by the petitioner by inflicting a knife blow on the left side of his chest, which proved fatal but it was held to be under a sudden and grave provocation and, thus, the conviction of the petitioner under Section 302 IPC was set aside and he was convicted under Section 304 (Part-1) IPC and his sentence was reduced from life imprisonment to 10 year rigorous imprisonment with a fine of Rs.10,000/- and in default of payment of fine, for another one year rigorous imprisonment.

4. After the order was passed in the criminal appeal, respondent no.5 filed revision petition before the Financial Commissioner against the order dated 27.09.2012 passed by the Divisional Commissioner, Patiala, who had kept the matter pending to await the decision of this Court in the criminal appeal. The said revision is accepted by the Financial Commissioner on 04.07.2016 on the ground that since the petitioner has been convicted under Section 304 (Part-1) IPC and has been sentenced for rigorous imprisonment of 10 years for killing the testator Maghar Singh, therefore, the mutation be sanctioned on the basis of natural succession instead of registered Will. Hence, the present writ petition has been filed by the petitioner.

5. Counsel for the petitioner has submitted that the parties are Hindus and are governed by the provisions of the Hindu Succession Act, 1956 (hereinafter referred to as the "Act"). It is further submitted that since the petitioner has not been convicted and sentenced under Section 302 IPC, which is the punishment for committing murder, therefore, he cannot be debarred from succeeding to the property of the deceased testator on the basis of the registered Will executed in his favour. Section 25 of the Act is reproduced here as under:-

"25. Murderer disqualified.-- A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder."

6. I have heard learned counsel for the petitioner and perused the available record with his able assistance.

7. No doubt that the language of Section 25 of the Act suggests that a murderer cannot succeed to the property of the person who is murdered by him and as per the case of the petitioner, he has not been sentenced under Section 302 IPC, which is the punishment meant for committing the murder and has been sentenced under Section 304 (Part-1) IPC, which brings the offence within the ambit of Exception-I of Section 300 IPC, therefore, the petitioner can still succeed to the property of the deceased Maghar Singh on the basis of the registered Will but there is no substance in this submission because the petitioner had admittedly killed the testator.

8. In this regard, reference can be made to a decision of the Andhra Pradesh High Court in the case of Nannepuneni Seetharamaiah vs. Nannepuneni Ramakrishnaiah, AIR 1970 AP 407 and in the case of Minoti vs. Sushil Mohan Singh Malik and another, AIR 1982 Bom 68, in which following observations have been made:-

"12. In my opinion, this is the correct approach for interpreting the provisions of section 25 of the Act, which incorporates a paramount principle of public policy based on principle of public policy based on principles of justice, equity and good conscience, so that the person will not be able to take the advantage of his own crime. In this context, it is pertinent to note that the words used are "commits murder or abets commission of murder" and not "is convicted of an offence of murder and not "is convicted of an offence of murder or abetment of offence of murder." Therefore, it is clear that the legislature has used the term "murder" in Section 25 of the Hindu Succession Act not in a technical sense as defined in Section 300 of the IPC, but in a wider and popular sense, which must include in its import even culpable homicide or unlawful manslaughter. It is neither possible nor desirable to lay down general rule in this behalf, because to some extent it must depend on the facts and circumstances of each case."

9. It has been held by this Court that Maghar Singh (since deceased) was put to death by the petitioner by inflicting knife blow on the left side of his chest

because of which Maghar Singh succumbed to the said injury. Thus, it is a positive case that the petitioner is the person who had killed his testator Maghar Singh and it hardly makes any difference that the petitioner has been sentenced under Section 302 IPC or has been given the benefit of sudden and grave provocation to bring his case within the ambit of Section 304 (Part-1) IPC for the purpose of reducing his sentence from life imprisonment to 10 years rigorous imprisonment.

10. The word "murderer" has to be understood in common parlance as a person who commits murder or abets commission of murder. As per Section 25 of the Act, no person could succeed to the property of a person whose life has been put to an end by the said person or has been a party to it in the form of abetment. This principle is also based upon the principle of equity, justice and good conscience to exclude that person for being an heir of the person killed by him.

11. Thus, in view of the aforesaid observations, the question posed in the beginning is answered in affirmative holding that the petitioner shall not succeed to the property of the deceased testator Maghar Singh on the basis of the registered Will in his favour, whom he had killed, even under sudden and grave provocation and has been sentenced under Section 304 (Part-1) IPC and not under Section 302 IPC.

12. Consequently, the present writ petition is hereby dismissed being denuded of any merit, though without any order as to costs.