



## IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.MMO No.365 of 2020

Date of Decision: December 20, 2023

Jai Pal &amp; others

...Petitioners.

Versus

State of Himachal Pradesh &amp; another

..Respondents.

*Coram:**The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.**Whether approved for reporting?<sup>1</sup>*

For the Petitioners: Mr.R.D. Sharma, Advocate, Mr.Aditya Kaushal, Advocate.

For the Respondents: Mr.Manoj Chauhan, Additional Advocate General, for respondent No.1.

Mr.Vijay Bir Singh, Advocate, for respondent No.2.

Vivek Singh Thakur, J.

Petitioners in the instant petition, are co-accused in FIR No.70 of 2018, dated 28.03.2018, registered in Police Station Indora, District Kangra, H.P., under Sections 420, 467, 468 and 471 read with Section 120B of the Indian Penal Code (in short 'IPC'). After presentation of challan in the Court, Criminal Case Registration No.21 of 2020, titled as *State of H.P. vs. Jarnail Singh & others*, is pending adjudication before Judicial Magistrate First Class, Indora, District Kangra, H.P.

2. Petitioners have approached for quashing and setting aside the proceedings against them.

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1 Whether reporters of the local papers may be allowed to see the judgment?

3. Facts emerging from the material placed before me, are that complainant Ramesh Singh Pathania son of late Sh.Dharam Singh, resident of VPO Rehan, Tehsil Fatehpur, District Kangra, H.P. (hereinafter referred to as 'complainant') made a complaint to Superintendent of Police, Kangra, stating therein that his father was owner of the land situated in Mohal Jamgal and Mohal Larth, Mauza Dinni, Tehsil Indora, District Kangra, H.P., and he had been living with the complainant till his death on 29.09.2016. It was alleged in the complaint that in the year 2007, accused Jarnail Singh and Surinder Singh sons of Kehar Singh, in connivance with witnesses and the scribe prepared two false sale deeds and got them registered in the office of Sub-Registrar Indora vide document Nos.49 and 50 purporting the same to have been executed by Dharam Singh, father of the complainant, and thereafter, they got mutation Nos.79 and 211 sanctioned and attested in their favour on 19.04.2007. It had been alleged that father of the complainant neither ever visited the Tehsil office nor executed the sale deeds in reference and signatures on the sale deeds were different than the admitted signatures of Dharam Singh.

4. It was further stated in the complaint that accused persons somehow managed to get the photographs of Dharam Singh pasted on the sale deeds alongwith Tehsildar, vendee and witnesses, and by committing such fraud they fabricated false sale deeds in connivance with witnesses, scribe and revenue officials/officers.

5. According to the complainant, after death of his father on 29.09.2016, he visited village Jamgal and Larth for attestation of mutation in his favour on the basis of Will executed by his father and at that time he came to now in Patwar office that property of his father had illegally been transferred in the name of accused Jarnail Singh and Surinder Singh on the basis of forged sale deeds.

6. On the basis of aforesaid complaint, FIR was registered on 28.03.2018. Matter was investigated and during investigation it was found that signatures of Dharam Singh alleged to have been appended by him on sale deeds did not match with the admitted signatures of Dharam Singh obtained from the Bank. It was also surfaced that accused persons manipulated photographs of Dharam Singh (vendor) by successfully pasting it on the photograph taken at the time of execution of sale deeds in the office of Tehsildar.

7. With respect to first incident of execution of sale deeds, challan was prepared and presented in the Court against accused Jarnail Singh and Surinder Singh (both vendees), Chain Singh, Gagan Singh (both witnesses of both sale deeds), Rakesh Kumar (Tehsildar, who attested both sale deeds) and Prem Chand (Document Writer), under Sections 420, 467, 468 and 471 read with Section 120B IPC.

8. With respect to second incident of attestation of mutation, challan has been presented against Jai Pal Khaira, the then Naib Tehsildar, who attested mutation in favour of vendees, on the basis of sale deeds allegedly by presenting a false person

in place of Dharam Singh, vendor, Lal Singh, Field Kanungo, who made comparison of mutation recorded by Patwaris with the sale deeds, Darshan Singh, Patwari Halqua Jamgal, who entered mutation with respect to sale deed No.49 and Harbans Lal, Patwari Halqua, Patwar Circle Dinni, who entered mutation with respect to sale deed No.50, under Section 120B IPC.

9. Present petition has been filed on various grounds, including clubbing of two separate incidents in one FIR is not permissible; taking of cognizance is barred in the absence of prosecution sanction under Section 197 Cr.P.C.; the act performed as Judge in good faith is no offence as provided under Section 77 IPC read with section 6 of IPC; cognizance could not have been taken in view of section 3(1) of the Judges Protection Act; and attestation of mutation by Jai Pal Khaira after due identification of vendor by Gian Chand Chowkidar, personal presence of vendor not required at the time of entry and comparison of mutations by Patwari and Kanungo.

10. The petition has been opposed by respondent-State as well as complainant-respondent No.2 Ramesh Singh Pathania. It has been submitted by learned Additional Advocate General, that during investigation sufficient material has been found against accused persons that they connived with the vendees and attested mutation at the instance of vendees despite absence of vendor on the spot and, therefore, it has been submitted that it is an incident in continuation and petitioners are also equally liable to be punished alongwith other co-accused

for commission of offence alleged to have been committed by them as referred in the challan.

11. It has been contended on behalf of the respondent-State that petitioners had failed to verify the genuineness of the documents, photographs and signatures of the deceased before attestation of mutation Nos.79 and 211 in accordance with Aadhar Card and other available documents and, hence, they are equally liable for commission of offence of criminal conspiracy with other co-accused.

12. Admittedly, vendor Dharam Singh was residing in Village Rehan in Tehsil Fatehpur. Whereas, land in reference was situated in Mohal Jamgal and Mohal Larth, Tehsil Indora, District Kangra, H.P. Jamgal and Larth are located at a considerable distance from Rehan and vendor was living with his son (complainant) and even had not visited these villages for quite a long time, but the complainant visited these villages after death of his father for attestation of mutation in his favour, on the basis of Will executed by father. All three villages are situated in three Patwar Circles having different Patwaris.

13. As per prosecution case, sale deeds were executed in connivance with Rakesh Kumar, Tehsildar, by manipulating photographs of vendor in the photograph affixed on the sale deeds alongwith Tehsildar and witnesses.

14. At the time of execution of sale deeds, Patwaris Darshan Singh, Harbans Lal, Field Kanungo Lal Singh and Naib Tehsildar Jai Pal Khaira, were having no role at any point of time. Sale deeds were registered by Tehsildar. Petitioners came in

picture when sale deeds were presented to them to enter mutation accordingly. At that time, presence of vendor was not necessary. Patwaris entered mutation on the basis of sale deeds and placed the same before Field Kanungo, Lal Singh for comparison, who, on the basis of documents, had compared the mutation, which was attested by Naib Tehsildar Jai Pal Khaira, on the basis of entry made by Patwaris and comparison made by Field Kanungo. At the time of entry and comparison of mutation, presence of vendor may be there or may not be. In any case, sale deeds were not having the true photograph of Dharam Singh, but was of someone else and being Patwari of different Patwar Circle, in absence of any evidence of their acquaintance with Dharam Singh, it cannot be expected that Patwaris as well as Field Kanungo, were knowing Dharam Singh, real owner of the land. Before Jai Pal Khaira, Naib Tehsildar, person appeared as vendor, was identified by Gian Chand, Chowkidar, as vendor-Dharam Singh.

15. It has come on record that Gian Chand, Chowkidar, had died in the year 2012, who identified the person as Dharam Singh. Dharam Singh, in fact, was impersonated. Nothing material has been placed before me to establish that petitioners were knowing Dharam Singh or complainant or well acquainted with real owner of the land or person, who impersonated him as Dharam Singh. In absence of such evidence of production of registered sale deeds by someone with manipulated photograph of Dharam Singh by morphing photograph of another person in his place on the sale deeds, it was obvious for the Patwaris as

well as Kanungo and Naib Tehsildar to act upon the sale deeds for attestation of mutation accordingly. The act of the petitioners was an act assigned to them with their posts and they were performing their duties on the basis of material placed before them and person attending their office.

16. Mutations were attested on the basis of registered sale deeds and sale deeds were having photographs of a person impersonated as Dharam Singh and on comparison of photograph with the person who attended the Court, it was likely to give an impression that vendor was present in person whose photograph was there on the sale deeds. Moreover, vendor was identified by Chowkidar Gian Chand, who was expected to know all persons of his area. In such eventuality, it cannot be said that petitioners were acting in furtherance of criminal conspiracy. Though it can be said that they should have more careful scrutiny of the material placed before them, identification of vendor by local Chowkidar. It is also natural that someone may prefer to verify the facts further, whereas, other person may be satisfied with material placed before him about genuineness of sale deeds as well as persons appearing before him for attestation of mutation on the basis of registered sale deed. Therefore, it cannot be said with certainty that petitioners were also involved in the conspiracy. Only for the reason that petitioners were instrumental in attestation of mutation, on the basis of sale deeds obtained by fraud and manipulation committed by other accused persons, it cannot be a ground, in absence of material establishing conspiracy, to drag the

petitioners to face trial, particularly when there is no evidence at all on record to establish a conspiracy between petitioners and other co-accused. In my opinion, there is no sufficient material to continue trial against the petitioners. Therefore, other grounds raised in the petition have neither been raised nor are being discussed and decided considering those issues unnecessary to be adjudicated.

17. In aforesaid facts and circumstances and material available on record, I am of the considered opinion that it is a case where not only a *prima facie* case is not made out, but *ex facie* petitioners appear to be innocent. On the basis of record made available, no sufficient material is there to continue proceedings against the petitioners.

18. In the given facts and circumstances, continuation of proceedings against the petitioners may definitely amount to miscarriage of justice and, therefore, for ends of justice, it is a fit case to exercise jurisdiction under Section 482 Cr.P.C., to quash the FIR/proceedings against the petitioners and accordingly FIR No.70 of 2018, dated 28.03.2018, registered in Police Station Indora, District Kangra, H.P., is quashed qua petitioners only. Consequent to quashing of FIR, against petitioners criminal proceedings initiated against petitioners-accused in pursuance thereto, pending before the Judicial Magistrate First Class, Indora, District Kangra, H.P., in Criminal Case No.21 of 2020, titled as *State of H.P. vs. Jarnail Singh & others*, are also quashed and set aside with respect to the petitioners.



19. Needless to say that quashing of FIR against the petitioners shall have no bearing on the proceedings initiated/ pending adjudication before the trial Court against other co-accused as there is sufficient material against them to proceed further.

20. Petition stands disposed of in above terms.

(Vivek Singh Thakur),  
Judge.

December 20, 2023  
(Purohit)

High Court of H.P.