REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1174 OF 2003

Chaman Lal & Ors. ..Appellants

Versus

State of Punjab & Anr. ..Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a learned Single judge of the Punjab and Haryana High Court dismissing the Criminal Revision i.e. Criminal Revision No.512 of 2000 filed by nine petitioners, who are the appellants in this Appeal. Before the High Court the challenge was to the order passed by learned Additional Chief Judicial Magistrate, Ludhiana framing charges for alleged commission of offences punishable under

Section 409 read with Section 120B and Section 420 read with Section 120 B of the Indian Penal Code, 1860 (in short the 'IPC'). The High Court dismissed the revision petition on the ground that there are sufficient grounds to presume that the unrebutted evidences of the complainant constitute triable offences.

2. Background facts as projected by appellants in a nutshell are as follows:

In February, 1987 the complainant and his five family members executed General Power of Attorney (in short the 'GPA') at Canada in favour of Manvinder Singh and subsequently the said GPA was registered with the Commissioner of Ferozepur, Punjab. The GPA stated that the GPA holder can do anything on behalf of the complainant which he can lawfully do. The GPA does not contain any condition or restriction.

In August, 1989 the GPA holder met the appellants with a proposal to sell a plot of land of the complainant admeasuring 4840 square yards comprised in Khasra No. 1085 situated at Village Barewal Awana,

Ludhiana. The GPA holder demanded a price of Rs.5 lakhs for the said property.

On 4.10.1989 the appellants by an oral agreement-agreed to purchase the said property and paid Rs.1 lakh by way of four demand drafts to the GPA holder.

On 7.11.1989 the aforesaid oral agreement was reduced into writing and the balance sum of Rs.4 lakh was also paid (Rs.1 lakh in cash and Rs.3 lakhs by bank drafts). Upon receipt of entire consideration, the GPA holder executed four SPAs in favour of appellant Nos.1 (Chaman Lal) 2 (Daljander Kaur) 3 (Narinder Kaur) and 7 (Balwant Singh).

On 5.12.1989 by virtue of the aforesaid 5 SPAs dated 7.11.1989 appellant Nos.1, 2, 3 & 7 executed and registered 5 sale deeds in favour of appellant Nos.2 to 6.

In the middle of December, 1989 the appellants suddenly came to know that the complainant had filed a suit No.120/89 dated 28.11.1989 against Petitioner Nos.1, 2, 3 and 7 for declaration that the said GPA

holder (Manvinder Singh) had no authority to sell the said property and/or to permanently alienate and dispose of the said property.

The appellants also came to know that in the said suit for declaration, an ex-parte injunction order/status quo was granted on 02.12.1989, though the appellants in the absence of knowledge of such ex-parte injunction order had already executed the sale-deeds and got them registered on 05.12.1989.

On 14.06.1990 the learned Senior Subordinate Judge passed an order in the aforesaid suit, restraining the appellants from dispossessing the complainant from the said property and to maintain status quo with regard to ownership of the said property pending disposal of the suit, whereas in fact the appellants were already in possession of the said property since 07.11.1989.

On 20.8.1990 and 21.11.1990 the appellants preferred an Appeal No. 274/67 in the Court of the learned Additional District Judge, Ludhiana praying, *inter alia,* to maintain the status quo with regard to the ownership and possession of the said property and vide order dated 21.11.1990, the

parties were ordered, during pendency of the main suit, to maintain status quo with regard to ownership and possession of the property.

On 30.6.1995 the complainant lodged a complaint with the Deputy Commissioner, Ludhiana - Shri S.S. Channi, I.A.S., who summoned the appellants at his residence and asked them to cancel the sale-deeds and concede to the claim of the complainant in the civil suit. The Commissioner also threatened the appellants with dire consequences by implicating them in false criminal cases. The said officer is related to the complainant.

On 31.08.1995 after a period of about 6 years, on a complaint lodged by the complainant, an FIR No. 183, Police Station Division No.5 District Ludhiana was registered only against Shri Sadhu Singh, Naib Tehsildar, Ludhiana and Shri Banta Singh, Patwari of Village Barewal Awana under Sections 420, 468,, 471, 120 B IPC.

On 13.3.1996 on application of the complainant, an inquiry was initiated and marked to the SP City, Ludhiana.

On 29.5.1996 the SP City, Ludhiana submitted his Report to the SSP, Ludhiana stating therein that the FIR was the handiwork to pressurize the appellants and further that no such offence had been committed by the appellants.

On 14.10.1996 despite the aforesaid report of the SP City, Ludhiana and in spite of the note of the A.D.A. (Legal) that no criminal case was made out against the appellants, a charge sheet under Section 173 Cr.P.C. was filed against the appellants for commission of alleged offences under Sections 420, 468, 467, 471,120B IPC.

On 11.12.1999 the Ld. ACJM, Ludhiana framed charges under Sections 120B read with Section 409 IPC and under Sections 120B/420 IPC against the appellants.

The appellants preferred a Criminal Revision No. 512 of 2000 in the Punjab & Haryana High Court challenging the maintainability of the charges framed against them and the learned Single Judge of the High Court dismissed the prayer of the appellants by the impugned order holding that there was sufficient ground to presume that the unrebutted evidence of the complainant constitute triable offences.

3. According to learned counsel for the appellant a sum of Rs.1,00,000/- was paid as earnest money. The power of attorney was drawn up at Canada and was registered on 19.3.1987 by accused No.1 at Firozepur, Punjab. The factual scenario described above goes to show that the complaint was

nothing but the abuse of the process of court. The ingredients necessary for constituting offences punishable under Sections 409, 420 and 120B IPC are not made out. In any event the complaint was lodged after about six years and this itself is sufficient to show lack of bonafides.

4. Manvinder Singh at the relevant point of time had the authority to enter into the transaction.

5. Learned counsel for the respondents on the other hand supported the judgments of the courts below.

6. The High Court has found that the acts are not in dispute, the power of attorney is the central document in the case. The High Court noted that significantly, too many details of the property in respect of which it was executed were missing. The High Court observed that the power of attorney was embossed with the stamp of Commissioner, Firozepur on 19th March, 1987 prima facie on making it a valid document. But nevertheless a plain reading of the power of attorney leaves one with the uncertain feeling as regards its true import. The High Court observed that it is possible that the appellants were duped by the attorney who had known that his power has

been revoked but concealed the fact. Thereafter having coming to this conclusion the High Court noted as follows:

> "Such an argument could have been validly advanced by the petitioners to establish their bonafides if the power of attorney itself had mentioned the details of the property in dispute and had also mentioned specifically that the attorney had the power to alienate the property through sale, mortgage and lease etc. The petitioners must have examined the document because it was from the document that the power to enter into the agreement to sell had come to vest in Manvinder Singh. If even after examining the document the petitioners went ahead with the transaction they did so at their own peril. They lacked bonafides and were out to deprive the owner of his property by a series of transactions."

7. It would be appropriate to deal with the question of conspiracy. Section 120-B IPC is the provision which provides for punishment for criminal conspiracy. Definition of "criminal conspiracy" given in Section 120-A reads as follows:

> "120-A. When two or more persons agree to do, or cause to be done,—
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> (1) an illegal act, or
>
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy

> unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

The elements of a criminal conspiracy have been stated to be: (*a*) an object to be accomplished, (*b*) a plan or scheme embodying means to accomplish that object, (*c*) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (*d*) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign

punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See *American Jurisprudence*, Vol. II, Sec. 23, p. 559.) For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done an illegal act; the agreement may be proved by necessary implication. The offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

8. No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of the offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal

conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

9. In *Halsbury's Laws of England* (vide 4th Edn., Vol. 11, p. 44, para 58), the English law as to conspiracy has been stated thus:

> "*58*. Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the court.

10. The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or

frustration or however it may be. The actus reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other."

11. The High Court has rightly observed that the charges have to be established beyond reasonable doubt before the prosecution can succeed, but at that stage the challenge can be made. There was no scope for intereference. We are in agreement with the view expressed by the High Court. However, we make it clear that the observations made by the High Court while dismissing the petition before it shall not be considered to be conclusive and determined. It has been rightly noted that Manvinder accepted the factum of cancellation but thereafter executed the special power of attorney. Therefore, we find no infirmity in the order of the High Court to warrant interference. However, we request the trial court to explore the possibility of early disposal of the case. If any petition for exemption is filed, needless to say the same shall be considered keeping in

view sub section 2 of Section 205 of the Code of Criminal Procedure, 1973 (in short the 'Cr.PC.').

12. The appeal is dismissed.

…….J.

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(Dr. ARIJIT PASAYAT)

…….J.
(LOKESHWAR SINGH PANTA)

…….J.
(P. SATHASIVAM)

New Delhi,
March 31, 2009