

In the court of Sh. Amit Kumar Garg, PCS
Chief Judicial Magistrate, Fazilka.

Criminal Case No: 60-1 of 25.7.2016

CIS No. CHI-134/2016

CNR No.PBFZC2-001183-2016

Date of Decision: 30.3.2018

State

Verses

Harbans Singh son of Inder Singh, resident of village Hasta Kalan, Police
Station Sadar Fazilka, Tehsil and District Fazilka.

....Accused

FIR No.24 dated 14.2.2013

under Section 419, 420, 465, 467, 468, 470, 471, 120-B of Indian Penal
Code, Police Station City Fazilka.

Present: Sh. Yogesh Kasrija, Additional Public Prosecutor for the State.
Accused on bail.
Sh.Manish Sharma, Advocate counsel for accused.

JUDGMENT

Initially the accused Harbans Singh son of Inder Singh was
declared proclaimed offender vide order dated 23.8.2013 and Challan
against remaining accused was presented and remaining accused were
convicted vide judgment dated 07.12.2015.

2. The present challan has been filed by the SHO, P.S. City Fazilka
under section 419/420/465/467/468/470/471/120B IPC against the above
named accused after he was arrested on 13.07.2016.

3. The brief facts of the prosecution story are that an application
from Fauja Singh son of Sunder Singh resident of Village Fatehgarh Tarobri
was received in the office of Senior Superintendent of Police, Fazilka,
which was marked for enquiry. The subject matter of the application was for

taking action against the accused , who impersonated a lady namely Parvati in order to grab the land of the complainant, they got prepared a forged sale deed qua land in possession of complainant and for raising threats to the life and liberty of complainant and his family members. It was submitted in the application that the complainant is aged about 78 years and came into possession of the land for the last about 40 years. In order to usurp the land of the complainant, the accused persons operate as a gang. Accused Madan Lal was earlier involved in murder cases and accused Jasvir Singh is also a very clever person. All of them have threatened to take forcible possession of the land measuring 37 Kanals 07 Marlas of his son Sarwan Singh, regarding which, his son filed a civil case in the Court on seeing his old age. The complainant accompanied by Kashmir Singh, Jiwan Singh, Himmat Singh, Gagandeep Singh, Sarwan Singh and Om Singh etc. visited the house of accused Madan Lal and requested the accused persons that he had already paid the price of the land to Lok Nath and Munshi Ram, after their death and the death of Smt. Parvati, again the legal heirs of Parvati had received the price of the land so they are coming into possession of the disputed land for the last 40 years. He requested the accused persons that the sale deed, which they have procured by impersonation by producing some other lady in place of Smt. Parvati is forged one and the sale deed got executed by Jarnail Singh in favour of Parkash Kaur and Manjit Singh without sale consideration by preparing forged and false documents, is not liable to be got implemented. The accused persons after consulting with the marginal witnesses of the sale deed i.e. Lambardar and Panchayat Member have stated that firstly the complainant should pay a sum of Rs. 5,00,000/- to each of

them for procuring the forged sale deed after paying high bribe and then the sale deed of the disputed land would be got registered from Manjit Kaur and Parkash Kaur in favour of complainant party. If the complainant party did not agree for the same, they would be killed and would also take over possession of the land from them. It was further averred that according to Jamabandi for the year 2008-09, the name of Tilak Raj etc. was mentioned in the column of ownership in Khewat No. 11, Khatoni Nos. 179, 180, 181, 182, 183, which was purchased by the sons of the complainant and Khatoni No. 185 land measuring 37 Kanals 7 Marlas is entered in the name of Sarwan Singh son of the complainant being Gair-marusi. In fact, Dariya Ditta son of Daulat Ram was owner of Khewat No.118 recorded in Jamabandi and after his death, his sons Lok Nath and Munshi and daughter Parbati d/o Dariya Singh became owner of the land being his legal heirs. Lok Nath and Munshi Ram were residing in Saharanpur and their sister Parvati being not residing in the village. Therefore, Lok Nath and Munshi Ram executed an agreement on 14th December, 1992 for selling the land in favour of complainant and received the earnest money. Lok Nath and Munshi Ram taken responsibility of their sister for getting the sale deed executed in favour of the person of the choice of complainant. After a span of time, the rates of the land became high and due to greed crept in the mind of the owners, they received excess rate of the land and got executed a general power of attorney in favour of son of complainant at Chandigarh authorizing him to get the sale deed executed in favour of the person of choice of complainant. On the basis of power of attorney, the land was transferred in the name of Balraj Singh etc. and qua remaining land i.e. 35

Kanals 07 Marlas, legal heirs of Smt. Parbati have got executed an agreement. Since Lok Nath had expired, so his legal heirs received more money and agreed to sell the land. The land measuring 37 Kanals 07 Marlas comprising Khewat no. 118 Khatoni no. 185 fell to the share of Parbati. After her death, her legal heirs became owner thereof. The son of the complainant namely Sarwan Singh filed a civil suit titled as Sarwan Singh versus Amarjit Kaur, in which, counter-claim was also filed and vide judgment dated 21.03.2001 passed by the Court of Shri Ranjit Singh, Civil Judge, Fazilka, the suit as well as counter-claim was dismissed and as such, possession of Sarwan Singh is entered in the revenue record. The accused persons by forming an illegal gang got procured a sale deed dated 19.08.2011 by utilizing the name of Smt. Parbati by way of impersonation by producing some other lady than Parbati in connivance with Harbans Singh Sarbara Lambardar, which was registered as wasika No. 3231 in spite the fact that Parbati had expired long ago before execution of sale deed. That on the basis of sale deed bearing wasika No. 3231 dated 19.08.2011, accused Jarnail Singh further transferred the land in question in favour of Parkash Kaur wife of Madan Lal to the extent of half share and Manjit Kaur wife of Jasvir Singh to the extent of half share vide wasika No. 2762 dated 30.08.2012, which is the result of deep rooted conspiracy between the accused persons. It was submitted in the sale deed that the possession of the land was delivered to the vendee's, whereas, in the revenue record, possession of land measuring 37 Kanals 07 Marlas is coming in name of complainant and his family members. Madan Lal husband of Parkash Kaur, is a criminal person and was already involved in murder cases and Manjit

Kaur wife of Jasbir Singh is his supporter. The accused persons have got procured a sale deed in the name of deceased Parbati daughter of Dariya Ditta by producing some other lady before Sub Registrar and accused Makhan Singh and Harbans Singh have put their witness in an illegal manner. It was requested that the accused persons were raising threats to the life and liberty of the complainant so he prayed for taking action against the culprits. On the said application of the complainant, after collecting the relevant revenue record and other relevant documents and recording the statements of concerned persons, an inquiry report bearing No. 27 Spl/PC dated 04.01.2013 was prepared by Veer Chand, PPS, DSP(D), Fazilka, whereby, he recommended for registration of an FIR against Jarnail Singh son of Fauja Singh resident of Village Amir Khas, Makhan Singh Member Panchayat village Tarobari and Harbans Singh Sarbara Lambardar village Hasta Kalan under the relevant sections. On this inquiry report, SSP, Fazilka Shri Amar Singh Chahal vide his order dated 7.2.2013 ordered SHO P.S. City Fazilka to take further necessary legal action. On the basis of said direction of SSP, Fazilka, present FIR was registered against the accused persons. Further investigation was entrusted to ASI Janak Raj, who conducted initial investigation and as per directions of the higher officers, file was sent to ASI Harkesh Kumar, for investigation to Anti Fraud Squad, Fazilka. Accused Makhan Singh was arrested on 24.06.2013 and accused Jarnail Singh was arrested on 05.07.2013, whereas, proclamation proceedings against accused Harbans Singh son of Inder Singh was pending in the Court. After completion of requisite investigation formalities, challan against accused Jarnail Singh son of Fauja Singh resident of village Amir

Khas Police Station Guruharsahai and Makhan Singh son of Gurdit Singh resident of village Tarobri was presented in the Court for the offences punishable under sections 419, 420, 465, 467, 468, 470, 471, 120-B of Indian Penal Code with the submission to summon the witnesses mentioned in the list of witnesses and trial accordingly. They were convicted vide judgment dated 07.12.2015 and supplementary challan under section 173(8) was presented against accused Harbans Singh.

4. On appearance of accused, he was supplied with the copies of Challan and documents free of costs as required under Section 207 Code of Criminal Procedure.

5. Finding a prima facie case under Section 419, 420, 465, 467, 468, 471, 120-B of Indian Penal Code, the charge was framed against accused, to which he pleaded not guilty and claimed trial.

6. In evidence, the prosecution examined **PW-1** Fauja Singh son of Sunder Singh complainant who reiterated the averments of complaint and proved the application moved by him against the accused as Ex.P1 and identified his signatures as Ex.P1/A, Agreement to sell Ex.P2 in his favour.. **PW-2** Satish Kumar Computer Clerk, Fazilka deposed that as per record Parbati Devi wife of Ralia Ram died on 5.11.1979 and registration regarding her death was made on 8.11.1979 vide entry No.211 Ex.PW2/A. He further proved the death certificate of Parbati Devi as Ex.PW2/B which was issued on 14.5.2013 under his signatures. **PW-3** Sarwan Singh @ Swarn Singh son of Fauja Singh and **PW-7** Kashmir Singh son of Gulab Singh corroborated the version of PW-1. **PW-4** Gian Chand circle Patwari deposed that as per record Tilak Raj etc are the owners of land and proved the Jamabandi for the

year 2008-2009 Ex.PW4/A and Khasra Girdawari for Hari and Sauni 2012-2013 Rect No.3, Killa No.23 Rect No.5 Killar No.3, 4, 5 and 8/2 Khasra Girdawari is in the name of Swaran Singh son of Fauja Singh and attested copy of the same is Ex.PW4/B. **PW-5** HC Santa Singh deposed that on 22.5.2013 he was posted at E.O.Wing Fazilka and on that day Investigating Officer Paramjeet Singh took into possession death certificate of Parbati Devi vide Memo Ex.PW5/A produced by Satish Kumar, recovery Memo of Wasika No.3231 dated 19.8.2011 and Wasika No.2762 dated 30.8.2012 Ex.PW5/B and copy of Khasra Girdawari Ex.PW5/C. **PW-6** ASI Tilak Raj Investigating Officer deposed that on 13.7.2016 he was posted at Police Station City Fazilka and on that day he apprehended accused Harbans Singh from his house and prepared his personal search Memo Ex.PW6/A, arrest Memo Ex.PW6/B, intimation memo Ex.PW6/C. **PW-8** HC Satpal Singh deposed that on 24.6.2013 he was posted at EO Wing Fazilka and on that day in his presence Investigating Officer he arrested accused Makhan Singh vide arrest Memo Ex.P8/A, his personal search was conducted vide personal search Memo Ex.P8/B, intimation memo Ex.P8/C. He further deposed that on 5.7.2013 he arrested accused Jarnail Singh vide Memo Ex.P8/D, personal search Memo Ex.P8/E. **PW-9** Harbhajan Lal registration clerk deposed that as per record the copy of Wasika No.3231 is correct and the same is Ex.P9/A and the copy of Wasika No.2762 is Ex.P9/B. **PW-10** Harpreet Singh System Manager deposed that as per record of the office of Punjab Land Record Society on 17.6.2013 on application, he issued the copy of Ex.PW4/A. **PW-11** ASI Paramjit Singh who partly conducted the investigation reiterated the prosecution version and proved documents. **PW-12** Veer Chand DSP

deposed that in the year 2013 he was posted as DSP (D) Fazilka and on 5.1.2013 application Ex.P1 vide Endorsement of SSP Ex.P12/A was received in his officer and on receiving it he called both the parties and after inquiry he found the guilty of accused and submitted his report Ex.P12/B which was sent to the office of SSP Fazilka vide Ex.P12/C. Lastly the prosecution examined **PW-13** Mukesh Kumar Clerk Record Room Fazilka who brought the case file titled as “Swaran Singh Versus Amarjeet Kaur etc” and proved the copy of judgment Ex.PW13/A and decree sheet Ex.PW13/B. Thereafter the evidence of prosecution was closed by order vide order dated: 6.3.2018.

7. Accused was examined under Section 313 of Code of Criminal Procedure by putting entire incriminating evidence appearing against him which he denied being incorrect and pleaded innocence as well as false implication while submitting that he is innocent person and has been falsely implicated in the present case and in defence he tendered into evidence copy of order dated 3.7.2008 Ex.D1. Thereafter accused closed his defence evidence.

8. I have heard learned Additional Public Prosecutor for State, learned defence counsel and have perused the case file carefully.

9. Learned Additional Public Prosecutor for the State argued that prosecution has duly proved its case beyond reasonable shadow of doubt while examining all the material witnesses. He relied upon the statement of **PW-1** complainant Fauja Singh which is corroborated by **PW-3** Sarwan Singh @ Swarn Singh and **PW-7** Kashmir Singh who deposed as per prosecution version and identified the accused in the Court. He also proved

the agreement to sell Ex.P2. He further relied upon the death certificate of Parvati Devi Ex.PW2/B according to which said Parvati died on 5.11.1979. He also relied upon the statement of **PW-4** Gian Chand Patwari who proved the copy of Jamabandi Ex.PW4/A and copy of Khasra Girdawari Ex.PW4/B in the name of Swaran Singh alias Sarwan Singh. So by relying upon the other oral as well as documentary evidence brought on record by the prosecution he contended that present accused Harbans Singh identified the wrong lady who impersonated herself as Parvati Devi and transferred her land in favour of accused. He prayed maximum punishment for the accused.

10. On the other side learned defence counsel argued that prosecution has miserably failed to prove its case beyond reasonable shadow of doubt and first of all he contended that complainant is not the owner of the land in dispute till today and there is no evidence brought on record by the prosecution that how the complainant came into possession. He further argued that the present accused is not the beneficiary to the transaction in any manner and no civil suit has been filed by the complainant till today. He further argued that husband name of Parvati Devi is different in the police proceedings from the name mentioned in the death certificate. So he prayed that the accused may kindly be acquitted.

11. Having heard the prosecution as well as defence, this Court is of the view that prosecution has duly proved on record the Jamabandi for the year 2008-2009 Ex.PW4/A in which Parvati Devi daughter of Dariya Ditta Mall was shown to be owner in possession 1/3rd share of land and as per certified copy of sale deed dated 19.8.2011 Ex.P9/A said Parvati Devi daughter of Dariya Ditta Mall son of Daulat Ram executed the sale deed of

land measuring 37 Kanals 5 Marlas being 1/3 share out of total land measuring 111 Kanals 16 Marlas in favour of Jarnail Singh son of Fauja Singh resident of village Amir Khas and present accused Harbans Singh identified said Parvati Devi being Nambardar of village Hasta Kalan. It is also not disputed by the defence that accused Harbans Singh was appointed as Nambardar of village Hasta Kalan vide order dated 3.7.2008 Ex.D1 produced by the defence itself. The prosecution has also proved on record the death certificate of Parvati Devi Ex.PW2/B according to which she died on 5.11.1979. The complainant Fauja Singh PW-1 categorically deposed that originally Dariya Ditta Mall was allotted 111 Kanals 5 Marlas of land in lieu of land left by him in Pakistan and the said land was inherited by his two sons namely Lok Nath and Munshi Ram and one daughter Parvati Devi. He also deposed about the execution of agreement in his favour on 19.2.1964 and thereafter in the year 1992 by the legal heirs of said Lok Nath and Munshi Ram. The prosecution has also proved the certified copy of sale deed Ex.PW9/B according to which said Jarnail Singh further executed the sale deed of land measuring 37 Kanals 5 Marlas allegedly purchased from Parvati Devi, to Smt.Parkash Kaur and Smt.Manjit Kaur on 30.8.2012. As per per Khasra Girdawari Ex.PW4/B Swaran Singh alias Swarna son of complainant Fauja Singh is shown to be in possession as Gair Marusi. In the inquiry conducted by DSP, Ex.PW12/B also it was found that said Parvati Devi died on 5.11.1979 and accused in connivance with each other got executed the sale deed by impersonating other lady in place of deceased Parvati Devi. The complainant also proved the agreement dated 16.12.1992 Ex.P2 according to which the legal heirs of said Munshi Ram and Lok Nath

admitted to have received the amount from the complainant Fauja Singh in the year 1964 and on 16.12.1992 and agreed to execute the sale deed on 30.6.1993. No cross examination has been conducted by the defence on these documents which are deemed to have been admitted as per settled law and this Court is of the view that as per revenue record Swaran Singh son of Fauja Singh complainant has been shown to be in possession of the land which was subject matter of the sale deed executed in favour of Jarnail Singh on 19.8.2011 by impersonating the deceased Parvati Devi and it is also proved that present accused Harbans Singh being Nambardar of village Hasta Kalan identified the said lady who impersonated herself as Parvati Devi which proved the criminal conspiracy of present accused Harbans Singh to cause wrongful gain for themselves and wrongful loss to the legal heirs of deceased Parvati Devi or subsequent transferee in interest. Nothing favourable could come out from the cross examination of witnesses to rebut the case of prosecution and which could prove that accused Harbans Singh identified Parvati Devi correctly and she was alive at the time of execution of sale deed in favour of Jarnail Singh who has already been convicted vide judgment dated 7.12.2015. It is also proved that accused Harbans Singh being attesting witness identified the wrong lady in place of Parvati Devi and prepared a forged sale deed dated 19.8.2011 in favour of Jarnail Singh who further sold the same being valuable security in favour of Parkash Kaur and Manjit Singh. However, the offence of cheating has not been proved by the prosecution that how the complainant Fauja Singh was cheated by the act of accused Harbans Singh and as per revenue record and as per admitted fact also no ownership right has ever been transferred in the name of

complainant by the legal heirs of deceased Lok Nath and Munshi Ram original owners of the land. Hence the prosecution has failed to prove the offence Under Section 420 of Indian Penal Code and prosecution has been able to prove remaining charges beyond reasonable shadow of doubt accordingly present accused Harbans Singh is accordingly held guilty Under Section 419, 465, 467, 468, 471, 120-B of Indian Penal Code. Let he be heard on quantum of sentence.

Pronounced in open Court
Dated 30.3.2018

(Amit Kumar Garg),
Chief Judicial Magistrate,
Fazilka. (UID No.PB0260)

David Paul (Stenographer Gr.II)

Hearing on the question of sentence

Present: Sh.Yogesh Kasrija, Additional Public Prosecutor for State.
Convict/accused in custody.
Sh.Manish Sharma, Advocate counsel for accused.

The accused prayed lenient view with regard to sentence and his release on probation on being first time offender and sole bread winner of his family but learned Additional Public Prosecutor for the State opposed his submissions with prayer of exemplary punishment.

2. Having heard both the sides, this court is of the opinion that this is not a fit case to extend benefit of probation to convict/accused because the convict has committed serious offence. However, keeping in view the facts and circumstances convict is sentenced to undergo rigorous imprisonment as follows:

Sr. No	Offence	Sentence	Fine	Simple Imprisonment in default of fine
Accused Harbans Singh				
	419 read with Section 120-B IPC	RI 2 years	Rs.2000/-	30 days
	465 read with Section 120-B IPC	RI 1 year	Rs.1500/-	15 days
	467 read with Section 120-B IPC	RI 3 years	Rs.3000/-	30 days
	468 read with Section 120-B IPC	RI 2 years	Rs.2000/-	30 days
	471 read with Section 120-B IPC	RI 1 year	Rs.1500/-	15 days

3. The period already undergone in custody by convict during inquiry, investigation or trial shall be set off against the substantive sentence. All the sentences shall run concurrently. Case property if any be disposed off after awaiting period of appeal or revision. Bail bonds and surety bonds stand

discharged. File be consigned to the record room.

Pronounced in open Court
Dated 30.3.2018

(Amit Kumar Garg),
Chief Judicial Magistrate,
Fazilka. (UID No.PB0260)

David Paul (Stenographer Gr.II)