

In the Court of Daljeet Kaur, PCS, Judicial Magistrate 1st Class, Kharar.

PBSAA1-000444-2014

Police Challan No. 47/21.07.2014

Date of Decision : 16.11.2018

STATE

Vs.

1. Krishan Kumar son of Preeta Ram, aged about 50 years, resident of Mullanpur Garibdass, District S.A.S. Nagar.
2. Yogesh Kumar son of Krishan Kumar, resident of Mullanpur Garibdass, District SAS Nagar.
3. Harish Kumar son of Nand Lal, resident of House No.480, Ward No.1, Nehru Market Bagriya Road, Near Dharamkanda Dhuri, District Sangrur.

.....Accused.

FIR No.24 dated 21.07.2014

U/s 420, 465, 467, 468, 471, 511,
120-B IPC

Police Station Mullanpur Garibdass.

Present: Sh. Gurjinder Singh, APP for the State.
Accused Krishan Kumar, Yogesh Kumar and Harish
Kumar on bail with counsel Sh. Amit Mandkan Adv.,

JUDGMENT:

1. The above named accused have been sent up by the police of Police Station, Mullanpur Garibdass for facing trial under Section 420, 465, 467, 468, 471, 511, 120-B IPC IPC.
2. Briefly stated, case of the prosecution is that an application was moved by Dilbagh Singh to SSP concerned. The application was inquired by EO Wing

and after opinion of DDA (legal), instant FIR was registered against accused.

3. The application was moved against Krishan Kumar Malhotra son of Preeta Singh resident of Mullanpur Garibdass, Yogesh Kumar, Harish Kumar, sons of Krishan Kumar Malhotra resident of Mullanpur Garibdass, Harish Kumar son of Nand Lal, resident of Puri, District Sangrur, Vijay Kumar resident of Mundi Kharar, District Mohali regarding cheating. The application was to the effect that the complainants are residents of village Todhe Majra, Tehsil Kharar, District SAS Nagar and their land is situated at village Toda Majra. Krishan Kumar Malhotra is resident of Mullanpur Garibdass and is a property dealer. He is running an office in the name Disha Property Dealers at Mullanpur Garibdass. He along with above mentioned friends and sons is preparing forged agreements and thereby used to grab the property of people. Krishan Kumar Malhotra prepared a forged agreement dated 25.08.2008 in the name of his son. All the signatures have been forged on the said agreement. They never entered into any agreement with above mentioned persons. Accused mentioned the value of their land as Rs.38 lacs per acre, whereas, the value of their land is Rs.1 crore 10 lacs per acre at the time of the alleged agreement. As per agreement, an amount of Rs.40,00,000/- was shown as paid as earnest money, whereas such a huge amount was not paid to any of the complainant by above mentioned persons nor the said amount is deposited in their bank accounts. Accused have no proof regarding above-said amount. Even, the stamp papers for the agreement to sell were not purchased by complainant party. Instead, the stamp papers were purchased in the name of Yogesh Kumar son of Krishan Kumar Malhotra

and Harish Kumar son of Nand Lal witnessed the alleged agreement. The agreement was prepared by the accused while sitting in their office. The agreement does not bear signatures of any of the complainant or Nambardar/Sarpanch/Punch etc. On the basis of the forged agreement, Harish Kumar filed the civil suit against them. Now they have received summonses. They were surprised as they never entered into any agreement with above mentioned persons. The case is still pending. It is, therefore, requested that action be taken against accused persons for forging the agreement and cheating the complainant party who are innocent rustic villagers and earning livelihood from the landed property. They have also come now that above mentioned persons have also cheated several other land owners from many villages and obtained the signatures of the agriculturists as witnesses. They be saved from the gang of land grabbers.

4. Instant FIR was registered and investigation was launched. The forged signatures were got compared from FSL. Accused Krishan Kumar Malhotra was arrested in the present case and challan against him was present in the Court. Similarly, accused Yogesh Kumar and Harish Kumar were arrested in the present case. Earlier accused Yogesh Kumar and Harish Kumar were declared as proclaimed absconders and after their arrest, supplementary challan was presented against them. After completion of the investigation and other necessary formalities, challan/supplementary challan against the accused persons was presented.

5. On presentation of the challan/supplementary challan in the Court, copies of all the documents relied upon by the prosecution were supplied to the accused,

free of costs, as required under Section 207 Cr.P.C.

6. On finding a prima-facie case, charge Under Sections 420/465/467/468/471/120-B of IPC was framed vide order dated 21.04.2017 against the accused persons, to which, they pleaded not guilty and claimed trial.

7. In order to prove its case, prosecution examined Inspector Raghbir Singh as PW1, ASI Jarnail Singh as PW2, Dilbagh Singh as PW3, Harchand Singh as PW4, SI Harbhajan Singh as PW5, Malkiat Singh as PW6, Jatinder Sabarwal, Incharge, Judicial Record Room, Kharar as PW7, Kirpal Singh as PW8, Sh. Deepak Verma Advocate as PW9, Retired Inspector Pritam Singh as PW10, Shiv Kumar, Stamp Vendor as PW11. Besides examining above-said witnesses, learned APP for the State given up witnesses SI Ajaib Singh, Ahlmad Daljit Singh being unnecessary for the time being. On the no objection of learned counsel for accused, learned APP for the State tendered into evidence the inquiry conducted by ASI Kuldeep Singh E.O. Wing Mohali as Ex.PW10/A and thereafter evidence of prosecution was closed.

8. Statement of the accused was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against them on file were put to them, which were denied by them. Rather, the accused took a specific plea that they have been falsely implicated in the present case and never committed any offence as alleged by the prosecution.

9. Accused did not lead any evidence in defence and they closed the same.

10. I have heard the arguments of learned APP for the State and learned counsel for defence and have gone through the judicial file carefully.

11. Learned APP for the State argued that prosecution duly proved its case against accused by leading cogent and reliable evidence. All the accused after hatching a criminal conspiracy, forged the agreement dated 25.08.2008 in the name of Harish Kumar and thereafter filed civil suit on the basis of the forged agreement against complainant party and thus used as genuine the forged agreement knowing it well to be a forged one. The accused persons have cheated the complainant party and as such, the accused persons facing trial be convicted for the offences charged with.

12. On the other hand, learned defence counsel argued that prosecution miserably failed to prove its case against accused persons beyond shadow of reasonable doubt. No iota of evidence has come up on record against Krishan Kumar Malhotra. He is neither a party nor an attesting witness or beneficiary under the alleged forged agreement. He has got no concern with the alleged forged agreement. Prosecution failed to connect him with the commission of the offence. So far as accused Yogesh Kumar and Harish Kumar are concerned, the charges against them are also not established on record. There is no such evidence on record that the alleged agreement is forged by the accused persons. It is also not established on record beyond doubt that accused Harish Kumar filed civil suit, on the basis of alleged forged agreement. There is no iota of evidence on record, who purchased the stamp papers for the alleged agreement. The signatures/handwriting on the alleged agreement is not proved to be as that of any of

the accused. Sh. Deepak Verma Advocate PW9 never identified accused Harish Kumar as the person who filed the civil suit in question. He next contended that the original agreement to sell allegedly forged has never seen light of the day. The original agreement is not collected by the Investigating agency during investigation. Even, the original agreement, allegedly forged, is not produced and proved on record. Prosecution although sought permission to prove the copy of the said agreement, available on record, by way of secondary evidence, but, it failed to fulfill the conditions attached to its exhibition, as were imposed by the Court as per law. Since, the original agreement, which is allegedly forged by the accused persons has not been brought on record, no criminal liability is made out against the accused persons facing trial. He also contended that the prosecution witnesses did not support the prosecution case. The testimonies of the even material witnesses are not sufficient to convict the accused persons facing trial for any offence with which they have been charged. In the end, he argued that accused persons deserve acquittal.

13. I have considered respective submissions in the light of material on record and found substance in the contention raised by learned counsel for accused.

14. At the very outset, it is to be seen that the original agreement, allegedly forged by accused and then used as genuine one knowing it well to be a forged document, is not produced on record. Prosecution placed on record only copy of the said agreement. The original agreement was never collected during investigation of the case. Even, during trial the original agreement is never produced on record. The photocopy of

the said agreement is proved on record as PW3/B, by Dilbagh Singh complainant.

15. Prosecution examined Shiv Kumar, Stamp Vendor as PW11, who deposed that on 06.08.2008 Yogesh Malhotra son of Krishan Kumar purchased three stamp papers of Rs.100/-from him. After seeing the photo copy of the agreement Ex.PW3/B, he deposed that the stamp papers were sold by him. He identified his handwriting at point -A. He entered the particulars in his register and proved the copy of the relevant entry as Ex.PW11/A. In his cross-examination he deposed that he has never seen the original stamp papers nor seen the original agreement to sell dated 25.8.2013. The serial number of the stamp papers has not been mentioned by him in his register when stamp papers were issued. No identity card of the person shown to be Yogesh Kumar was seen by him or placed on record at the time of issuance of the alleged stamp papers. He also admitted that one FIR has been got registered against him under Section 420 of IPC by Sh.Beant Singh Advocate for using rubber stamps to forge documents.

16. It is to be seen here that Dilbagh Singh complainant as PW-3 in his examination in chief supported the prosecution case, but, during his cross examination, he deposed that he does not know anything about the present case. No body prepared the false agreement to sell regarding his land at village Dhode Majra. Police did not meet him regarding investigation of the case. He never moved any complaint against anyone regarding false agreement to sell dated 25.8.2008 regarding his land at village Dhode Majra. Krishan Kumar Malhota, accused, present in the Court has not committed any offence and he is innocent. Krishan Kumar or Harish Kumar or Yogesh Kumar or Vijay

Kumar never prepared any false agreement. He never disclosed their names to the Police. Police falsely implicated them. He has never seen the original agreement. He never received any summons of the Civil case regarding their land at Dhode Majra. He does not know who purchased the stamp papers of the agreement agreement to sell. Krishan Kumar Malhotra or any of the accused never approached them for settlement regarding their land. He gave his statement in chief in misunderstanding of facts and misconception. This witness was re-examined by the APP for the State. However, nothing material came out.

17. Similarly, alleged affected party Harchand singh son of Gajra Singh appeared as PW-4 and supported prosecution case in examination in chief, but, in his examination he also deposed that he does not know anything about the present case. No body prepared the false agreement to sell regarding his land at village Dhode Majra. Police did not meet him regarding investigation of the case. He never moved any complaint against anyone regarding false agreement to sell dated 25.8.2008 regarding his land at village Dhode Majra. Krishan Kumar Malhota, accused, present in the Court has not committed any offence and he is innocent. Krishan Kumar or Harish Kumar or Yogesh Kumar or Vijay Kumar never prepared any false agreement. He never disclosed their names to the Police. Police falsely implicated them. He has never seen the original agreement. He never received any summons of the Civil case regarding their land at Dhode Majra. He does not know who purchased the stamp papers of the agreement agreement to sell. Krishan Kumar Malhotra or any of the accused never approached

them for settlement regarding their land. He gave his statement in chief in misunderstanding of facts and misconception. This witness was re-examined by the APP for the State. However, nothing material came out.

18. PW-6 Malkit Singh, alleged co-sharer in the land, deposed that he does not know anything regarding present case. No body prepared the false agreement to sell regarding their land at village Dhode Majra. Police did not meet him regarding investigation of the case. They never moved any complaint to SSP Mohali against anyone regarding false agreement to sell of their land at Dhode Majra. Police did not record his statement. He even did not identify the accused present in the Court. This witness was declared hostile on the request of learned APP for the State, who cross examined the witness at length, but, failed to extract anything incriminating from his mouth, which can be used against the accused facing trial.

19. PW-8 Kirpal Singh, deposed that he does not know anything regarding present case. No body prepared the false agreement to sell regarding the land of Dilbagh Singh, Hardev Singh, Malkit Singh residents of village Dhode Majra. Police did not meet him regarding investigation of the present case. He never got recorded his statement to the Police or to the E.O. Wing. He did not identify any of the accused present in the Court.

20. This witness was declared hostile on the request of learned APP for the State, who cross examined the witness at length, but, failed to extract anything incriminating from his mouth, which can be used against the accused facing trial.

21. So, from above discussion, the testimonies of material witnesses do not inspire any confidence.

22. Accused Krishan Kumar Malhotra is neither signatory to the alleged agreement as an attesting witness nor he is a party to the same. He is not even the beneficiary under the alleged agreement. Prosecution has failed to prove how accused Krishan Kumar Malhotra is arrayed as an accused in this case and what is his role. The only contention raised by learned APP for the State is that as per complainant, Krishan Kumar Malhotra called the complainant party and assured to get the matter settled regarding the civil suit and as such, he is a part of the criminal conspiracy with Harish Kumar. However, the said contention is found devoid of any merit. In this regard, the testimony of complainant and his witnesses are material. During the course of their deposition in Court, complainant and other material witnesses have categorically deposed that Krishan Kumar never assured to get the matter settled regarding civil suit.

23. As discussed above, all the material witnesses have already turned hostile and nothing incriminating came out from their mouth, which cannot be used against accused persons facing trial. So far as at the fact of filing of the civil suit is concerned, it is not established on record as to who filed the said civil suit. It is also not established on record that it was accused Harish Kumar facing trial, who filed the said civil suit. Sh. Deepak Verma Advocate as PW9 did not identify accused Harish Kumar facing trial as the person, who filed the alleged civil suit. PW-7 has categorically deposed that there is no proof on the file of Civil Case as to who filed it. PW-9 also did

not identify Harish Kumar accused as the person who filed the Civil Suit on the basis of alleged photo copy of the agreement. There is nothing on record to prove that the civil suit was filed on the basis of photocopy of agreement to sell prepared by the accused persons after hatching any criminal conspiracy, as alleged by prosecution.

24. At the cost of repetition, it is reiterated here that the original agreement dated 25.08.2008 has never seen light of the day and original of it was not collected during investigation or proved on record during trial of the case. Even, if the photocopy is taken into consideration, even then prosecution failed to prove that the agreement dated 25.8.2010 was forged by the accused persons facing trial, from which Ex.PW3/B (photocopy) is allegedly generated.

25. The other witnesses examined by prosecution also categorically deposed that the original forged agreement was never produced before them and they have not seen the alleged forged original agreement to sell at any point of time. The same was even collected during investigation. It is to be seen that from report of FSL Ex.PX on record, it was opined that no definite opinion can be given regarding authorship of questions signatures and admitted signatures.

26. In view of my discussion above, prosecution miserably failed to prove the charges against the accused persons beyond shadow of reasonable doubt and even to connect the accused persons with the alleged offence. As such, I have no other option but to acquit the accused Krishan Kumar Malhotra, Yogesh Kumar and Harish Kumar facing trial. Accordingly accused Krishan Kumar Malhotra, Yogesh Kumar and

Harish Kumar are acquitted of the offences charged with, by giving them the benefit of doubt. Bail bond and surety bond of accused stand discharged. Case property be disposed of as per rules after expiry of period for filing appeal, revision or result thereof, if any. File be consigned to the Judicial Record Room, Kharar after due compliance in all respects as per rules.

Pronounced
16.11.2018

Neha
JW

(Daljeet Kaur) PCS
Judicial Magistrate 1st Class
Kharar
UID No.PB0420