
(2013) 07 SC CK 0116

In the Supreme Court Of India

Case No : Criminal Appeal No. 815 of 2013 (Arising out of SLP (Criminal) No. 1332 of 2007)

Sarabjit Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 438, 482
Penal Code, 1860 (IPC) — Section 148, 149, 379, 420, 427

Citation : (2013) 2 ACR 2145 : (2013) 7 AD 301 : (2013) 4 JCC 2777 : (2013) 14 JT 606 : (2013) 3 MLJ(Cri) 326 : (2013) 4 RCR(Criminal) 463 : (2013) 7 SCALE 571 : (2013) 6 SCC 800 : (2013) 2 UC 1482

Hon'ble Judges : P. Sathasivam, J;J.S. Khehar, J

Bench : Division Bench

Advocate : R.K. Kapoor, Rekha Giri, Shweta Kapoor and Anis Ahmed Khan, for the Appellant; Shilpa Sood, AAG, Kuldeep Singh and S.K. Verma, for the Respondent

Final Decision : Allowed

Judgement

Jagdish Singh Khehar, J.—Leave granted.

2. Sarabjit Singh, the Appellant herein, purchased 30 kanals 11 marlas of land from Salamat Masih through two deeds dated 11.2.1992 and 13.3.1992. The pleadings in the instant appeal reveal, that the aforesaid purchase made by the Appellant was out of a total holding of 99 kanals (with the vendor Salamat Masih). It is not a matter of dispute, that on purchasing 30 kanals 11 marlas of land, the Appellant Sarabjit Singh set up a brick kiln on the land for manufacture of bricks. Itpal Singh (Respondent No. 4 herein) and his brother Gurbinder Singh also purchased 61 kanals 3 marlas of land from Salamat Masih (the vendor of Sarabjit, the Appellant herein). The instant purchase was made through two sale deeds dated 17.3.1997 and 4.4.1997. It is accepted by the parties, that the land purchased by Sarabjit Singh, the Appellant herein, adjoins the land purchased by Itpal Singh (Respondent No. 4 herein) and his brother Gurbinder Singh.

3. The first litigation between the parties was initiated by Salamat Masih. He filed a civil suit on 20.4.1995 against the Appellant Sarabjit Singh. The principal prayer made by Salamat Masih in the aforesaid suit was, for a direction to the Appellant Sarabjit Singh, not to interfere in his land measuring 61 kanals 3 marlas. It would be pertinent to mention at this juncture, that it was the instant land which was subsequently sold by Salamat Masih to Itpal Singh and his brother Gurbinder Singh (through the said two registered sale deeds, dated 17.3.1997 and 4.4.1997). In the written statement filed by Sarabjit Singh in response to the suit filed by Salamat Masih, Sarabjit Singh admitted, that he had only purchased 32 kanals of land, out of the total land holding of Salamat Masih. Interestingly, in his written statement, Sarabjit Singh (the Appellant herein) did not aver, that he had entered into an agreement to purchase any further land from Salamat Masih.

4. In the above-mentioned suit preferred by Salamat Masih, the Civil Court passed an interim order of status quo on 3.2.1998. At the time of passing of the aforesaid interim order, the land in question was already in possession of Itpal Singh (Respondent No. 4 herein) and his brother Gurbinder Singh. At this juncture, it is necessary to reiterate, that Itpal Singh and Gurbinder Singh had purchased the instant 61 kanals and 3 marlas of land from Salamat Masih (through the said two registered sale deeds, dated 17.3.1997 and 4.4.1997). In view of the interim order passed in the civil suit, Itpal Singh and Gurbinder Singh were not adversely affected by the dispute between Salamat Masih and the Appellant Sarabjit Singh. Despite that, the Appellant Sarabjit Singh assailed the order dated 3.2.1998 (passed by the Civil Court requiring the parties to the litigation to maintain status quo), before the District Judge. The District Judge vide order dated 5.5.2000, dismissed the challenge raised by the Appellant Sarabjit Singh. It is not a matter of dispute, that the aforesaid order dated 5.5.2000 was not further challenged by the Appellant Sarabjit Singh, and must therefore, for all intents and purposes, be deemed to have attained finality between the rival parties.

5. It is apparent from the factual position noticed hereinabove, that Salamat Masih had initiated the process of litigation between the parties by filing the said civil suit against the Appellant Sarabjit Singh on 20.4.1995. About three years thereafter, the Appellant Sarabjit Singh also filed a civil suit on 8.1.1998 against Salamat Masih (and others, including Itpal Singh and Gurbinder Singh), for specific performance and possession. The relief of specific performance was claimed by the Appellant Sarabjit Singh on the basis of a deed dated 13.3.1992.

6. It seems, that the Appellant Sarabjit Singh was on the back foot with reference to the litigation pertaining to 61 kanals 3 marlas of land purchased by Itpal Singh and Gurbinder Singh (through the said two registered sale deeds, dated 17.3.1997 and 4.4.1997). The instant inference is based on the fact, that Salamat Masih had filed his suit on 20.4.1995, wherein an order of status quo was passed on 3.2.1998. As against the aforesaid, the Appellant Sarabjit Singh

had also filed a civil suit on 8.1.1998. However, he was not successful in getting any interim order in his favour. It is, therefore, that on 10.1.1998, the Appellant Sarabjit Singh lodged a first information report at Police Station Adampur in district Jalandhar. The aforesaid first information report was lodged under Sections 420, 379, 427, 506, 148 and 149 of the Indian Penal Code. The entire claim of the Appellant Sarabjit Singh in the aforesaid first information report was founded on an agreement to sell in furtherance whereof it is alleged, that Salamat Masih had received from him a sum of Rs. 3,00,000/- as consideration. However interestingly, neither the date of the agreement to sell had been depicted in the complaint made by Sarabjit Singh, nor the same was produced by him at the time of the registration of the above first information report.

7. Threatened with the registration of the first information report referred to above, Itpal Singh (Respondent No. 4 herein), his brother Gurbinder Singh and the vendor Salamat Masih (besides others implicated in the first information report) preferred Criminal Miscellaneous No. 4994-M of 1998, before the High Court of Punjab & Haryana at Chandigarh (hereinafter referred to as, the High Court). The prayer made in the aforesaid Criminal Miscellaneous No. 4994-M of 1998, was for grant of anticipatory bail, u/s 438 of the Code of Criminal Procedure. By an order dated 24.7.1998, the High Court granted interim bail to all the Petitioners. On 24.7.1998, the High Court confirmed the aforesaid order of bail.

8. Itpal Singh (Respondent No. 4 herein) and his brother Gurbinder Singh, preferred a complaint before the Senior Superintendent of Police, Jalandhar, alleging that they were being unnecessarily harassed by the police, in furtherance of the first information report lodged by the Appellant Sarabjit Singh. In continuation with the aforesaid complaint, the Senior Superintendent of Police, Jalandhar marked an enquiry into the matter to the Superintendent of Police (City-II), Jalandhar. Even though a copy of the aforesaid report was available (on the file of the High Court, as annexure P-8), the same has not been placed on the record of the instant case. Nevertheless, it is relevant to mention, that with reference to the aforesaid report, the High Court had remarked that the Superintendent of Police (City-II), Jalandhar had concluded, that the case registered by the Appellant Sarabjit Singh was only to pressurize Itpal Singh (Respondent No. 4 herein), his brother Gurbinder Singh and Salamat Masih.

9. Despite the aforesaid favourable report, Itpal Singh and his brother Gurbinder Singh were repeatedly summoned by the police authorities. In the aforesaid view of the matter, Itpal Singh and Gurbinder Singh again approached the High Court by filing Criminal Miscellaneous No. 22198-M of 2000. The aforesaid Criminal Miscellaneous Petition was disposed of by the High Court on 10.1.2002. The order passed by the High Court is self-explanatory, and is accordingly being extracted hereunder:

Allegation of the Petitioner is that he is being repeatedly summoned in the office of S.P. (D), Jalandhar, without any jurisdiction. This grievance will be looked into

by the S.S.P., Jalandhar on a fresh representation being made by the Petitioner and the same will be disposed of within six months of its filing.

Disposed of accordingly.

It seems, that the matter was then placed before the Deputy District Attorney, Jalandhar, for consideration. As per the report of the Deputy District Attorney, Jalandhar, the Appellant Sarabjit Singh had not been able to establish the execution of any agreement to sell, in his favour. In the aforesaid view of the matter, the Deputy District Attorney, Jalandhar, in a separate report, reiterated the conclusions which had already been drawn by the Superintendent of Police (City-II), Jalandhar (in his report, referred to in the foregoing paragraph).

10. Despite the factual position noticed hereinabove, having concluded its investigation in the matter, the police presented a report u/s 173 of the Code of Criminal Procedure, before a court of competent jurisdiction, so as to initiate criminal proceedings against Itpal Singh (Respondent No. 4 herein), Gurbinder Singh, Salamat Masih and others. The process of initiation of criminal proceedings against the Appellant was assailed by Itpal Singh and Ors. By preferring Criminal Misc. No. 3039-M of 2002. The following order was passed in the aforesaid Criminal Miscellaneous No. 3039-M of 2002 on 11.2.2002:

Learned Counsel for the Petitioner contends that report u/s 173 Code of Criminal Procedure has been presented before the trial court in FIR 4 dated January 10, 1998 u/s 420/379, 427, 506, 148 and 149 Indian Penal Code.

It is further contended that the alleged occurrence had taken place on a parcel of land measuring 61 kanals 3 marlas which had been sold by the owner Salamat Masih to the Petitioner and his brother vide two sale deeds dated March 17, 1997. On the other hand the possession of this land was claimed by the complainant (Respondent 4 herein) on the basis of an agreement to sell. In the recital of the FIR the complainant stated that "for the balance of 61 kanals 2 marls, I had entered into an agreement to sell with Salamat Masih for digging earth and for purchasing the said land. That the whole of the land measuring 91 kanals 13 marlas is situated in village Dhogri and possession was given to me in 1990.

Significantly, no details of the agreement to sell have been mentioned. FIR does not disclose any date, area of land covered by agreement, the rate per kanal or purchase price, the date on which the sale was to be concluded etc., which are all important ingredients of any agreement to sell.

In the main petition the Petitioner is seeking relief on the basis of report of SP, Annexure P-7 in which on investigation it was found that the Petitioner had not committed any offence.

On January 23, 2002 notice of motion was ordered to be issued for February 28, 2002.

In the interim period, proceedings before the trial court on the basis or report u/s 173 Code of Criminal Procedure shall remain stayed.

(Emphasis is ours)

It is therefore apparent, that the trial Court was restrained by the High Court from proceeding against Itpal Singh and others.

11. Simultaneously with the proceedings mentioned hereinabove, Itpal Singh preferred Criminal Miscellaneous No. 32871-M of 2002 u/s 482 of the Code of Criminal Procedure, for quashing the first information report lodged by the Appellant Sarabjit Singh. After obtaining the response of the Appellant Sarabjit Singh (who was arrayed as Respondent No. 4), the High Court, vide its order dated 20.11.2006, quashed the first information report dated 10.1.1998 (lodged by the Appellant Sarabjit Singh with Police Station Adampur in district Jalandhar).

12. The order passed by the High Court dated 20.11.2006, quashing the first information report dated 10.1.1998 referred to above, has been assailed by the Appellant Sarabjit Singh before this Court, through the instant criminal appeal.

13. We have given our thoughtful consideration to the submissions advanced at the hands of the learned Counsel for the Appellant. Primarily, the contention of the learned Counsel for the Appellant was, that the High Court had prematurely, invoked its jurisdiction u/s 482 of the Code of Criminal Procedure and quashed the first information report lodged by the Appellant Sarabjit Singh without considering the allegations made by the Appellant. It was submitted, that a large number of questions of fact were involved in the allegations contained in the complaint filed by the Appellant, specially in view of the factual position adopted by the Respondents. The truth or falsity of the matter, according to the learned Counsel representing the Appellant, could only have emerged after the prosecution was permitted to lead its evidence. It was submitted, that persons against whom allegations have been levelled in the first information report, would then have had ample opportunity to rebut the prosecution evidence and substantiate their innocence. The contention in nutshell was, that in the above situation, justice would have been rendered to both parties. It is, therefore, the submission of the learned Counsel for the Appellant, that the High Court was not justified in invoking its jurisdiction u/s 482 of the Code of Criminal Procedure, to quash the aforesaid first information report, dated 10.1.1998.

14. We have given our thoughtful consideration to the submissions advanced at the hands of the learned Counsel for the Appellant. The entire claim of the Appellant Sarabjit Singh is based on an agreement to sell. The first information report lodged by the Appellant Sarabjit Singh on 10.1.1998 at Police Station Adampur, district Jalandhar, did not even disclose the date of the aforesaid agreement to sell. According to the averments made by the Appellant Sarabjit Singh before the High Court, and now before this Court, it is alleged that the aforesaid agreement to sell was executed on 13.3.1992. With reference to the abovesaid agreement to sell, the observations made by the High Court in its

order dated 11.2.2002 (in Criminal Miscellaneous No. 3039-M of 2002) are extremely significant. The aforesaid order has been extracted hereinabove. The High Court, while granting interim relief, had taken into consideration the fact, that the Appellant Sarabjit Singh had not enclosed a copy of the alleged agreement to sell. He had given no details of the agreement to sell. He did not disclose any date of the alleged agreement to sell. He did not even mention the area of land covered by the agreement, or the rate at which the land was agreed to be purchased. The High Court also noticed, that the date on which the sale was to be concluded, besides other similar issues, had also not been disclosed by the Appellant Sarabjit Singh, in his complaint. While recording that the aforesaid were important ingredients for any agreement to sell, and while noticing that the same had not been disclosed by the Appellant Sarabjit Singh, the High Court had stayed the proceedings before the trial Court. Despite such strong observations made by the High Court in its order dated 11.2.2002, and inspite of the fact that the same is the actual basis for all the allegations which the Appellant has chosen to level against Itpal Singh (Respondent No. 4 herein), Gurbinder Singh, Salamat Masih and Ors. the said agreement to sell has still not been placed on the record of the case, nor have the aforesaid details been furnished.

15. The impugned order passed by the High Court makes a specific mention of the report submitted by the Superintendent of Police (City-II), Jalandhar, wherein it was sought to be concluded, that the first information report had been registered by the Appellant Sarabjit Singh only to pressurize Itpal Singh (Respondent No. 4 herein), Gurbinder Singh, Salamat Masih and others. The aforesaid report was available on the record of the High Court as annexure P-8. An effective determination of the present controversy, therefore, could have been made only upon a perusal of the aforesaid report. Unfortunately, the aforesaid report has not been placed on the record of the case by the Appellant Sarabjit Singh. In the aforesaid view of the matter, an adverse inference is liable to be drawn against the Appellant Sarabjit Singh, and the finding recorded by the High Court on the basis of the aforesaid report of the Superintendent of Police (City-II), Jalandhar, that the instant case had been registered by the Appellant Sarabjit Singh only to pressurize Itpal Singh, Gurbinder Singh, Salamat Masih and Ors. has inevitably to be reiterated. Consequent upon the disposal of Criminal Miscellaneous No. 22198-M of 2000 vide order dated 10.1.2002 (extracted hereinabove), it seems, that the matter was placed before the Deputy District Attorney, Jalandhar. The Deputy District Attorney, Jalandhar also arrived at a similar conclusion, namely, that the Appellant Sarabjit Singh had not been able to produce any material demonstrating the execution of the alleged agreement to sell in his favour. It has been expressly noticed by the High Court in the impugned order dated 20.11.2006, that even the Deputy District Attorney, Jalandhar, in his report, upheld the earlier report submitted by the Superintendent of Police (City-II), Jalandhar. Even this report has not been placed on the record of the case. Herein again, an adverse inference is liable to be drawn against the Appellant Sarabjit Singh.

16. From the course of our narration of the factual position as it traversed before different levels of investigation and judicial scrutiny, it emerges that the Appellant Sarabjit Singh has not been able to produce any material, on the basis of which he can establish his claim. The aforesaid land was admittedly been sold by Salamat Masih to Itpal Singh and Gurbinder Singh (through two registered sale deeds dated 17.3.1997 and 4.4.1997), i.e. Well before the registration of the first information report dated 10.1.1998 by the Appellant Sarabjit Singh. This is surely a case of no evidence. It is a case where accusations have been levelled without supporting material. Despite a clear indication in the order passed by the High Court, such supporting material has still not been made available for perusal of this Court. Therefore, in the facts and circumstances of this case, we are satisfied, that in the absence of any material whatsoever to support the charges levelled by the Appellant Sarabjit Singh in the first information report dated 10.1.1998, the High Court was justified in quashing the said first information report by invoking its jurisdiction u/s 482 of the Code of Criminal Procedure. We are also satisfied, that the conclusions drawn by the Superintendent of Police (City-II), Jalandhar, and the Deputy District Attorney, Jalandhar, that the police complaint made by the Appellant Sarabjit Singh was solely aimed at pressurizing Salamat Masih, Itpal Singh and Gurbinder Singh (besides some others), were fully justified.

17. For the reasons recorded hereinabove, we find no merit in the instant appeal and the same is accordingly dismissed.