

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 224 of 2012
Reserved on: 02.12.2024
Date of Decision: 13.12.2024

State of H.P. ...Appellant.

Versus

Vidya Devi and Ors. ...Respondents

Coram

Hon'ble Mr Justice Vivek Singh Thakur, Judge.

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

For the Appellant/State : Mr. J.S. Guleria, Deputy Advocate General.

For Respondents No.1 and 2 : Mr. Sanjeev Kuthiala, Senior Advocate, with M/s. Amita Chandel and Abhishek, Advocates.

For respondents No.3 and 4 : Mr. Abhijeet Singh, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 26.12.2011 passed by learned Special Judge, Kullu (learned Trial Court), vide which the respondents (accused before the learned Trial Court) were acquitted of the charges framed against them. *(Parties shall be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused for the commission of offences punishable under Sections 420, 467, 468 and 120B of the Indian Penal Code (IPC) and Section 13(2) of the Prevention of Corruption Act. It was asserted that Sunder Lal Sharma married Vidya Devi in 1977. Vidya Devi got half share to the extent of 0-7-0 bigha in Khasra No. 2372, measuring 0-14-0 bigha situated in Mauja Lagsari District Kullu. She executed a gift deed no. 785 in favour of the Ayurvedic Department on 24.10.1980 for the construction of Ayurvedic Bhawan. She delivered the possession to the Ayurvedic Department. She filed an application before Deputy Commissioner, Kullu seeking Nautor because she was left with no land after gifting her share to the Ayurvedic Department. She also encroached upon Khasra No. 2880 in Unprotected Forest (UPF) to the extent of 2-17-0 bigha. She filed an application in May 1990 to get the timber under Timber Distribution (TD) Rights. This application was verified by Patwari Gulbadan on 04.05.1990. Totu Ram recommended the grant of TD rights. DFO sanctioned the TD in favour of Vidya Devi. Vidya Devi filed a false application for getting the TD because she did not have any land in her name in

Mohal Lagsari, and only a landowner was entitled to file the application for getting the TD. Gulbadan and Totu Ram also helped Vidya Devi by making false report. In this manner, they caused a loss to the State Government. The police registered the FIR (Ext. PW21/B) in the police station. Rajinder Kumar (PW30) conducted the initial investigation. He inspected the spot and prepared the site plan (Ext. PW30/A). He seized the case file, inquiry report, and other documents vide memo (Ext. PW2/A). He collected the TD Register and applications for a grant of TD (Ext. PW1/B and Ext. PW1/C) from the office of DFO vide memo (Ext. PW1/D). He collected the gift deed (Ext. PW3/A) from the Tehsil office vide memo (Ext. PW3/B). He seized the documents (Ext. PW4/A) from the office of Range Officer Kullu vide memo (Ext. PW4/B). He seized the jamabandies (Exts. PW6/A to Ext. PW6/E) vide memo (Ext. PW6/F). He seized the permit book (Ext. PW5/C) vide memo (Ext. PW7/A). He obtained the certified file of the mutation (Ext. PW30/B), certified copy of the sale deed (Ext. PW30/C), the documents of encroachment proceedings against Vidya Devi (Ext. PW30/D to Ext. PW30/G), photocopy of the application of the Vidya Devi (Ext. PW30/H), and photocopy of the application of Totu Ram (Ext. PW30/J and Ext. PW30/K). He

obtained the specimen signatures and handwriting of Gulbadan (Ext. PW30/L to Ext. PW30/P). Further investigation was conducted by Nand Kishore (PW20). He produced Gulbadan, Totu Ram and Sunder Lal before Naib Tehsildar-cum-Executive Magistrate to obtain their specimen signatures. Specimen signatures of Sunder Lal (Ext. PW10/A1 to Ext. PW10/A10), Totu Ram (Ext. PW10/A11 to Ext. PW10/A20) and Gulbadan (Ext. PW10/A21 to Ext. PW10/A30) were taken. He seized the admitted handwriting of Totu Ram (Ext. PW20/B) vide memo (Ext. PW20/A). Balwant Singh (PW29) conducted the further investigation. He produced Vidya Devi before Executive Magistrate Kullu (PW28) to obtain her signatures. Her specimen signatures (Ext. PW28/A1 to Ext. PW28/A9) were taken. He seized the encroachment file (Ext. PW9/A1 to Ext. PW9/A42) and letters (Ext. PW9/B, Ext. PW9/D and Ext. PW9/E) vide memo (Ext. PW9/C). He obtained the timber passing register (Ext. PW5/A) vide memo (Ext. PW5/B). He seized the jamabandi of Khata No. 294 (Ext. PW6/D). The specimen and disputed signatures were sent to FSL Junga for comparison. The result of the analysis (Ext. PW31/A) was issued in which it was mentioned that the writing on the register (Q1), the admitted handwriting

(A1 to A3) and specimen handwriting (S1 to S9) were written by the same person. Similarly, the writing on the register (Q2 to Q4) admitted handwriting (A4 to A9) and specimen handwriting (S10 to S29) were written by the same person. The writing on the register (Q5) specimen writing (S40 to S49) and admitted writing (A13 to A17) were written by the same person. Disputed signatures (Q6), specimen writing (S30 and 39) and admitted writing (A10 to A12) were written by the same person. The statements of the witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court charged accused-Vidya Devi with the commission of offences punishable under Sections 420, 467, and 468 read with Section 120B of IPC and accused Totu Ram, Gulbadan and Sunder Lal with the commission of offences punishable under Sections 420, 467, 468, 120B of IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. The accused pleaded not guilty and claimed to be tried.

4. The prosecution examined 31 witnesses to prove its case. Lachhman Dass (PW1) was posted as Superintendent in the office of DFO and witnessed the recovery of the record from the

office. HC-Sanjiv Kumar (PW2) is the witness to the recovery of the original complaint, forwarding letter and inquiry report. Uttam Ram (PW3) is the witness to the recovery of the gift deed. Sukhdev (PW4) was posted as a Block Officer and produced a TD permit book showing that TD was sanctioned in the name of Vidya Devi. He also witnessed the seizure of the register produced by Fateh Chand (PW5). Kehar Singh (PW6) was posted as Patwari, who produced the copies of Jamabandi. Ram Dayal (PW7) produced the permit book. Sobha Ram (PW8) produced a copy of the mutation. Bharat Bhushan (PW9) handed over the encroachment papers to the police. Shiv Ram (PW10) was posted as Naib Tehsildar, in whose presence Sunder Lal, Totu Ram, and Gulbadan put their specimen signatures and handwriting. Shishu Pal (PW11) produced the record of the appointment and superannuation of Totu Ram and his admitted handwriting. Devender Singh (PW12) witnessed the seizure of the Nautor case file. Magan Lal (PW13) produced the record regarding the nautor file. Balbir Bahadur Singh (PW14) proved the prosecution sanction. Bhagwan Dass (PW15) supplied the record of the appointment and posting of Gulbadan. Bal Mukand (PW16) supplied the copies of Jamabandies. Narvinder Singh (PW17)

produced the record of the gift deed. Dola Ram (PW18) did not support the prosecution case. Prem Chand (PW19) sent the case file for obtaining prosecution sanction. Inspector Nand Kishore (PW20) conducted the partial investigation. Amarnath (PW21) conducted the preliminary inquiry. Pyare Chand (PW22) was posted as Block Officer, who proved that an application for a grant of TD was filed by Vidya Devi, which was sanctioned by the Department. Jaswant Singh (PW23) issued a copy of Jamabandi. HC Sanjiv Kumar (PW24) carried the specimen signatures, disputed signatures and admitted handwriting to FSL Junga. HC-Sat Pal (PW25) is the witness to the recovery of the letter and application. Manorama Devi (PW26) produced the appointment and posting order of Sunder Lal and his admitted handwriting. Kishore Chand (PW27) proved the prosecution sanction against Patwari Gulbadan. Balbir Singh (PW28) was posted as Executive Magistrate, in whose presence specimen signatures of Vidya Devi were taken. Balwant Singh (PW29) and Rajinder Kumar (PW30) conducted the investigation. Dr. Meenakshi Mahajan (PW31) compared the disputed, admitted and specimen signatures.

5. The accused, in their statements recorded under Section 313 of Cr.P.C., denied the prosecution case in its entirety.

They claimed that they were innocent and were falsely implicated. Vidya Devi stated that she was illiterate and had no knowledge about the reports made by the forest officials. Her TD permit was collected by Sunder Lal. She had not encroached upon any Government land. Totu Ram stated that the TD permit was issued to Vidya Devi as per the rules. Gulbadan stated that Vidya Devi was the owner of Khata No. 212, and mistakenly, Khata No.294 was mentioned. The jamabandies were tendered in defence, and the statement of Lajja Devi (DW1) was recorded to prove the notifications.

6. Learned Trial Court held that Vidya Devi had purchased the land from Dola Ram vide sale deed (Ext. PW9/A-21) bearing Khasra No.2372 measuring 0-14-0 bigha to the extent of half share. She had gifted her share to the Ayurvedic Department for the construction of the dispensary. She had not transferred her rights over the land. She could have retained such rights in her favour as per the Punjab Forest Manual Volume I. Naina Devi, mother of Vidya Devi, was the owner in possession of Khasra No.196. She died on 17.01.1986. Vidya Devi, was the legal heir of her mother, and she could not be called to be landless. The prosecution version that Dola Ram had

signed the application on behalf of Vidya Devi was not established. The prosecution sanction against Sunder Lal was not proper. The public officials Gulbadan and Totu Ram had made the reports in the discharge of their official duties. The application was duly verified by the Panchayat. Therefore, the accused were acquitted.

7. Being aggrieved from the judgment passed by the learned Trial Court, the State has filed the present appeal asserting that the learned Trial Court failed to properly appreciate the evidence led before it in its proper perspective. The statements of the prosecution witnesses were discarded without any reasonable ground. Jaswant Singh Patwari admitted that Vidya Devi was not recorded as the owner of any land in Khata No.294. His statement was supported by Kehar Singh (PW6), who proved that Khata No.294 was owned by one Jagannath. Vidya Devi had wrongly shown herself to be the owner of Khata No.294, and she was not the owner of this Khata. The other accused helped her in getting the TD; therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. We have heard Mr J.S. Guleria, learned counsel for the appellant/State, Mr Sanjeev Kuthiala, learned Senior Counsel assisted by Ms Amita Chandel and Mr. Abhishek, learned counsel for respondents No.1 and 2 and Mr. Abhijeet Singh, learned counsel for respondents No.3 and 4.

9. Mr. J.S. Guleria, learned Deputy Advocate General for the appellant/State, submitted that the learned Trial Court erred in acquitting the accused. It was duly proved by the statements of official witnesses that Vidya Devi executed a gift deed in favour of the Ayurvedic Department, and she was left with no land. She made a false application stating that she was the owner of the land and thereby obtained TD in her favour. The other accused helped her by making false reports. The learned Trial Court erred in discarding the testimonies of the official witnesses; therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr. Sanjeev Kuthiala, learned Senior Counsel for the respondents/accused No.1 and 2, submitted that the learned Trial Court had rightly held that Vidya Devi had not transferred her forest rights in favour of the Ayurvedic department and she could file an application for getting the TD. The evidence on record also

shows that the mother of Vidya Devi was the owner of the land, and Vidya Devi succeeded to her estate; hence, she cannot be called a landless person; therefore, he prayed that the present appeal be dismissed.

11. Mr Abhijeet Singh, learned counsel for respondents/accused No. 3 and 4, adopted the submissions of Mr Sanjeev Kuthiala, learned Senior Counsel and submitted that respondents Nos 3 and 4 had made the reports *bona fide* on the basis of the recommendation made by the Panchayat; therefore, he prayed that the present appeal be dismissed.

12. We have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Mallappa v. State of Karnataka*, (2024) 3 SCC 544: 2024 SCC OnLine SC 130 that while deciding an appeal against acquittal, the High Court should see whether the evidence was properly appreciated on record or not; second whether the finding of the Court is illegal or affected by the error of law or fact and thirdly; whether

the view taken by the Trial Court was a possible view, which could have been taken based on the material on record. The Court will not lightly interfere with the judgment of acquittal. It was observed:

“25. We may first discuss the position of law regarding the scope of intervention in a criminal appeal. For that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretised when the case ends in acquittal. It is so because once the trial court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened, and a higher threshold is expected to rebut the same in appeal.

26. No doubt, an order of acquittal is open to appeal, and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to reappraise or re-visit the evidence on record. However, the power of the High Court to reappraise the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the trial court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the trial court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the trial court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

27. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The “two-views theory” has been judicially recognised by the courts, and it comes into play when the appreciation of evidence results in two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of the innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. Therefore, when two views are possible, following the one in favour of the innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the trial court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eye of the law.

28. In *Selvaraj v. State of Karnataka* [*Selvaraj v. State of Karnataka*, (2015) 10 SCC 230: (2016) 1 SCC (Cri) 19]: (SCC pp. 236–37, para 13)

“13. Considering the reasons given by the trial court and on an appraisal of the evidence, in our considered view, the view taken by the trial court was a possible one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in *Jagan M. Seshadri v. State of T.N.* [*Jagan M. Seshadri v. State of T.N.*, (2002) 9 SCC 639: 2003 SCC (L&S) 1494] has laid down that as the appreciation of evidence made by the trial court while recording the acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus: (SCC p. 643, para 9)

‘9. ... We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutory

principles while dealing with appeal against acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The view taken by the learned trial court was a reasonable view, and even if by any stretch of the imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal.’”

29. In *Sanjeev v. State of H.P.* [*Sanjeev v. State of H.P.*, (2022) 6 SCC 294: (2022) 2 SCC (Cri) 522], the Hon'ble Supreme Court analysed the relevant decisions and summarised the approach of the appellate court while deciding an appeal from the order of acquittal. It observed thus: (SCC p. 297, para 7)

“7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see *Vijay Mohan Singh v. State of Karnataka* [*Vijay Mohan Singh v. State of Karnataka*, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586] and *Anwar Ali v. State of H.P.* [*Anwar Ali v. State of H.P.*, (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395]).

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see *Atley v. State of U.P.* [*Atley v. State of U.P.*, 1955 SCC OnLine SC 51: AIR 1955 SC 807]).

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see *Sambasivan v. State of*

Kerala [Sambasivan v. State of Kerala, (1998) 5 SCC 412: 1998 SCC (Cri) 1320]).”

14. This position was reiterated in *Ramesh v. State of Karnataka, (2024) 9 SCC 169: 2024 SCC OnLine SC 2581*, wherein it was observed at page 175:

“20. At this stage, it would be relevant to refer to the general principles culled out by this Court in *Chandrappa v. State of Karnataka [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]*, regarding the power of the appellate court while dealing with an appeal against a judgment of acquittal. The principles read thus: (SCC p. 432, para 42)

“42. ... (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on the exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and law.

(3) Various expressions, such as “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc., are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is a double presumption in favour of the accused. *Firstly*, the presumption of

innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

21. In *Rajendra Prasad v. State of Bihar* [*Rajendra Prasad v. State of Bihar*, (1977) 2 SCC 205: 1977 SCC (Cri) 308], a three-judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the trial court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses, and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the trial court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice.”

15. The present appeal has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

16. Dr. Meenakshi Mahajan (PW31) compared the disputed signatures with the admitted and specimen signatures and issued her report (Ext. PW31/A). The specimen signatures were taken in the presence of Shiv Ram (PW10) and Balbir Singh

Lagwal (PW28). They admitted in their cross-examination that no proceeding or inquiry was pending before them when they obtained the specimen signatures. It was laid down by the Hon'ble Supreme Court in *Sukhwinder Singh vs. State of Punjab* 1994 (5) SCC 152 that a Magistrate had no authority to direct the accused to give his specimen signatures when no inquiry or trial was pending before him. It was observed:

“[21] The specimen writings in the instant case of appellant Sukhdev Paul were taken under the directions of Shri S. P. Garg, Tehsildar-Executive Magistrate, Public Witness 13. No enquiry or trial was admittedly pending in the court of the Tehsildar-Executive Magistrate. The enquiry and trial, in this case, were pending under TADA before the Designated court only. The direction given by the Tehsildar-Executive Magistrate Shri S. P. Garg to the appellant Sukhdev Paul to give his specimen writing was clearly unwarranted and not contemplated or envisaged by Section 73 of the Evidence Act. The prosecution has not disclosed as to at what stage of investigation or enquiry or trial was Sukhdev Paul, appellant, produced before the Executive Magistrate Public Witness 13 to take the specimen writings of the appellant and why the specimen writings were obtained under directions of Public Witness 13 and not of the Designated court. It is a mystery as to how the specimen writings required to be used at the trial against the appellant were directed to be taken by Public Witness 13, who was not enquiring or trying the case. To a specific question during his cross-examination, Public Witness 13 admitted at the trial that when he had issued the direction to the appellant, there was no document on his file which could go to show as to under whose orders the appellant had been sent to him for taking his specimen handwriting. The manner in which the specimen writing

of Sukhdev Paul was taken is totally objectionable and against the provisions of Section 73 of the Evidence Act. The Executive Magistrate Public Witness 13 appears to have been too obliging and did not even care to examine the provisions of the law before issuing the direction to the appellant. The argument of the learned counsel for the State that since no objection was raised by the appellant when he was called upon to give his specimen writing by Public Witness 13, therefore, he cannot be permitted to make a grievance now is only an argument of despair and the silence of the appellant, who admittedly on that day, was not even represented by an advocate, cannot certainly clothe Public Witness 13 with any jurisdiction to issue the directions as envisaged by Section 73 of the Evidence Act. The specimen writing of Sukhdev Paul could not, therefore, be made use of during the trial, and the report of the handwriting expert, when considered in the light of the foregoing discussion, is rendered of no consequence at all and cannot be used against Sukhdev Paul appellant to connect him with the crime.”

17. This position was reiterated in *State of Haryana Vs. Jagveer Singh (2003) 11 SCC 261* and *Rakesh Kumar vs. State 2001 (3) S.L.C 154*.

18. Similar is the judgment of the Hon'ble Supreme Court in *Sukh Ram vs. State of H.P. (2016) 14 SCC 183*, wherein it was observed: –

“14. The trial court discarded the opinion evidence of PW-20 on the ground that the executive magistrate was not the competent authority before whom the fingerprint and handwriting of the witnesses could be taken as no proceeding was pending before the executive magistrate. In this regard, the trial court placed reliance upon *Sukhvinder Singh's* case and held that the opinion evidence

of a handwriting expert cannot be used against the accused.

15. In *Sukhvinder Singh's case*, it was held that the direction given by the Tehsildar-Executive Magistrate to the accused to give his specimen writing was clearly unwarranted and, therefore, the said specimen writing could not be made use of during the trial and the report of handwriting expert was rendered of no consequence at all and could not be used against the accused to connect him with the crime. It was held that the direction to an accused to give specimen handwriting can only be issued by the court holding enquiry under the Criminal Procedure Code or the Court conducting the trial of such accused.

16. The High Court differentiated *Sukhvinder Singh's case* from the case at hand on facts as also on the law. High Court pointed out that in the matter at hand, admittedly, the authority-Executive Magistrate before whom the specimen signatures were given did not have the authority to inquire into or try the case. However, as observed by the High Court, during the course of the investigation, PW-5 and PW-7 gave the specimen signatures willingly. In *Sukhvinder Singh's case*, specimen writing of the accused was taken as per the direction of the tehsildar, whereas in the present case, PW-5 and PW-7 were produced before the Executive Magistrate by the police with a request that their signatures be taken by the Executive Magistrate. *Sukhvinder Singh's case* is clearly distinguishable on facts from the case at hand. High Court further relied on another decision rendered in *Vijay alias Gyan Chand Jain's case* wherein, in the facts and circumstances of the said case, it was held that procurement of specimen handwriting of the accused by Naib Tehsildar was not in violation of Section 73 of Evidence Act.

17. The question is whether the Judicial Magistrate/ Executive Magistrate was authorised to take specimen writing and signatures of the said accused during the investigation of the case when no matter was pending before either of them. Section 311-A of Cr.P.C. has been

introduced by Act No.25 of 2005 with effect from 23.06.2006 with respect to the powers of the Magistrate to order the person to give specimen signatures or handwriting, but no such powers were there prior to the year 2006. Section 311-A Cr.P.C. has been inserted on the suggestions of the Supreme Court in *State of Uttar Pradesh v. Ram Babu Misra*, (1980) 2 SCC 343: AIR 1980 SC 791, that suitable legislation be brought along the lines of Section 5 of Identification of Prisoners Act, 1980, to provide for the investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting but no such powers existed prior to such amendment. The said amendment is prospective in nature and not retrospective.

18. In *State of Uttar Pradesh v. Ram Babu Misra*, (1980) 2 SCC 343: AIR 1980 SC 791, the Supreme Court dealing with the scope and ambit of Section 73 of the Evidence Act held as under:

“The second paragraph of Section 73 enables the Court to give specimen writings ‘for the purpose of enabling the Court to compare’ such writings with writings alleged to have been written by such person. The clear implication of the words ‘for the purpose of enabling the Court to compare’ is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of ‘enabling the Court to compare’ and not for the purpose of enabling the investigating or other agency ‘to compare’. 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. The language of Section 73 does not permit a Court to give a direction to the accused to give specimen writings for the anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further, Section 73 of the Evidence Act makes no distinction

between a Civil Court and a Criminal Court. Would it be open to a person to seek the assistance of the Civil Court for a direction to some other person to give sample writing under section 73 of the Evidence Act on the plea that it would help him to decide whether to institute a civil suit in which the question would be whether certain alleged writings are those of the other person or not? Obviously not. If not, why should it not make any difference if the investigating agency seeks the assistance of the court under Section 73 of the Evidence Act on the plea that a case might be instituted before the Court where it would be necessary to compare the writings?”

19. After referring to Section 5 of the Identification of Prisoners Act, 1980, in Ram Babu Misra’s case, this Court suggested that suitable legislation be made along its lines to provide for the investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting. Accordingly, a new Section 311-A was inserted in the Criminal Procedure Code. Section 311-A Cr.P.C. reads as under: -

“Section 311A. Power of Magistrate to order person to give specimen signatures or handwriting.-If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case, the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.”

The said amendment is prospective in nature and not retrospective.”

19. It was laid down by this Court in *State of H.P. Vs. Laje Ram & Ors.* 2011 CrL. L.J. 3071 that signatures taken before 23.6.2006 by a Magistrate when no inquiry or trial was pending before him would be inadmissible. It was observed:-

“12. The perusal of the records shows that the Investigating Officer had made the request to the Magistrates aforesaid for obtaining the specimen writing and signatures of the accused persons for comparison, and the learned Magistrates proceeded to record their writings and signatures.

13. Thus, the dispute is whether the Judicial Magistrate/Executive Magistrate was authorised to take specimen writing and signatures of the said accused during the investigation of the case when no matter was pending before either of them. Although Section 311-A of the Code of Criminal Procedure has been introduced by Act No. 25 of 2005 with effect from 23.6.2006 with respect to the powers of the Magistrate to order the person to give specimen signatures or handwriting, no such powers were there prior to the year 2006. The said Section has been inserted on the suggestions of the Supreme Court made on its decision (*AIR 1980 SC 791*) that a suitable legislation be brought on the analogy of Section 5 of the Identification of Prisoners Act, 1980, to provide for the investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting, but no such powers existed prior to such amendment. Undisputedly, the said amendment is prospective in nature and not retrospective.

14. In *State of Uttar Pradesh v. Ram Babu Misra*, *AIR 1980 SC 791*, the Supreme Court dealing with the scope and ambit of Section 73 of the Evidence Act held as under:

"The second paragraph of Section 73 enables the Court to direct any person present in Court to give specimen writings 'for the purpose of enabling the Court to compare' such writings with writings alleged to have been written by such person. The clear implication of the words 'for the purpose of enabling the Court to compare' is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of 'enabling the Court to compare' and not for the purpose of enabling the investigating or other agency 'to compare'. 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. The language of Section 73 does not permit a Court to give a direction to the accused to give specimen writings for the anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further, Section 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court. Would it be open to a person to seek the assistance of the Civil Court for a direction to some other person to give sample writing under section 73 of the Evidence Act on the plea that it would help him to decide whether to institute a civil suit in which the question would be whether certain alleged writings are those of the other person or not? Obviously not. If not, why should not make any difference if the investigating agency seeks the assistance of the court under section 73 of the Evidence Act on the plea that a case might be instituted before the Court where it would be necessary to compare the writings?"

15. The Hon'ble Supreme Court also referred to Section 5 of the Identification of Prisoners Act, 1920, which provides: —

"If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898, (5 of 1898), it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer:

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class:

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding".

It was held:

"There are two things to be noticed here. First, signatures and writing are excluded from the range of Section 5 of the Identification of Prisoners Act, and second, 'finger impressions' are included in both Section 73 of the Evidence Act and Section 5 of the Identification of Prisoners Act. A possible view is that it was thought that Section 73 of the Evidence Act would not take in the stage of the investigation, and so Section 5 of the Identification of Prisoners Act made special provision for that stage and even while making such provision, signature and writings were deliberately excluded. As we said, this is a possible view but not one on which we desire to rest our conclusions. Our conclusion rests on the language of Section 73 of the Evidence Act."

16. As stated above, the Hon'ble Court also made a suggestion that suitable legislation may be made on the analogy of Section 5 of the Identification of Prisoners Act, 1920, to provide for the investiture of Magistrates with the

powers to issue directions to any person including an accused person to give specimen signatures and writings.

17. The above ratio was reiterated by the Hon'ble Supreme Court in *Sukhvinder Singh and Others v. the State of Punjab*, *JT 1994 (4) SC 1*. It was held:

"The second paragraph of Section 73 (supra) 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 writings with writings alleged to have been written by such person. The obvious implication of the words 'for the purpose of enabling the court to compare' is that there is some proceeding pending before the court in which or as a consequence of which it is necessary for the court to compare such writings. The direction is, therefore, required to be given for the purpose of 'enabling the court to compare' and not for the purpose of enabling an investigating or a prosecuting agency to obtain and produce as evidence in the case the specimen writings for their ultimate comparison with the disputed writings. Where the case is still under investigation, and no proceedings are pending in any court in which it might be necessary to compare the two writings, the person (accused) cannot be compelled to give his specimen writings. The language of Section 73 does 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. Section 73 of the Evidence Act, in our opinion, cannot be made use of for collecting specimen writings during the investigation and recourse to it can be had only when the enquiry or the trial court before which proceedings are pending requires the writing for the purpose of 'enabling it to compare' the same. A court holding an enquiry 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 handwriting to enable the court by which he may be subsequently tried to compare it with the disputed writings. Therefore, in our opinion, the court which can issue a direction to the person to give his specimen writing can either be the court holding the enquiry under the Code of Criminal Procedure or the court trying the accused person with a view to enable it to compare the specimen writings with the writings alleged to have been written by such a person. A court which is not holding an enquiry under the Code of Criminal Procedure or conducting the trial is not permitted, in the plain language of Section 73 of the Evidence Act, to issue any direction of the nature contained in the second paragraph of Section 73 of the Evidence Act. The words 'any person present in the court' in Section 73 has reference only to such persons who are parties to a cause pending before the court and, in a given case, may even include the witnesses in the said cause, but where there is no cause pending before the court for its determination, the question of obtaining for the purposes of comparison of the handwriting of a person may not arise at all; therefore, the provisions of Section 73 of the Evidence Act would have no application."

18. Admittedly, in the instant case, no proceedings against the persons before the Magistrates aforesaid were pending when the signatures and writings of the accused persons were obtained at the request of the Investigating Officer. Therefore, the directions of the learned Magistrates were unwarranted and not contemplated by Section 73 of the Evidence Act. As such, the report of the handwriting expert loses its importance and is of no consequence and thus cannot be used against the respondents."

20. In the present case, the Executive Magistrates admitted that no inquiry or proceeding were pending before

them. Therefore, they could not have taken the specimen signatures, and any comparison of the disputed and specimen signatures is meaningless.

21. There is no evidence that the admitted handwriting was in the hands of accused Totu Ram and Gulbadan. Dr. Minakshi relied upon the admitted handwriting (Ex. PW-30/H, Ex. PW-30/J to Ex. PW-30/P and Ex. PW-20/B). All these documents were exhibited by the investigating officers Inspector Nand Kishor (PW-20) and Rajinder Kumar (PW-30. The documents were not written in their presence and they were not competent to prove the handwriting. It was laid down by the Hon'ble Supreme Court in *Gulzar Ali v. State of H.P.*, (1998) 2 SCC 192: 1998 SCC (Cri) 605 that the handwriting can be proved by the handwriting expert or the person who is familiar with the handwriting of the person. It was observed at page 195:

“9. It must be remembered that expert evidence regarding handwriting is not the only mode by which the genuineness of a document can be established. The requirement in Section 67 of the Evidence Act is only that the handwriting must be proved to be that of the person concerned. In order to prove the identity of the handwriting any mode not forbidden by law can be resorted to. Of course, two modes are indicated by law in Sections 45 and 47 of the Evidence Act. The former permits expert opinion to be regarded as relevant evidence and the latter permits opinion of any person acquainted with such

handwriting to be regarded as relevant evidence. Those and some other provisions are subsumed under the title “Opinion of third persons, when relevant”. Opinions of third persons, other than those enumerated in the fasciculus of provisions, would have been irrelevant. Among the permitted opinions those mentioned in Sections 45 and 47 are also included. So it cannot be said that the identity of handwriting of a document can be established only by resorting to one of those two sections. There can be other modes through which the identity of the handwriting can be established. Citing an example, if a letter is seized from the possession of ‘A’ and the letter contains the name of the sender as well as the name of the sendee and if such sendee happens to be ‘A’ himself, those circumstances even without resorting to the mode indicated in Sections 45 and 47 of the Evidence Act, would be sufficient to draw an inference that the author or even scribe of that letter is the sender and ‘A’ is the sendee of it.

10. Reference can be made to two decisions of a three-judge Bench of this Court. First is *Ram Chandra v. State of U.P.* [AIR 1957 SC 381: 1957 Cri LJ 559] wherein authorship of some questioned letters has been found on the strength of “various items of external and internal evidence”. The same three-judge Bench has observed in *Mobarik Ali Ahmed v. State of Bombay* [AIR 1957 SC 857: 1958 Cri LJ 1346] thus:

“The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or the signature, by one of the modes provided in Sections 45 and 47 of the Indian Evidence Act.

It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the

satisfaction of the Court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender limited though it may be, as also his knowledge of the subject-matter of the chain of correspondence, to speak to its authorship.”

22. Thus, the admitted handwriting could not have been compared with the disputed handwriting of accused Totu Ram and Gulbadan.

23. It is the specific case of the prosecution that Vidya Devi had obtained a half share in Khasra No.2372 measuring No.0-7-0 bigha, which she gifted to the Ayurvedic Department. It was asserted by the prosecution that Vidya Devi was not left with any right after executing a gift deed in favour of the Ayurvedic Department. This is not correct. Learned Trial Court had referred to Punjab Forest Manual Volume-I regarding the Forest Rules of Kullu Division of 1878. Rule 4A reads as under:-

“4-A: Where a right holder alienates a fraction of a holding, the alienee shall not become a right holder. Where, however, a right holder alienates his entire holding, he may, at his option, either alienate his right of user along with the holding or alienate only the holding, retaining the right of user for himself. In the former case, he shall cease to be a right holder, and the alienee shall become a right holder; and in the latter case, the alienee shall not become a right holder.”

24. It is apparent from the opening part of Rule 4A that where the right holder alienates a fraction of the holding, the alienee does not become a right holder; therefore, the transfer of the fraction of a holding does not make the alienee as a right holder and the rights remain with the transferee. Thus, the learned Trial Court had rightly held that the forest rights in the land holding were not transferred by Vidya Devi by execution of a gift deed of half share of Khasra No.2372 and the very premise of the prosecution case that accused-Vidya Devi was landless and had no right to claim TD is incorrect.

25. The prosecution had filed the challan against the accused for the commission of offences punishable under Sections 467 and 468 of IPC on the premise that the application filed by Vidya Devi was false and the reports made by Gulbadan and Totu Ram were also false and in this manner, they had committed forgery. This is not correct. The term forgery has been defined in Section 463 of IPC as under:

"463. Forgery.--Whoever makes any false documents or electronic record part of a document or electronic record with intent to cause damage or injury], to the public or any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

26. It is apparent from the definition that a person has to make a false document before he can be said to have committed forgery. Making a false document is defined in Section 464 of IPC. It reads as follows:

464. Making a false document.—A person is said to make a false document or false electronic record—

First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of a document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

27. It was laid down by the Hon'ble Supreme Court in *Mohammed Ibrahim versus State of Bihar 2009 (8) SCC 751* that the prosecution is required to prove that the accused had forged a document by creating a false document to establish the offence of forgery. A false document is when a document is executed claiming to be executed by someone else or authorised by someone else, a document is tampered, or signatures are obtained by practising deception. It was observed:—

“[10] An analysis of section 464 of the Penal Code shows that it divides false documents into three categories:

10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

10.2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not because of (a) unsoundness of mind or (b) intoxication or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

[11] In short, a person is said to have made a 'false document' if (i) he made or executed a document claiming to be someone else or authorised by someone else, or (ii) he altered or tampered with a document, or (iii) he obtained a document by practising deception, or from a person not in control of his senses.”

28. In the cited case, the prosecution alleged that the accused had executed a sale deed regarding the property over which he had no right. It was held by the Hon’ble Supreme Court that there is a distinction between a document whose contents are false and a document that is itself false within the definition of Section 464 of IPC. A document containing false averment does not attract the provision of Criminal Law, and the accused cannot be held liable for executing the sale deed by claiming to be the owner when he was not the owner. It was observed:-

“[12] The sale deeds executed by the first appellant clearly and obviously do not fall under the second and third categories of 'false documents'. It, therefore, remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5

as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner to execute the deed on the owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he *bona fide* believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his, even though he knows that it is not his property. But to fall under the first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else, nor is he claiming that he is authorised by someone else. Therefore, execution of such a document (purporting to convey some property of which he is not the owner) is not an execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code is attracted”.

29. In *Mir Nagvi Askari Vs CBI* 2009 (15) SCC 643, the accused was charged with making false entries in the record of the bank. It was laid down by the Hon’ble Supreme Court that making wrong entries by itself will not attract criminal liability unless it is proved that the document was false within the

meaning of Section 464 of IPC. It was observed:-

“[229] A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person by whom the person falsifying the document knows that it was not made. Clearly, the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else.

[230] The second criterion of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion, the second criterion of the said section is also not applicable to the present case.

[231] The third and final condition of Section 464 deals with a document signed by a person who, due to his mental capacity, does not know the contents of the documents which were made, i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably, therefore, the accused before us could not have been convicted for the making of a false document.

[232] The learned Special Judge, therefore, in our opinion, erred in holding that the accused had prepared a false document, which clearly, having regard to the provisions of the law, could not have been done.

[233] Further, the offence of forgery deals with the making of a false document with the specific intentions enumerated therein. The said section has been reproduced below.

"463. Forgery.--Whoever makes any false documents or electronic record part of a document or electronic record with intent to cause damage or injury], to the public or any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

[234] However, since we have already held that the commission of the said offence has not been convincingly established, the accused could not have been convicted for the offence of forgery. The definition of "false document" is a part of the definition of "forgery". Both must be read together. [*Dr. Vimla v. Delhi Administration, 1963 Supp2 SCR 585*]"

30. It was further held that in the absence of the document being forged, a person cannot be convicted of the commission of an offence punishable under Section 471 of IPC. It was observed:-

"[235] Accordingly, the accused could not have been tried for an offence under Section 467, which deals with forgery of valuable securities, will, etc. or Section 471, i.e., using as genuine a forged document or Section 477-A, i.e., falsification of accounts. The conviction of the accused for the said offences is accordingly set aside".

31. It was held in *Sukhbir Singh Badal v. Balwant Singh Khera, 2023 SCC OnLine SC 522* that making a false claim and making a false document are entirely different. It was observed:

45. In the present case, no false document has been produced. What was produced was the Memorandum, and

no other documents were produced. Even according to the original complainant, the Memorandum and the claim made at the time of registration of the Party that it has adopted a Memorandum accepting secularism, the same was contrary to the Constitution of the Party produced before the Gurudwara Election Commission. *Making a false claim and creating and producing a false document both are different and distinct.*" (Emphasis supplied)

32. This question was also considered in *Sheila Sebastian versus R Jawaharaj & Anr, etc.* 2018 (7) SCC 581, and it was held that unless the ingredients of Section 464 of IPC are satisfied, a person cannot be convicted of the commission of an offence punishable under Section 465 of IPC. It was observed:-

"[26] The definition of 'false document' is a part of the definition of 'forgery'. Both must be read together. 'Forgery' and 'Fraud' are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case at hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute the mortgage deed under the guise of that 'false document'. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event, the trial court, as well as the appellate court, misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position, and we find no reason to interfere with the same".

33. In the present case, there is no evidence that the documents were altered after they were written or they were

purported to be in the handwriting of some person by whom they were not written. A document containing a false recital is not a false document as defined under Section 460 (4) of IPC, and even if the whole of the prosecution case is accepted to be correct that the document contains a false recital, it does not amount to forgery.

34. The prosecution has also filed a charge sheet for the commission of offences punishable under Section 420 of IPC. The ingredients of cheating were explained by the Hon'ble Supreme Court in *S.W. Palanitkar v. State of Bihar*, (2002) 1 SCC 241 as under:

“10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

11. One of us (D.P. Mohapatra, J.), speaking for the Bench, in *HridayaRanjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168: 2000 SCC (Cri) 786] on facts of that case, has expressed thus: (SCC p. 177, para 15)

“15. In determining the question, it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement, which may be judged by his subsequent conduct, but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. *To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise, cannot be presumed.*” (emphasis supplied)

12. Finding that the ingredients of the offence of cheating and its allied offences had not been made out, this Court interfered with the order of the High Court and quashed the criminal proceedings.

13. In *G.V. Rao v. L.H.V. Prasad* [(2000) 3 SCC 693: 2000 SCC (Cri) 733], this Court in para 7 has stated thus: (SCC pp. 696-97)

“7. As mentioned above, Section 415 has two parts. While in the first part, the person must ‘dishonestly’ or ‘fraudulently’ induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantrao Manilal Akhaney v. State of Bombay* [AIR 1956 SC 575: 1956 Cri LJ 1116], a guilty intention is an essential ingredient

of the offence of cheating. In order, therefore, to secure the conviction of a person for the offence of cheating, 'mens rea' on the part of that person must be established. It was also observed in *Mahadeo Prasad v. State of W.B.* [AIR 1954 SC 724: 1954 Cri LJ 1806] that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."(emphasis supplied)

14. In *Trisuns Chemical Industry v. Rajesh Agarwal* [(1999) 8 SCC 686: 2000 SCC (Cri) 47] dealing with the effect of existence of arbitration clause in the agreement on criminal prosecution on the ground that civil proceedings are also maintainable, this Court has held that quashing of FIR or a complaint exercising power under Section 482 CrPC should be limited to a very extreme exception; merely because an act has a civil profile is not enough to stop action on the criminal side. It is further held that a provision made in the agreement for referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act constitutes a criminal offence.

35. A similar view was taken in *G.V. Rao v. L.H.V. Prasad*, (2000) 3 SCC 693 as under:

"4. "Cheating" is defined in Section 415 of the Penal Code, 1860, which provides as under:

"415. *Cheating*.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that

person in body, mind, reputation or property, is said to 'cheat'.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.”

5. The High Court quashed the proceedings principally on the ground that Chapter XVII of the Penal Code, 1860 deals with the offences against properties and, therefore, Section 415 must also necessarily relate to the property which, in the instant case, is not involved and, consequently, the FIR was liable to be quashed. The broad proposition on which the High Court proceeded is not correct. While the first part of the definition relates to property, the second part does not necessarily relate to property. The second part is reproduced below:

“415. ... intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.”

6. This part speaks of intentional deception, which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived. The further requirement is that such an act or omission should have caused damage or harm to body, mind, reputation or property.

7. As mentioned above, Section 415 has two parts. While in the first part, the person must “dishonestly” or “fraudulently” induce the complainant to deliver any

property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantraai Manilal Akhaney v. State of Bombay* [AIR 1956 SC 575: 1956 Cri LJ 1116: 1956 SCR 483], a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure the conviction of a person for the offence of cheating, “mens rea” on the part of that person must be established. It was also observed in *Mahadeo Prasad v. State of W.B.* [AIR 1954 SC 724: 1954 Cri LJ 1806] that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.

8. Thus, so far as the second part of Section 415 is concerned, “property”, at no stage, is involved. Here, it is the doing of an act or omission to do an act by the complainant as a result of intentional inducement by the accused, which is material. Such inducement should result in the doing of an act or omission to do an act as a result of which the person concerned should have suffered or was likely to suffer damage or harm in body, mind, reputation or property. In an old decision of the Allahabad High Court in *Empress v. Sheoram* [(1882) 2 Awn 237], it was held by Mahmood, J.:

“That to palm off a young woman as belonging to a caste different to the one to which she really belongs, with the object of obtaining money, amounts to the offence of cheating by personation as defined in Section 416 of the Penal Code, 1860, which must be read in the light of the preceding Section 415.”

36. In the present case, it has been found above that the mere gift of the half share by Vidya Devi did not amount to

divestment of her forest right as per Rule 4A (supra). Therefore, she had not made any false representation, and she cannot be held to be guilty of cheating.

37. It was submitted that a wrong report was made by Patwari Gulbadan and Forest Guard Totu Ram, which facilitated the grant of TD to Vidya Devi. This is also based upon the premise that after the transfer of her share in Khasra No.2372, Vidya Devi was left with no right, which is not correct because forest rights remained with her because of Rule 4A of Forest Rules of Kullu Division of 1878.

were retained; hence, the representation made by these persons cannot be said to be false so as to attract the provisions of Section 420 of IPC.

38. Vidya Devi, being the right holder, was entitled to get the TD and the sanction of TD in her favour is not illegal; hence, the offence punishable under Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act is not made out. Therefore, the learned Trial Court had taken a reasonable view, and this Court will not interfere with the same while deciding an appeal against acquittal, even if the other view is possible.

39. In view of the above, the present appeal fails and the same is dismissed.

40. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the respondents/accused are directed to furnish their personal bond in the sum of ₹25,000/- each with one surety each in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondents/accused, on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court.

41. Records be sent back forthwith. Pending applications, if any, also stand disposed of.

(Vivek Singh Thakur)
Judge

(Rakesh Kainthla)
Judge

13th December, 2024
(saurav pathania)