Mohinder Pal Singh And Others vs The State Of Punjab And Another on 15 March, 2010

Author: A.N.Jindal

Bench: A.N.Jindal

IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH
...

Criminal Revision No.219 of 2000(O&M) Mohinder Pal Singh and others ... Petitioners VERSUS The State of Punjab and another ... Respondents and Criminal Revision No.220 of 2000(O&M) Gurbax Singh ... Petitioner VERSUS The State of Punjab and another ... Respondents Decided on : March 15, 2010 CORAM :

HON'BLE MR.JUSTICE A.N.JINDAL Present: Mr.Saurav Garg, Advocate for Mr.K.S.Dadwal, Advocate for the petitioners.

Mr.Raghbir Chaudhary, Sr.DAG for the State of Punjab.

A.N.JINDAL, J.-

This judgment of mine shall dispose of two connected revisions i.e. Criminal Revision Nos.219 and 220 of 2000; one filed by Mohinder Pal Singh, Jagtar Singh and Gurmit Singh and the other filed by Gurbax Singh, challenging the judgment dated 11.2.2000 passed by Additional Sessions Judge, Hoshiarpur, dismissing the two appeals against the judgment dated 8.2.1999 passed by Judicial Magistrate Ist Class, Hoshiarpur, convicting the petitioner - accused Gurbax Singh under Section 467 of the Indian Penal Code, whereas, petitioners - accused Mohinder Pal Singh, Jagtar Singh and Gurmit Singh under Section 471 read with Section 149 IPC, and sentencing each of them to undergo rigorous imprisonment for two years and to pay fine of Rs.2000/-. However, in appeal the sentence was reduced to 1½ years, without any alteration in the fine.

It may be mentioned that even though all the accused have undergone the entire period of sentence, yet they are assailing the impugned judgment.

The backdrop of the case is that accused Mohinder Pal Singh, Jagtar Singh and Gurmit Singh are the

sons of Jagdish Singh s/o Gurdit Singh, while the complainant - Sarup Singh s/o Gurdit Singh (herein referred as `the complainant') is their uncle. Gurdit Singh s/o Natha Singh, father of the complainant had gone missing in the year 1979 and his whereabouts were not known. He had executed a registered Will on 2.12.1976 in favour of the complainant, his wife and son Manjit Singh regarding the house bearing No.B-II/1435 and 1436 situated in Arya Nagar, Hoshiarpur and also regarding the land measuring 15 Kanals situated in village Islamabad Bajwara, District Hoshiarpur.

On the presumed death of Gurdit Singh after seven years of his missing, mutation proceedings were initiated by the complainant, which were hotly contested by the sons of Jagdish Singh i.e. Accused - appellants as well as Amarjit Singh and Surjit Singh, so also Jagdish Singh on the basis of a Will dated 3.5.1982, purported to have been executed by Gurdit Singh in favour of Amarjit Singh, Mohinder Pal Singh, Jagtar Singh, Gurmit Singh and Surjit Singh (all accused), whereas, Gurbax Singh and Channan Singh, who are stated to be scribe and attesting witnesses, respectively, have already died.

Jagdish Singh and Channan Singh had also died during trial, whereas, the accused Amarjit Singh was discharged at the charge stage.

The civil litigation also started between the parties. The complainant, his wife and son filed a suit for declaration and mandatory injunction on the basis of the Will dated 2.12.1976, which was hotly contested by all the accused and they set up their claim on the basis of the Will dated 3.5.1982. The Assistant Collector Ist Grade, Hoshiarpur, while ignoring the Will dated 3.5.1982 ordered to sanction the mutation on the basis of the Will dated 2.12.1976. The Civil Court also refused to place reliance on the said Will, the appeal against which was also dismissed by Additional District Judge, Hoshiarpur on 18.5.1992. While dismissing the appeal, the Additional District Judge observed that the said Will was forged one.

On 2.8.1984, while coming to know about the forging of the Will by the accused, the complainant filed a complaint under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code, alleging that the Will dated 3.5.1982 was handiwork of the sons of Jagdish Singh, so also of the scribe and the attesting witnesses. It was also alleged that actually Amarjit Singh propounded the forged Will.

In the pre-charge evidence, the complainant examined Udham Singh (PW1), Sarup Singh - complainant (PW2) and Arvind Sud, Hand- writing expert, Hoshiarpur (PW3).

After recording the preliminary evidence, the Court summoned the accused and after recording the pre-charge evidence, the Trial Court framed the charge against accused Mohinder Pal Singh, Jagtar Singh, Gurmit Singh and Gurbax Singh under Sections 120-B/420/467/468 read with Section 149/471 read with Section 149 of the Indian Penal Code.

Thereafter, the complainant examined one more witness, namely, Naresh Kumar (PW4), Clerk in the Record Room at Hoshiarpur, who had brought the partition file titled 'Gurdit Singh vs. Jagdish Singh', decided by the Tehsildar on 25.3.1981 and closed the prosecution evidence.

When examined under Section 313 of the Code of Criminal Procedure, the accused denied all the incriminating circumstances appearing against them and pleaded their false implication in the case. All the accused further explained that the Will dated 3.5.1982 propounded by them is a genuine document. However, they while admitting the previous litigation, took the stand that the Will was wrongly ignored by the Civil Judge as well as the Appellate Court. They also averred that though the complainant wanted to grab whole of the property, but at the same time, they have also pleaded having compromised with the complainant. In defence, they examined Gurdev Singh, Clerk in the office of DC, Hoshiarpur (DW1); Ram Sarup, Assistant in the office of District & Sessions Judge, Hoshiarpur (DW2); Manoj Kumar, Record Keeper, DMC, Hospital, Ludhiana (D3); Mohinder Prit Singh r/o Mohan Lal Oswal Cancer Hospital, Ludhiana (DW4); V.K.Rana, UDC in the Passport Office, Chandigarh (DW5); Garish Chander, Peon, Bar Council of India (DW6); HC Devinder Singh (DW7); Sadhu Singh (DW8) and Rama Kant, Clerk, Judicial Record Room, Hoshiarpur (DW9).

The Trial Court while acquitting the accused Mohinder Pal Singh, Jagtar Singh and Gurmit Singh of the charges under Sections 420, 467,468, 120-B IPC, convicted them under Section 471 read with Section 149 IPC. Similarly, Gurbax Singh was convicted and sentenced under Section 467 IPC. Both appeals preferred by the aforesaid accused were dismissed with the modification in the sentence, which was reduced from two years to 1½ years, each, without any alteration in the sentence of fine.

The counsel for the petitioners has urged that both the courts below have mainly relied upon the judgment passed by the Civil Court declaring the Will to be forged one and did not appreciate the evidence led by the accused independently, in order to reach the conclusion with regard to the genuineness of the document. No sufficient evidence has been led by the complainant before the Trial Court for proving the fact that the Will was not executed by Gurdit Singh and does not bear his signatures. Secondly, it was urged that since the Will was produced in court, which was found to be forged, therefore, the provisions of Section 195(1)(b)(ii) of the Code of Criminal Procedure were attracted and the Court could take the cognizance of the offence only on filing of the complaint by the Court itself or the Court, which was superior to the Court, where the Will was presented.

Before I touch the point, it needs mention that the provisions of Section 195 are not attracted in this case. The said provisions are applicable only in cases where some forgery or tampering is done to a document when it is already in the custody of the Court and in cases where the document is forged or tampered outside the Court, and, thereafter, produced in Court, then the said provisions of Section 195(1)(b)(ii) are not applicable and no enquiry under Section 340 could be envisaged in such a case. The Full Bench of this Court in case of Mohan Lal Sharma vs. Punjab and Haryana High Court (P&H), 1999(2) RCR(Crl.) 223 observed that where a document had been forged out of court and thereafter produced in court holding of enquiry under S.340 Cr.P.C. is not a must for institution of proceedings against the accused.

In the instant case also, the Will was forged outside the Court and then produced, therefore, the aforesaid provisions are not attracted and the complaint before the Court for the relevant offences was maintainable.

Now, I lay my hands to decide over the first issue. In this regard, it is observed that undisputedly the Will executed by Gurdit Singh on 2.12.1976 was made the basis by the complainant for claiming ownership of the property. The accused came forward with the Will dated 3.5.1982 purported to have been executed by Gurdit Singh in favour of Jagdish Singh and his sons. The Court of Civil Judge (Sr.Divn.), Hoshiarpur vide its judgment dated 1.10.1991 while ignoring the Will dated 3.5.1982 observed as under:-

> "Gurdit Singh was not residing with defendant Nos.2 to 6 and there was no occasion to execute a Will in favour of these defendants, who are the sons of defendant No.1, with whom Gurdit Singh had a litigation. This Will being unregistered and not scribed through a regular deed writer and purporting to have been executed just a few days before the death of Gurdit in favour of sons of Jagdish Singh, which has not been supported by Jagdish Singh, can be clearly called forged and fictitious document."

This judgment (Ex.P4) was challenged before Additional District Judge, Hoshiarpur, who while dismissing the appeal on 18.5.1992 again confirmed these findings of fact while observing as under:-

> "As the deceased had lived upto about 100 years, he was not expected to make the Will just at the very fag end of his life. There are glaring circumstances which show that the Will propounded by the defendant - appellants No.2 to 6 is a forged document. Firstly, in the Will Ex.D3 even no reference has been made of the earlier registered Will, the execution of which stands proved by reliable and convincing evidence, much less to contain a recital about reasons which led to the cancellation of the earlier will. Secondly, when it is evident from the documentary evidence that shortly prior to the death of the deceased, the deceased fought civil and criminal proceedings against Jagdish Singh and his sons, it is difficult to accept that the deceased had even thought of showering his bounty upon them and would have deprived his son Sarup Singh of his inheritance with whom he had cordial relations and joint bank accounts. Thirdly, while the earlier Will was a registered document and had been scribed by a regular deed writer, the second Will is unregistered and scribed by a close relative of the beneficiaries. It is, thus, highly improbable that the deceased would have executed the Will Ex.D3 in favour of the defendants No.2 to 6 and to my mind the same appears to be a forged document. In view of the facts and circumstances, I affirm the finding of the Ld. Trial Court qua Will Ex.D3."

Not only this, Assistant Collector Ist Grade vide his judgment dated 30.1.1984 had also ignored the Will dated 3.5.1982. Any way, from the aforesaid documentary evidence as well as the evidence led by the complainant in this Court, as referred to above, it transpires that the Will dated 2.12.1976 executed by Gurdit Singh in favour of Sarup Singh (complainant), his wife and children is a genuine document, whereas, the Will dated 3.5.1982, which was declared as forged was purported to have been scribed by Gurbax Singh and executed in favour of the petitioners. The parties in the criminal case were the same as in the civil suit, which was decided by the Civil Court and attained finality before the decision of the criminal case. There was no other issue, except to decide the forgery of the

Will in both civil and criminal proceedings and there was similarity of the lis between the parties before the civil court as well as the criminal Court.

The counsel for the petitioners while raising the question that the judgment of the civil court is not binding upon the criminal court and the court is to decide the criminal case independently on the basis of the evidence led by the complainant, cannot be principally disputed, but it is well-settled by now that when the criminal and civil proceedings have been initiated for the same cause, then the judgment delivered by the Civil Court would be relevant and have probative value.

As regards the simultaneous circumstance of the civil and criminal proceedings, the law has developed further, when it was dealt with by the Full Bench of the Apex Court in case Syed Askari Hadi Ali Augustine Imam & another vs. State (Delhi Admn.) & another, 2009(2) RCR(Crl.) 520, wherein it was observed as under:-

> "10. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible.
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> The law in this behalf has been laid down in a large number of decisions. We may notice a few of them.
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> In M.S.Sheriff & Anr vs. State of Madras & Ors. [AIR 1954 SC 397], a Constitution Bench of this Court was seized of a question as to whether a civil suit or a criminal case should be stayed in the event both are pending; it was opined that the criminal matter should be given precedence.
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> In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality, when it expressly refrains from making the decision of one Court binding on the other or even relevant, except for certain limited purposes, such as sentence or damages. It was held that the only relevant consideration here is the likelihood of embarrassment.
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> If primacy is to be given to a criminal proceeding, indisputably, the civil suit must be determined on its own merit, keeping in view the evidence brought before it and not in terms of the evidence brought in the criminal proceedings.
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> The question with regard to the relevancy of the civil court judgment came up for consideration in K.G.Premshanker vs. Inspector of Police and anr. 2002(4) RCR(Criminal) 596 : 2002(4) RCR (Civil) 330 : [(2002) 8 SCC 87], wherein this Court inter alia held:-

> "30. What emerges from the aforesaid discussion is - (1) the previous judgment which is final can be relied upon as provided under Section 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principles of res -

judicata may apply;

(3) in a criminal case, Section 300 Cr.P.C. makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned there are satisfied;

(4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of the Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceedings, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, Court has to decide as to what extent it is binding or conclusive with regard to the matter (s) decided therein. Take for illustration, in a case of alleged trespass by `A' on `B's property, `B' filed a suit for declaration of its title and to recover possession from `A' and the suit is decreed. Thereafter, in a criminal prosecution by `B' against `A' for trespass, judgment passed between the parties in civil proceedings would be relevant and Court may hold that it conclusively establishes title as well as possession of `B' over the property. In such a case, `A' may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, first question which would require consideration is - whether judgment, order or decree is relevant?, if relevant - its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon facts of each case.

It is, however, significant to notice that the decision of this Court in M/s Karam Chand Ganga Prasad & Anr, etc. vs. Union of India & ors. [(1970) 3 SCC 694]., wherein it was categorically held that the decisions of the civil courts will be binding on the criminal courts but the converse is not true, was overruled, stating :

> "33. Hence, the observation made by this Court in V.M.Shah case that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand's case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S.Sheriff case as well as Sections 40 to 43 of the Evidence Act."

While discussing the scope of Section 41 of the Evidence Act, it was observed that in order to attract the provisions of this Section, a judgment has to be pronounced. The genuineness of the Will must have been gone into. Law envisages not only genuineness of the Will but also explanation to all the suspicious circumstances surrounding thereto besides proof thereof in terms of Section 63(c) of the

Indian Succession Act and Section 68 of the Evidence Act.

In the aforesaid Karam Chand Garg Ganga Parshad's judgment (supra), a judgment in rem passed by the civil court was involved, therefore, the Apex Court did not consider it necessary to make it binding, but in the instant case, it is a judgment in personam, having attained finality before the case was decided. The issue in the civil proceedings as well as the present case is the same. The genuineness of the Will was disputed in the civil court and both the courts concurrently decided the issue against the accused - petitioners while further holding that the Will is a forged document. As such, I don't find any reason to hold that the judgment in a civil matter is not relevant in the criminal proceedings, though, may not be conclusive, but still for that purpose, the complainant has to lead sufficient evidence to establish that the document was forged one.

Arvind Sud (PW3), Handwriting and Fingerprint Expert after comparing the signatures of Gurdit Singh on the alleged Will with his standard signatures mark S1 to S6, opined vide opinion Ex.P12 that questioned signature is not of the person signing at S1 to S6. He compared the questioned signatures marked `Q1' of Gurdit Singh in English which were present on the left side of the second page of the Will dated 3.5.1982 attached in the summoned file. Besides his statement, oral testimony of Udham Singh (PW1) lends further corroboration to the statement of the complainant (PW2). Both the courts have given concurrent findings that the accused knowing that the Will was a forged document, used the same as genuine and, thereby, to change the course of inheritance towards them and depriving the complainant of the property on the basis of a forged document. As such, while scrutinising the entire evidence and taking into consideration the civil court findings, the accused were rightly held guilty for the offences by the courts below, and there is no ground to interfere with the impugned judgment at this revisional stage.

Resultantly, finding no merit in the petitions, the same are dismissed.

March 15, 2010 (A.N.JINDAL)
`gian' JUDGE