
Before V. M. Jain, J.

KARAMJIT SINGH,—*Petitioner*

versus

STATE (U.T.) CHANDIGARH,—*Respondent*

Crl. R. No. 851 OF 2000

17th December, 2004

Indian Penal Code, 1860—S. 420—Evidence Act, 1872—S. 73—Filing of false affidavit for the purpose of allotment of plot in Chandigarh—Petitioner existing owner of a plot in Mohali—Registration of a criminal case under section 420 IPC—Petitioner failing to produce any evidence in his defence—Police taking sample signatures of petitioner during the course of investigation—Whether report of the handwriting expert based on such specimen signatures can be made the basis for holding the petitioner guilty—Held, no—Petitioner admitting filing of affidavits while applying for a plot in Chandigarh—Signatures on affidavit submitted in the office of Estate Office Mohali for allotment of plot proved to be of the same person who signed on the affidavit submitted before the Chandigarh Administration—Petitioner guilty of filing false affidavit—Order of Courts below convicting and sentencing the petitioner under section 420 IPC upheld.

Held, that at the time when the accused petitioner had submitted various affidavits to the Chandigarh Administration in the years 1980-81, the accused petitioner had already been allotted a plot in Mohali, bearing plot No. 919, Phase X, Mohali. However, by concealing these facts and making false averments in the aforesaid affidavits that he was not owning any residential site or house in any urban area anywhere in India in his own name or in the name of his wife or any dependent member, the accused petitioner was able to secure the allotment of another plot in Chandigarh from the Chandigarh Administration. Since the petitioner has not disputed that he had applied for a plot in Chandigarh and has also not disputed that a plot was allotted to him in pursuance of the application submitted by him before the Chandigarh Administration, on the basis of which he was allotted the said plot in Chandigarh it stands fully proved on

the record that prior to the aforesaid allotment in Chandigarh the accused petitioner has been allotted a plot in Mohali and this fact stands proved on the record from the affidavit which bears the signatures of petitioner. These signatures on the affidavit were found to have been written by the same person who had put his signatures on the various affidavits submitted before the Chandigarh Administration.

(Para 15)

Further, held, that once it is proved on the record that the accused petitioner was already allotted a plot at Mohali, it would be clear that accused petitioner has certainly committed an offence under section 420 IPC by filing false affidavits before the Chandigarh Administration that he was not having any plot etc. anywhere in India and in this manner he had induced the Chandigarh Administration in allotting plot No. 758, Sector 40-A, Chandigarh to him even though under the scheme he was not entitled to get the allotment of the said plot since he was already having a residential plot at Mohali.

(Para 16)

P.S. Hundal, Advocate, for the petitioner.

Gautam Dutt, Advocate for U.T., Chandigarh.

JUDGMENT

V. M. JAIN, J,

(1) This Revision Petition has been filed by the accused petitioner against the judgments of the courts below, whereby he was convicted under section 420 IPC and was sentenced to undergo RI for two years and to pay a fine of Rs. 1000 and in default of payment of fine to undergo further RI for two months, by the learned Magistrate,—*vide* judgment and order dated 25th April, 1996 and the appeal filed by him was dismissed by the learned Additional Sessions Judge,—*vide* judgment dated 24th July, 2000.

(2) Facts, which are relevant for the decision of the present Revision Petition, are that one Kehar Singh had made a complaint with regard to the filing of wrong affidavits by various persons

including accused petitioner for the purpose of allotment of plots under LIG scheme. It was alleged that affidavits were filed in order to get the plots. With regard to the petitioner, it was alleged that he was already owner of eight marla plot in SAS Nagar (Mohali) and had submitted a false affidavit for the allotment of LIG plot (in Chandigarh). On inquiry, it was found by the Chandigarh Administration that the petitioner was owner of plot No. 919 Phase X, Mohali and he also succeeded in getting allotment of plot bearing No. 758, Sector 40-A, Chandigarh by concealing real facts by filing wrong affidavits dated 11th January, 1980, 7th May, 1981, 18th August, 1981 and 22nd September, 1981 before the Estate Officer, U.T., Chandigarh. It was found that in those affidavits the petitioner had declared that he, his wife or his dependent children did not own any residential site or house including dwelling unit in any urban area etc., anywhere in India including Chandigarh, since the coming into force of 1971 Scheme. It was found that he had done so to cheat the U.T. Administration for making grounds to get plot in U.T. Chandigarh. A criminal case was registered bearing FIR No. 7 dated 17th October, 1990 under section 420 IPC in PS Vigilance, Chandigarh. After completion of investigation, challan was submitted in the court. The accused was charged under section 420 IPC to which charge he pleaded not guilty and claimed trial. The prosecution produced evidence in support of its case. The statement of the accused under section 313 Cr. P. C. was recorded in which he denied the prosecution allegations against him and stated that he was innocent and had been falsely implicated in this case. He took up the plea that he had rightly applied for the allotment of plot and had never applied for the allotment of any plot at Mohali. No evidence was led by the accused in his defence. After hearing both sides the learned Magistrate convicted and sentenced the accused petitioner as referred to above,—*vide* Judgment and order dated 25th April, 1996. Aggrieved against the same, petitioner filed an appeal before the Sessions Court and the learned Additional Sessions Judge,—*vide* Judgment dated 24th July, 2000, dismissed the said appeal, upholding the conviction and sentence imposed upon him by the learned Magistrate. Aggrieved against the same, petitioner filed the present revision petition in this court. On 4th September, 2000, the revision petition was admitted and the petitioner was ordered to be released on bail.

(3) I have heard the learned counsel for the parties and have gone through the record carefully.

(4) Learned counsel for the accused petitioner submitted before me that there was no admissible evidence available on the record to say that in fact the accused petitioner had previously applied for any plot in Mohali and/or was allotted any plot in Mohali. It was further submitted that there was no evidence on the record to show that the accused petitioner had filed any false affidavit in this regard. It was further submitted that the alleged report of the Handwriting Expert could not be made the basis for holding the accused petitioner guilty in this case since the sample signatures of the petitioner were taken by the police during the course of investigation which was not permissible under the law. Reliance was placed on the law laid down by the Hon'ble Supreme Court in **Sukhvinder Singh and others versus State of Punjab (1)**.

(5) After hearing the learned counsel for the parties and perusing the record, I find no merit in the present Revision Petition and the same is liable to be dismissed.

(6) In **Sukhvinder Singh's case (supra)**, it was held by the Hon'ble Supreme Court that second paragraph of Section 73 of the Indian Evidence Act enables the court to direct any person present before it to give his specimen writing "for the purpose of enabling the court to compare" such writing with the writings alleged to have been written by such person. It was found that the obvious implication of the words "for the purpose of enabling the court to compare" was that there was some proceeding pending before the court in which or as a consequence of which it was necessary for the court to compare such writings. It was held that the direction was therefore required to be given for the purpose of "enabling the court to compare" and not for the purpose of enabling an investigating or prosecuting agency to obtain and produce as evidence in the case the specimen writings for their ultimate comparison with the disputed writings. It was held that where the case was still under investigation and no proceedings were pending in any court in which it might be necessary to compare the two writings, the accused cannot be compelled to give his specimen writings. It was held that the language of Section 73 did not permit

any court to give a direction to an accused to give his specimen writing for comparison in a proceeding which may subsequently be instituted in some other competent court. It was held that Section 73 of the Evidence Act, could not be made use of for collecting specimen writings during the investigation and recourse to it can be had only when the inquiry or the trial court before which proceedings are pending requires the writing for the purpose of "enabling it to compare" the same. It was further held that a court holding an inquiry under the Code of Criminal Procedure is indeed, entitled under Section 73 of the Evidence Act to direct an accused person appearing before it to give his specimen writing to enable the court by which he may be subsequently tried to compare it with the disputed writings. However, a court which was not holding an inquiry under the Code of Criminal Procedure or conducting the trial was not permitted to issue any direction of the nature contained in second paragraph of Section 73 of the Act. It was further held by the Hon'ble Supreme Court that the subsequent writing (which was taken in contravention of Section 73 of the evidence Act) could not therefore be made use of during the trial and the report of the Handwriting Expert would be of no consequence and cannot be used against the accused to connect him with the crime.

(7) Similar law was laid down by their Lordships of the Hon'ble Supreme Court in the case **State of Haryana versus Jagbir Singh and another (2)** and it was held that the language of Section 73 of the Evidence Act does not permit a court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceedings which may later be instituted in the court. It was further held that if the case is still under investigation there is no present proceeding before the court in which or as a consequence of which it might be necessary to compare the writings and that in order to enable the exercise of power under Section 73, the pendency of a proceedings before the court is the *sine qua non*.

(8) In view of the law laid down by the Hon'ble Supreme Court in the above mentioned authorities, in my opinion, it would be clear that the report of the Handwriting Expert based on the specimen writings of the accused petitioner taken during the investigation at the behest of the police could not be made the basis for holding the accused petitioner guilty in this case since it has come on the record that the specimen handwriting of the accused petitioner was taken during the course of investigation and not during the inquiry or trial

before the Magistrate, inasmuch as the specimen writings Ex. PW 1/C and Ex. PW 1/F were taken before the Executing Magistrate on 7th December, 1990 i.e. during the investigation of the case. However, in the present case, even if the specimen writings of the accused petitioner are taken out of consideration, still there is enough material on the record to show that the accused petitioner had committed offence by filing false affidavits for the purpose of obtaining allotment of plot from the Chandigarh Administration.

(9) PW 2 Parvinder Kumar, Clerk in the Estate Office, U.T., Chandigarh, had deposed that Karamjit Singh, son of late Pritam Singh had applied for allotment of plot under Model Scheme,—*vide* application Ex. PW 2/A and as per the terms and conditions of the scheme, the applicant should not have a plot or dwelling unit in his name or the name of his wife and dependents. He deposed that Karamjit Singh submitted affidavits to this effect dated 7th May, 1982, Ex. PW 2/B, 22nd September, 1981 Ex. PW 1/B, dated 11th January, 1980 Ex. PW 2/C, and dated 18th August, 1981 Ex. PW 2/D. As per the said affidavits Karamjit Singh applicant had deposed that he or his wife or dependents had no plot or dwelling unit in their names at Chandigarh, Mohali and Panchkula. It was alleged that on the basis of these affidavits and receipt of payment from Karamjit Singh, he was issued allotment letter dated 4th May, 1982,—*vide* which he was allotted plot No. 758, Sector 40-A, Chandigarh, Mark-A. He deposed that the said documents pertaining to the allotment of said plot allotted to Karamjit Singh were taken into possession from him by the Vigilance Department,—*vide* recovery memo Ex. PW 2/E. During cross-examination he stated that he did not know personally Karamjit Singh. The prosecution also examined PW 3 Yash Pal Singh, Senior Assistant in the office of Estate Office, Punjab, Mohali. He deposed that he remained posted in the Allotment Branch for the period from 19th June, 1989 to 18th April, 1992. He deposed that Karamjit Singh applied for the allotment of 7—1/2 marlas plot in Urban Estate Mohali, which application was received in their office on 15th December, 1973, Ex. PW 3/A and the said application was diarised at Serial No. 33230 dated 15th December, 1973 and office stamp was affixed thereon. He deposed that allotment letter dated 6th October, 1978 Ex. PW 3/D was the allotment letter which was issued in favour of Karamjit Singh, Assistant, Civil Secretariat, Chandigarh and plot No. 919, Phase X, measuring 200 sq.yards was allotted to the said allottee. He deposed that Karamjit Singh submitted affidavit, Ex. PW 3/B before the allotment of plot and also submitted General

Power of Attorney Ex. PW 3/C. He deposed that all these documents were in his possession and the same were taken from him by the Vigilance Department, Chandigarh,—*vide* recovery memo Ex. PW 3/E. During cross-examination he stated that Ex. PW 3/B and PW 3/C were not signed in his presence and did not bear the stamp or diary number of their office.

(10) PW 4 Dr. B.A. Vaid, Assistant Government Examiner of Questioned Documents, Shimla deposed that various documents which included questioned documents, standard/specimen signatures and admitted signatures were received from the O.S.D., Vigilance Cell, U.T., Chandigarh. He deposed that on careful and through examination of these documents he came to the conclusion that the person who signed standard signatures S1 to S4 and admitted signatures A1 to A7 had also signed the red enclosed portions of questioned documents Q1 to Q9. He proved his opinion Ex. PW 4/W. During cross examination he stated that Mr. Santokh Singh, Government Examiner of Questioned Documents had also examined these documents independently and they both had come to the same conclusion. He admitted that the report Ex. PW 4/W was signed by him as well as by Mr. Santokh Singh.

(11) PW 7 S1, Nanak Chand, I.O. deposed that on 3rd April, 1991 he had visited the office of Estate Officer, Urban Estate, Mohali and had taken into possession the record consisting of application form dated 13th December, 1973, Ex. PW 3/A, affidavit dated 6th June, 1978, Ex. PW 3/B, Power of Attorney, dated 27th December, 1984, Ex. PW 3/C and allotment letter, Ex. PW 3/D, as produced before him by Jaspal Singh, an official of the Estate Officer, Mohali and the same were taken into possession,—*vide* recovery memo Ex. PW 3/E, attested by Jaspal Singh. PW 9 S.I., Jaswant Singh, I.O. deposed that he had taken into possession the record,—*vide* recovery memo Ex. PW 2/E, relating to Plot No. 758, Sector 40-A, Chandigarh. He also deposed that on 7th December, 1990 he had moved an application Ex. PW 9/A to the Executive Magistrate for taking specimen signatures of the accused (who was formally arrested on 3rd December, 1990) and later on specimen signatures were obtained which are Ex. PW 4/A to PW 4/N (S1 to S4). He stated that these specimen signatures/writings were sent to the Government Examiner of Questioned Documents, who submitted his report Ex. PW 4.W.

(12) When the statement of accused petitioner Karamjit Singh was recorded under Section 313 Cr. P.C., it was put to him that he had applied for allotment of a plot under Model Scheme,—*vide* application Ex. PW 2/A and submitted various affidavits Ex. PW 2/B, PW 1/A and PW 2/C and PW 2/D and on the basis of the said affidavits he was allotted plot No. 758, Sector 40-A, Chandigarh. In reply to the said question he stated that the same was incorrect but proceeded to state that he had rightly applied for the allotment of plot under the scheme and had not given any false declaration. It was also put to him that he had applied for 10 ½ marlas plot,—*vide* application Ex. PW 3/A and he was allotted a plot in Phase X, Mohali and that he had submitted affidavit before the allotment of the said plot, Ex. PW 3/B and Power of Attorney Ex. PW 3/C and the said plot was allotted to him,—*vide* allotment letter Ex. PW 3/D. In reply to the said question he replied in the negative and stated that he never applied for any plot at Mohali and continued to state that Ex. PW 3/A was not in his hand and that he never owned any plot at Mohali. The report Ex. PW 4/W submitted by the Government Examiner of Questioned Documents was also put to him but the accused petitioner stated that the said report was not correct. In reply to the question as to whether he wanted to say anything, the accused petitioner stated that he had never applied for any plot at Mohali and that Ex. PW 3/A was not in his hand and that he never owned any plot at Mohali and that he had been falsely implicated. He further stated that he had correctly applied for the plot at Chandigarh and had not given any false declaration.

(13) From a perusal of the above, it would be clear that accused petitioner had admitted having applied for a plot at Chandigarh and had not denied that plot No. 758, Sector 40-A, Chandigarh was allotted to him. His case was that he had never applied for any plot at Mohali nor he owned any plot at Mohali.

(14) As per the opinion, Ex. PW 4/W, signed by Sh. Santokh Singh, Government Examiner of Questioned Documents and Dr. B.A. Vaid, Assistant Government Examiner of Questioned Documents, dated 23rd April, 1991, as proved by PW 4 Dr. B.A. Vaid, the person who wrote the red enclosed signatures stamped and marked as S1 to S4 and A1 to A7 also wrote the signatures in the red enclosed portions similarly stamped and marked Q1 to Q9. Thus, the various documents available on the record have to be considered, in the

aforementioned report of the Government Examiner of Questioned Documents, Ex.PW4/W, as proved by PW4 Dr. B.A. Vaid. Ex.PW4/A, is the applicaion submitted by Karamjit Singh, petitioner for the allotment of a plot, to the Chandigarh Administration. Exhibits PW2/B, PW1/A, PW2/C and PW2/D are the original affidavits submitted by Karamjit Singh, accused petitioner, to the Chandigarh Administration, to the effect that he or his wife or any of his dependent children did not own any residential site or house in any urban area anywhere in India including Chandigarh nor they had secured or transferred by way of sale/gift/exchange etc. a residential site or house in any urban area/estate etc., anywhere in India including Chandigarh etc. As per the report Ex.PW4/W, submitted by the Government Examiner of Questioned Documents, application Ex.PW2/A and the aforementioned affidavits Ex.PW2/B, PW1/A, PW2/C and PW2/D bear the signatures (Q1 to Q9) of the same person who had signed the affidavit Ex.PW3/B at Points A1 and A2. As per the said affidavit Ex.PW3/B, it was alleged by Karamjit Singh that he or his wife or any of his children or members dependent upon him had not obtained any residential plot or house etc. in Chandigarh or any Urban Estate etc., in Punjab or Chandigarh. The said affidavit is dated 6th June, 1978 and was submitted before the Estate Officer, Mohali, whereas the affidavits Ex.PW2/B, Ex.PW1/A, Ex.PW2/C and Ex. PW2/D are of the years 1980 and 1981 and were submitted to the Chandigarh Administration. Furthermore, by virtue of allotment lettler dated 6th October, 1978, Ex.PW3/D, plot No.919, Phase X, Mohali, was allotted to Karamjit Singh in Mohali.

(15) From a persual of the above, it would be clear that at the time when the accused petitioner had submitted various affidavits Ex.PW2/B, Ex.PW1/A, Ex.PW2/C and Ex.PW2/D, to the Chandigarh Administration in the years 1980-81, the accused petitioner had already been allotted a plot in Mohali, bearing Plot No.919, Phase X, Mohali. However, by concealing these facts and making falsle averments in the aforesaid affidavits that he was not owning any residential site or house in any urban area anywhere in the India in his own name or in the name of his wife or any dependent ;member, the accused petitioner was able to secure the allotment of another plot in Chandigarh from the Chandigarh Administration, bearing plot No 758, Sector 40-A, Chandigah,—*vide* allotment letter mark A dated 11th May, 1982 since the petitioner has not disputed that he had applied for a plot in Chandigarh and has also not disputed that a plot was allotted to

him in pursuance of the application submitted by him. Since the aforesaid affidavits were submitted by him before the Chandigarh Administration, on the basis of which he was allotted the said plot in Chandigarh, in my opinion, it stands fully proved on the record that prior to the aforesaid allotment in Chandigarh, the accused petitioner had been allotted a plot bearing No. 919, Phase X, Mohali and this fact stands proved on the record from the affidavit Ex. PW 3/B which bears the signatures of Karamjit Singh, petitioner at points A1, A2, A3 and A4. These signatures at points A1 to A4 on affidavit Ex. PW 3/B were found to have been written by the same person who had put his signatures on the various affidavits submitted before the Chandigarh Administration, bearing the signatures at Q1 to Q9, referred to above. In this view of the matter, even if the sample signatures of the accused petitioner on the sheets Ex. PW 4/K to PW 4/N, are taken out of consideration, yet it stands proved on the record that the person who had signed the affidavit submitted in the office of Estate Officer, Mohali for the allotment of plot (which was allotted to him) had also signed the various affidavits referred to above, before the Chandigarh Administration for the allotment of a plot which was also allotted to him subsequently.

(16) Once it is proved on the record that the accused petitioner was already allotted a plot at Mohali, in my opinion, it would be clear that accused petitioner had certainly committed an offence under Section 420 IPC by filing false affidavits before the Chandigarh Administration that he was not having any plot etc. anywhere in India and in this manner he had induced the Chandigarh Administration in allotting plot No.758, Sector 40-A, to him even though under the scheme he was not entitled to get the allotment of the said plot since he was already having a residential plot at Mohali.

(17) In view of the detailed discussion above, in my opinion, the courts below had rightly held the accused petitioner guilty for the offence under Section 420 IPC and no fault could be found with the same. Accordingly, I uphold the conviction of the accused petitioner for the aforesaid offence.

(18) So far as the question of sentence is concerned, in my opinion, it could not be said that the sentence awarded by the courts below is on the higher side, considering the offence committed by the accused petitioner. In view of the above, finding no merit in this revision petition the same is hereby dismissed.