

HRSI030023532012



Presented on : 14-09-2012
Registered on : 14-09-2012
Date of judgment on : 05-03-2024
Order of quantum of sentence on : 06-03-2024
Duration : 11 years, 5 months, 22 days

**IN THE COURT OF SALONI GUPTA, JUDICIAL MAGISTRATE 1st
CLASS, SIRSA (UID No.HR0425).**

COMI/1123/2013

Abhinay Rathore, aged 32 years, son of Shri Ashpat Singh Rathore alias Ashavpat Singh Rathore, resident of village Bajekan, Tehsil and District Sirsa, through his Power of Attorney Hardayal Singh son of Shri Girdhari Singh, resident of village Amarapura Theri, Hanumangarh, District Hanumangarh (Rajasthan).

.....Complainant.

Versus

1. Akshay Nidhi Rathore son of Ashavpath Singh Rathore;
2. Nisha Rathore wife of Ashavpath Singh Rathore,
....both residents of village Bajekan, Tehsil and District Sirsa.

.....Accused persons

Complaint under Sections 406,416,420,465,467,468,471,
120-B, 506 of IPC.
Police Station: City Sirsa.

Present: Shri Abhinav Sharma, Advocate for complainant.
(Complainant not present).
Accused Akshay Nidhi Rathore and Nisha Rathore on bail
with Shri Pukhraj Chauhan, Advocate.

JUDGMENT:-

Present complaint has been filed by the complainant against
the above named accused persons alleging commission of offences

(Saloni Gupta),
JMIC/Sirsa.05.03.2024

punishable under Sections 406,416,420,465,467,468,471,120-B,506 of IPC.

2. Briefly stated the facts as alleged in the complaint are that the complainant is resident of Village Bajekan, Tehsil & District Sirsa and now he is residing in USA. The present criminal complaint has been filed by complainant through his General Power of Attorney before the Court and the said power of attorney executed by complainant in favour of Shri Hardayal Singh is still intact and has not been cancelled, or revoked and the complainant is still alive. It is further submitted that accused no.1 (Akshay Nidhi Rathore) is brother of complainant and accused no.2 (Nisha Rathore) is mother of complainant. It is pleaded in the complaint that the complainant was having his land under his ownership at Village Bajekan District Sirsa and he is residing abroad. The complainant was having full faith on his brother i.e. accused no.1 and due to the faith, the complainant has appointed accused no.1 as his General Power of Attorney for looking after his land vide General Power of Attorney deed no.19 dated 10.04.2008 registered in the office of Sub Registrar, Sirsa. It is further submitted that brother-in-law of complainant named Nitin and father-in-law of complainant named Hardayal Singh, who are residing in Hanumangarh used to visit Village Bajekan to look after the land of the complainant and they came to know that accused no.1 is trying to mis-appropriate the land of the complainant with bad intentions and they informed the complainant in this regard. On coming

to know these facts, the complainant revoked his General Power of Attorney on 19.01.2012, which was issued in favour of accused no.1 and executed and got registered a revocation deed (cancellation deed) on 24.02.2012 and thereby withdrawn all the rights of attorney already provided to accused no.1 through General Power of Attorney and thereafter, accused no.1 remained no more the General Power of Attorney of the complainant and to this effect, the complainant got served a legal notice dated 24.02.2012 upon accused no.1 through his counsel Shri Mahesh Pareek, Advocate, Sirsa, informing him about cancellation/revocation of General Power of Attorney already registered in his favour and that now he is no more general power of attorney holder of the complainant and he has no right to act as General Attorney of complainant in future. Besides this, the brother-in-law and father-in-law of the complainant has also orally informed the accused No.1 about the cancellation of General Power of Attorney already given to him and also told him that in future, he will have no right to look after and maintain the land of the complainant because he is no more the General Power of Attorney of complainant. Therefore, both the accused were very much aware about the cancellation of General Power of Attorney executed in favour of accused No.1. In spite of it, after coming into knowledge all these facts, both the accused persons in collusion with each other and to gain themselves with mala-fide intention and to cause loss to the complainant with their bad intention, accused no. 1 fraudulently sold the

land of complainant measuring 77 Kanals 3 Marlas being 1/2 share of total land measuring 154 Kanals 6 Marlas comprised in Khewat no.100 Khatuni no.159-Min and 160 and 1 Kanal 13 Marlas comprised in Khewat no.13 Khatuni no.17 i.e. total land measuring 78 Kanals 16 marlas, situated at Village Bajekan, Tehsil and District Sirsa, for consideration of ₹5,17,15,000/- to accused No.2 in pursuance of a conspiracy, vide registered sale deed no.1645 dated 31.05.2012 registered in the office of Sub Registrar, Sirsa, whereas in fact, the sale deed has been registered without any sale consideration, rather it is a Benami transaction for causing loss to the complainant and also usurping his land and the consideration is totally false and bogus whereas the said document are not binding upon complainant because the aforesaid land was shown to have been sold through Power of Attorney whereas on the said day, accused no.1 was not the General Attorney of the complainant and he had no right to sell out the land of the complainant. Both the accused were well aware that General Power of Attorney in favour of accused No.1 has already been cancelled, despite this, both the accused persons intentionally and malafidely have hatched a conspiracy by committing serious offence of fraud and cheating. It is further submitted that now the complainant came to know that accused no.1 has withdrawn a sum of ₹14,74,000/- from the account of the complainant maintained with HDFC Bank, Sirsa bearing account no.14131000017434 after procuring cheque book from the bank by forging and manipulated

signature of the complainant vide cheque no.053091 dated 21.07.2011 with bad intention and in this regard, the complainant was not informed regarding withdrawal of the money and thereby accused No.1 had misappropriated the money of complainant for his own use because on 21.07.2011, when the above said voucher was submitted in the bank with forged signature of the complainant, the complainant was present in USA, therefore, accused no.1 has committed serious offence of forgery with the complainant. It is further submitted that in this manner, both the accused persons hatched a conspiracy with intention to usurp the land of the complainant and forged & fabricated sale deed of the land of the complainant, which is not binding upon him, because the complainant has neither agreed to sell the land to any body, nor he has received any amount of sale consideration and further, the accused No.1 was not authorized to sell the land of complainant. Therefore, the accused persons prepared a forged sale deed/document and thereby committed a serious offence. The family of the General Power of Attorney of the complainant and relatives have convened Panchayat and tried to make the accused persons understand, but the accused persons have threatened the complainant and his Attorney to kill them and openly threatened them that they wanted to usurp the land of the complainant and they had done so and now the complainant can do whatever he can. The accused persons have thereby committed serious offence punishable under Sections 406, 416, 420, 465, 467, 468, 471, 120-B and 506 of Indian

Penal Code and they are liable punishment under the aforesaid Sections. It is also mentioned in the complaint that the complainant had moved an application to Deputy Commissioner, Sirsa and requested to take strict action against the accused persons, but no action has been taken against the accused. Hence, the complainant has approached this court for justice.

3. In his preliminary evidence, the Power of attorney of complainant Hardayal Singh examined himself as PW1, Ravi Jain, Branch Manager of HDFC Bank as PW2, Anil Kumar Gupta, Handwriting and Finger Prints Expert as PW3. Thereafter, complainant has closed his evidence vide separate statement. After perusing the allegations made in the complaint and the preliminary evidence led by the complainant, vide order dated 04.04.2014, accused no.1 Akshay Nidhi Rathore and accused no.2 Nisha Rathore were summoned to face trial for commission of offence punishable under Sections 406,419, 420,467,468, 471,506 read with section 120-B of IPC.

4. On perusal of evidence led by the complainant and upon perusal of case file, a prima-facie case under Sections 406, 420, 467, 468, 471, 506 read with Section 120-B of IPC was made out against the accused persons and they were charge-sheeted accordingly on 31.07.2023 to which they did not plead guilty and claimed trial.

5. In pre-charge evidence, complainant examined Advocate

Mahesh Pareek as PW1, Hardayal Singh Power of Attorney of complainant as PW2, Nishant Kumar as PW3, Surjeet Singh Branch Manager HDFC Bank as PW4, Anil Kumar Gupta, Handwriting and Finger Prints Expert as PW5, Naveen Kumar, Record Keeper, Sessions Court Sirsa as PW6. No other CW was examined and pre-charge evidence on behalf of complainant was closed on 19.07.2023. Following documents have been tendered during the evidence of complainant as under:-

- | | | |
|---|---|--|
| Ex.P2 & Ex.PW3/F | - | Power of Attorney dated 10.04.2008 executed by Abhinay Rathore in favour of Akshay Nidhi Rathore |
| Ex.P1, Ex.PW3/G, Mark-PA & Ex.PW3/D, Ex.PW3/E | - | Revocation of Power of Attorney of Abhinay Rathore on 19.01.2012 |
| Ex.P1 & Ex.PW3/C Mark PX1, Ex.PW6/B Ex.PW6/A | - | Power of Attorney issued by Abhinay Rathore to Hardayal Singh on 26.03.2012 |
| Ex.P2 | - | Legal Notice issued to Akshay Nidhi Rathore by Adv. Mahesh Pareek. |
| Mark-PB | - | Entry regarding cancellation of Deed |
| Ex.PW3/A, Ex.PW3/B | - | Copy of sale deed dated 31.05.2012 |
| Mark-PL | - | Copy of Mutation |
| Mark-PF & Ex.PW5/H | - | Copy of voucher dated 13/07/2011 allegedly having forged signature of Abhinay Rathore |
| Mark-PG, PW5/I | - | Copy of cheque dated 21/07/2011 allegedly having forged signature of Abhinay Rathore |

Ex. PW4/D allegedly	-	Original cheque dated 21/07/2011 having forged signature of Abhinay Rathore
Mark-PE & Ex.PX1/ Ex P11	-	Copy of passport of Abhinay Rathore
Mark P1/Ex. PW4/B	-	Account statement
Mark-PJ	-	Letter written by Abhinay to D.C. for cancellation of Power of Attorney.
Mark-PK	-	Letter written by Abhinay to D.R.O for cancellation of Power of Attorney.
Mark-PM	-	Copy of complaint to SP, Sirsa.
Mark-PD & Ex.PW5/J	-	Copy of application vide which the dormant account was activated
Ex.PW5/B	-	Affidavit of Handwriting and Finger Print Expert
Ex.PW5/C to Ex.PW5/G	-	Photo charts of signature of Abhinay Rathore
Ex.PW4/A	-	Copy of bank account opening form of Abhinay Rathore

6. When confronted with incriminating evidence against the accused persons, they in their statement under Section 313 Cr.P.C. pleaded false implication and claimed innocence. In defence evidence, accused persons examined Sonu Yadav, Registry Clerk as DW1. No other witness examined by defence. Following documents have been tendered during the evidence of accused persons as under:-

Ex.D1	-	copy of sale deed no.14884 dt. 07.03.2022
Ex.D2	-	Copy of sale deed no.14997 dt.14.09.2011

Ex.DA	-	Certified copy of judgment dt.10.04.2020
Ex.DB	-	Certified copy of statement dated 20.08.2018 of Hardayal Singh
Ex.DC	-	Certified copy of order dated 20.08.2018.
Ex.DD	-	Photostat certified copy of judgment dt.19.07.2018
Ex.DE	-	Certified copy of order dated 01.04.2022 passed by this court.
Ex.DF	-	Certified copy of statement of Hardayal Singh dated 07.03.2022
Ex.DG	-	Certified copy of appeal dated 21.01.2020

7. This Court has heard learned counsel for complainant and learned defence counsel and has gone through the case file carefully and thoroughly.

8. Learned counsel for complainant has argued that complainant has substantiated the allegations against the accused beyond reasonable doubt. He submitted that the present complaint has been filed by the complainant Abhinay Rathore through his GPA Hardayal Singh against accused Akshay Nidhi Rathore and Nisha Rathore and in that regard Abhinay Rathore had given all authority to his GPA who is father in law to contest the present complaint on his behalf as he is well aware about the facts of the present complaint. Further submitted that earlier complainant had given power of attorney to his brother for taking care of his agriculture land and the copy of the same is Ex. P2. Further submitted

that as the complainant sensed some foul play by his brother and his mother, so in due time, he cancelled the power of attorney Ex. P2 by way of way of registered cancellation deed which is Ex. P1 and thereafter a legal notice by Shri Mahesh Pareek, Advocate was issued which in Ex.P2 to the accused and an information was given to the accused that they are not entitled to do any kind of dealing with respect to his property, the said cancellation was entered in the office of registrar. Thereafter, a fresh power of attorney which is again exhibited as Ex.P1 was issued by the complainant in favour of Hardayal Singh. Apart from this, GPA Hardayal had also given information to both the accused regarding cancellation of the GPA. Learned counsel further submitted that even after cancellation of GPA on 31.05.2012, accused Akshay Nidhi Rathore, sold the land belonging to the complainant Abhinay Rathore at the rate of Rs.5,00,00,000/- which is actually a sham transaction. This act was actually done to grab the property of Abhinay Rathore as on 31.05.2012, neither he was the GPA of Abhinay Rathore, nor any such amount was given to Abhinay Rathore, which was shown to be taken by Akshay Nidhi Rathore from his mother i.e. an amount of Rs.5 crore. The whole act ultimately resulted in number of civil litigation which were ultimately decided in favour of complainant. Learned counsel further submitted that apart from this, some land of complainant Abhinay was acquired by the Govt of Haryana and in that respect compensation of Rs.14,63,700/- had came in the name of Abhinay Rathore. The said amount could be

transferred only in the bank account of Abhinay Rathore, at this point of time, Abhinay rathore was in USA and this thing can be well understood by pursuing the passport detail and as this amount was in the form of cheque and by way voucher Mark-PF, this cheque was deposited initially in the account of Abhinay Rathore and this voucher bearing the signature of Abhinay Rathore, irrespective of the fact he was not in India and thereafter as the bank account of the complainant was dormant at that point of time, so one application Ex.PW5/J was written by impersonating, Abhinay Rathore showing his signature for activating his dormant account and when the bank accout of Abhinay Rathore was activated, then the amount of Rs.14,74,000/- by way of voucher showing signature of Abhinay having mark PH and a cheque Mark-PG, through which the cheque was deposited in the account of accused Akshay Nidhi Rathore. The transaction was effected by way of forging the signature of the complainant which is well proved by the expert. As such, learned counsel for complainant has requested that the accused persons be accordingly punished.

9. On the other hand, learned counsel for the accused has opposed the submissions made by the learned counsel for complainant and has submitted that the accused have been falsely implicated in the present case. The complainant has failed to substantiate its allegations against the accused persons beyond doubt. It was further argued that the present complaint has been filed by father-in-law of complainant

Abhinay Rathore being Power of Attorney of complainant Abhinay Rathore. He submitted that except the complaint under section 138 of Negotiable of Instrument Act or complaint under section 494 IPC, complaint cannot be filed through a power of attorney holder under Indian Penal Code sections. He further submitted that accused no.1 is elder brother of complainant and accused no.2 is mother of complainant Abhinay Rathore. Complainant Abhinay Rathore is resident of United State of America and before going to USA, complainant Abhinay Rathore had executed a registered power of Attorney dated 10.04.2008 in favour of his elder brother, who is accused no.1 for purpose of looking after his land. He further submitted that complainant Abhinay Rathore had also handed over some blank cheques and blank papers duly signed by complainant for purpose of any future use since the complainant was residing abroad. He submitted that accused no.1 had been duly taking care of property of complainant Abhinay Rathore. He further submitted that sale deed dated 31.05.2012 was executed by accused no.1 in favour of accused no.2 with the express consent of complainant Abhinay Rathore. He further submitted that present complaint has been filed only on account of instigation of the complainant Abhinay Rathore by his in-laws family. He further submitted that as per the complaint, complainant Abhinay Rathore had cancelled the Power of Attorney in favour of accused no.1 but the factum regarding cancellation of Power of Attorney was not brought within the knowledge of accused no.1. He further

submitted that the complainant has not placed on record any postal receipt or acknowledgment showing service of legal notice upon the accused persons. He further submitted that as per the allegations of the complainant, accused no.1 has withdrawn a sum of Rs.14,74,000/- from account of complainant at HDFC Bank. He submitted that the amount was withdrawn only on the basis of blank cheques which had been signed by complainant Abhinay Rathore and had been handed over to accused no.1 and further the withdrawal was done with the consent of complainant. He further submitted that accused no.1 had only purchased another property in the name of complainant by way of using the said amount of Rs.14,74,000/- as withdrawn from the account of complainant. He further submitted that the complainant had even filed a suit for declaration seeking cancellation of sale deed dated 31.05.2012 and said suit was decreed by the trial Court vide order dated 13.12.2018 and the appeal was dismissed by the First Appellate Court on 05.02.2020. He submitted that in the second appeal, the Hon'ble Punjab and Haryana High Court had passed the status quo order with respect to the property in dispute. He submitted that a family settlement was entered between complainant and the accused persons and in view of family settlement, the accused persons, who filed the second appeal before the Hon'ble Punjab and Haryana High Court had withdrawn their appeal to put an end to the litigation. However, after the withdrawal of appeal, the complainant stepped back from his promise to withdraw the present

complaint and did not withdraw the same. He further submitted that the present complaint is only a result of family dispute which is purely civil in nature. He further submitted that bare perusal of document which have been alleged to be forged i.e. Ex.P7, Ex.P20 and Ex.P21 with signatures of complainant upon passport Ex.P11, shows that the signatures have been made by one person. He submitted that the present false case has been made by complainant by way of changing his signatures. He submitted that the comparison of signature from Ex.P11 i.e. copy of passport of complainant with the alleged forged documents can reveal the true state of affairs. He submitted that accused persons have been falsely implicated by the complainant in order to cause harassment to them. He requested for dismissal of present complaint. With these submissions, request for acquittal of accused persons has been made.

10. Having heard the contentions raised by the learned counsel for the parties and after careful perusal of the case file, it is observed that in the present case the accused have been charge-sheeted for the commission of offences under Sections 406, 420, 467, 468, 471, 506 read with Section 120-B of IPC. So, it was on the complainant to prove the above allegations beyond reasonable doubt.

11. In the present case, the power of attorney of complainant Abhinay Rathore namely Hardayal Singh appeared as PW2. He deposed that he is father-in-law of complainant of Abhinay Rathore and

complainant Abhinay Rathore has given him power of attorney to file and pursue the present complaint. He deposed that he is well aware of the facts of the present case. Further deposed that Abhinay Rathore is residing at America. Initially, complainant Abhinay Rathore had executed a power of Attorney in favour of his elder brother namely Akshay Nidhi Rathore (accused no.1), since he was residing at USA and he had complete faith upon his brother. However, accused Akshay Nidhi Rathore started disposing of property of complainant Abhinay Rathore against the interest of complaint. Thereafter, Abhinay Rathore revoked the power of Attorney granted in favour of accused Akshay Nidhi Rathore on 19.01.2012 and same was got registered in the office of Sub Registrar. A legal notice regarding revocation of Power of Attorney was also sent to accused Akshay Nidhi Rathore by complainant Abhinay Rathore through Shri Mahesh Pareek, Advocate. Further, he and his son Nitin had also expressly told the accused regarding the cancellation of Power of Attorney and not to deal with the land of Abhinay Rathore in future. Further copy of notice was delivered by him and his son at the residence of accused Akshay Nidhi Rathore. He deposed that despite having knowledge regarding the revocation of Power of Attonrey so executed by complainant Abhinay Rathore in favour of accused Akshay Nidhi Rathore, accused Akshay Nidhi Rathore fraudulently got executed sale deed of land measuring 77 kanal owned by complainant Abinay Rathore in favour of his mother Nisha Rathore (accused no.2) for sale

consideration of around 5 crores. He further deposed that accused no.1 and 2 had complete knowledge about the fact that accused no.1 Akshay Nidhi Rathore is no longer GPA of complainant Abhinay Rathore. He further deposed that complainant Abhinay Rathore had also received an amount of Rs.14,63,000/- on account of acquisition of land owned by him by the Govt. The said amount was also withdrawn by accused Akshay Nidhi Rathore from the account of complainant Abhinay Rathore by way of forging the signature of complainant Abhinay Rathore upon the cheque. He further deposed that bank account of complainant Abhinay Rathore was dormant account since he was residing abroad, so accused Akshay Nidhi Rathore got bank account of complainant Abhinay Rathore activated by way of forging signatures of Abhinay Rathore upon the application for activation of dormant account. As per the policy of the bank, an account holder can only himself get his account activated. However, at that time, complainant Abhinay Rathore was at America and had no occasion to get his bank account activated himself. He further deposed that accused Akshay Nidhi Rathore forged signatures of complainant Abhinay Rathore upon voucher for purpose of deposit of cheque amount in the account of Abhinay Rathore. He further deposed that complainant had sent the complaint in this regard to the Deputy Commissioner, Sirsa as well as to District Revenue Officer, Sirsa via email. Further, Shri Mahesh Pareek, Advocate appeared as PW1 and deposed that upon instruction of Abhinay Rathore, Power of Attorney

which was got executed by complainant Abhinay Rathore in favour of accused Akshay Nidhi Rathore was got cancelled vide cancellation deed dated 24.02.2012 which is Ex.P1. He further deposed that a legal notice Ex.P2 was sent by him to accused Akshay Nidhi Rathore informing him about the revocation of earlier Power of Attorney executed by complainant in favour of Akshay Nidhi Rathore. He further identified his signature upon cancellation of Power of Attorney (Ex.P1) and legal notice (Ex.P2). Further, Nishant Kumar, Registry Clerk, Office of Sub Registrar, Sirsa appeared as PW3 and proved the documents i.e. sale deed dated 31.05.2012 executed by accused no.1 Akshay Nidhi Rathore in favour of accused no.2 Nisha Rathore as Ex.PW3/A. Registered GPA executed by complainant Abhinay Rathore in favour of Hardayal Singh dated 26.03.2012 as Ex.PW3/C, Revocation of Power of Attorney as executed by complainant Abhinay Rathore in favour of accused Akshay Nidhi Rathore as Ex.PW3/D and GPA executed by complainant Abhinay Rathore in favour of accused Akshay Nidhi Rathore dated 10.04.2008 as Ex.PW3/F. Further, Surjeet Kumar, Branch Manager, HDFC Bank appeared as PW4 and deposed that he had brought account opening form of complainant Abhinay Rathore and proved the same as Ex.PW4/A. He further proved the account statement of bank account of complainant Abhinay Rathore for the period 01.07.2011 to 31.12.2011 as Ex.PW4/B. He deposed that as per the account statement Ex.PW4/B, the said account was dormant and a request was received for activation of said account

and Rs.100/- were got deposited vide voucher Ex.PW4/C on record. He further deposed that as per voucher Ex.PW4/C, the depositor was mentioned to be Abhinay Rathore. Further deposed that as per account statement Ex.PW4/B, on dated 21.07.2011 amount of Rs.14,74,000/- was got transferred from account of Abhinay Rathore to the account of Akshay Nidhi Rathore vide original cheque no.53091 which is Ex.PW4/D. Further deposed that the supporting voucher which is annexed with cheque is Ex.PW4/E. He further deposed that he had tried to trace out the record pertaining to application given for activation of dormant account of Abhinay Rathore, however, the same could not be traced out since it was an old record. He further deposed that the said application which was moved in the bank for activation of dormant account is Ex.PW5/J and further deposed that account opening form Ex.PW4/A bears the original signatures of complainant Abhinay Rathore. Further, Anil Kumar Gupta, Hand Writing and Finger Print Expert appeared as PW5 and tendered in evidence his affidavit as Ex.PW5/A and further proved his report regarding comparison of signature as Ex.PW5/B. He deposed that he had compared the disputed signature of Abhinay Rathore Mark Q-1 (appearing upon original bank voucher dated 13.07.2021 for deposit of cheque amount of Rs.14,63,700/- which is Ex.PW5/H), disputed signature Mark Q-3 (appearing on cheque no.53091 dated 21.07.2011 alleged to be issued by Abhinay Rathore in favour of AkshayNidhi which is Ex.PW4/D), disputed signature Mark Q-

4 (appearing on the application submitted for the activation of dormant account of Abhinay Rathore which is Ex.PW5/J) with the standard signature of Abhinay Rathore Mark S1 to S6 (as taken from GPA bearing no.725 dated 26.03.2012 so executed by Abhinay Rathore in favour of Hardayal Singh and placed on record as Ex.P1/Ex.PW3/C) and the standard signatures Mark S7 and S8 (as taken from account opening form Ex.PW4/A). He deposed that disputed signatures Mark Q1, Q3 and Q4 as appearing on Ex.PW5/H, Ex.PW4/D, Ex.PW5/J are forged signatures and not similar with the standard signatures of complainant Abhinay Rathore. He further examined the standard signature of accused no.1 Akshay Nidhi Rathore Mark Q2 as appearing on voucher dated 21.07.2011 of HDFC Bank for deposit of amount of Rs.14,74,000/- in account of accused no.1 Akshay Nidhi Rathore placed on record as Ex.PW4/E with the disputed signatures mark Q1, Q3 and Q4. He deposed that disputed signature mark Q1, Q3 and Q4 were not found to be signatures of complainant Abhinay Rathore but were found to be similar in writing characteristic with the standard signatures of accused no.1 Akshay Nidhi Rathore. He deposed that signature Mark Q1, Q3 and Q4 and the standard signature of accused no.1 Akshay Nidhi Mark Q2 were similar and had been written by one and the same person.

12. From the entire oral as well as documentary evidence, it is clearly made out that complainant Abhinay Rathore had revoked his Power of Attorney so executed by him in favour of accused no.1 Akshay

Nidhi Rathore on 19.01.2012. Further, perusal of Ex.P1 shows that cancellation of GPA was also got registered on 24.02.2012. Further, a legal notice Ex.P2 was also been issued by complainant Abhinay Rathore to accused no.1 Akshay Nidhi Rathore informing him not to deal with the property of complainant Abhinay Rathore any longer. It is further seen from Ex.PW3/C (Also Ex.PW6/A on record) that complainant Abhinay Rathore had executed a fresh General Power of Attorney to deal with the affairs of his land in favour of his father-in-law namely Hardayal Singh on 26.03.2012. Further, CW2 Hardayal Singh has also deposed that he and his son Nitin informed accused no.1 regarding the cancellation of Power of Attorney so executed by complainant Abhinay Rathore in favour of accused no.1 Akshay Nidhi Rathore by visiting at their home at village Bajekan. Further, perusal of sale deed dated 31.05.2012, which is Ex.PW3/B (also Ex.PW3/A on record) shows that accused no.1 Akshay Nidhi Rathore had sold land measuring 77 kanals 3 marlas being $\frac{1}{2}$ share of total land measuring 154 kanals 6 marlas comprised in khewat no.100 khatoni no.159/min and 160 and 1 kanal 13 marlas comprised in khewat no.13 khatoni no.17 i.e. total land measuring 78 kanals 16 marlas situated at village Bajekan, District Sirsa for sale consideration of Rs.5,17,15,000/- in favour of accused no.2 Nisha Rathore. It is further seen that it is mentioned in the sale deed that the sale consideration amount has already been received by accused no.1 on behalf of complainant from accused no.2 at home. Hence, it is seen

that sale deed dated 31.05.2012 was got executed by accused no.1 Akshay Nidhi Rathore by claiming to be GPA of Abhinay Rathore in favour of his mother Nisha Rathore accused no.2 despite the cancellation of the Power of Attorney by complainant Abhinay Rathore so executed by him in favour of accused no.1 Akshay Nidhi Rathore. Further, it is seen that the cancellation of GPA was also got duly registered on 24.02.2012 i.e. much prior to 31.05.2012 which is date of execution of sale deed by accused no.1 in favour of accused no.2. Also, registration of cancellation of GPA is in itself a constructive notice to accused no.1 and 2 as well as to the public at large. Reliance can be placed upon authority titled as *Rajiv Mahajan and others v Ajit Kaur and others 2014(4) RCR Civil 645 (P &H)* wherein it has been held that once a registered document is cancelled by registered cancellation deed, then the cancellation operates as constructive public notice. Even otherwise, CW2 Hardayal Singh has also deposed that he had himself informed regarding the cancellation of earlier GPA so executed by complainant Abhinay Rathore in favour of accused no.1 Akshay Nidhi Rathore to accused no.1 AkshayNidhi. Hence, it stands established that accused no.1, despite having knowledge of the fact that he is no longer GPA holder of complainant Abhinay Rathore, had got executed sale deed of property owned by complainant Abhinay Rathore in favour of accused no.2 Nisha Rathore. Further, as per the sale deed dated 31.05.2012 a sale consideration of Rs. 5,17,15,000/- was received by accused no.1 from

accused no.2. However, there is nothing on record to show that accused no.2 Nisha Rathore had made any kind of payment of Rs.5,17,15,000/- to accused no.1. Further, accused no.1 has also not brought on record any evidence to show that the said amount of Rs.5,17,15,000/- ,if so received by him from accused no.2, had been got transferred in the account of complainant Abhinay Rathore. Hence, it stand proved that both accused no.1 and 2 in conspiracy with each other had got executed sale deed dated 31.05.2012 despite the fact that accused no.1 Akshay Nidhi Rathore did not have any right to deal with the property owned by complainant Abhinay Rathore and had thereby caused wrongful loss to complainant Abhinay Rathore. Hence, it stands established that accused no.1 and 2 in criminal conspiracy with each other had cheated the complainant by way of execution of sale deed dated 31.05.2012 without any consent of complainant Abhinay Rathore and had thereby committed the offence punishable under section 420 IPC read with section 120-B IPC.

13. Further, it is the allegation that accused no.1 had withdrawn a sum of Rs.14,74,000/- from the bank account of complainant by way of forging his signature, whereas on the date of withdrawl of above mentioned amount, the complainant was not present in India and he was in USA. In this regard, application for activation of dormant account of complainant Abhinay Rathore bearing disputed signature of complainant Abhinay Rathore is Ex.PW5/J. Further, original voucher dated

13.07.2011 of HDFC Bank for deposit of Rs.100/- is Ex.PW4/C and further bank account statement of complainant Abhinay Rathore from 01.07.2011 to 31.12.2011 is Ex.PW4/B. It is allegation of complainant that complainant Abhinay Rathore had received an amount of Rs.14,63,700/- from Government on account of acquisition of land of complainant by the Government which was got deposited in the account of complainant Abhinay Rathore. It is version of complainant that accused no.1 had firstly forged the signature of complainant Abhinay Rathore upon voucher dated 13.07.2011 of HDFC Bank for deposit of amount of Rs.100 for activation of account of complainant which is Ex. PW4/C and subsequently also forged signature of complainant Abhinay Rathore upon voucher dated 13.07.2011 of HDFC Bank for deposit of cheque amount of Rs.14,63,700/- in account of complainant Abhinay Rathore which is Ex.PW5/H and had also thereafter forged signatures of complainant upon cheque no.053091 dated 21.07.2011 of amount of Rs.14,74,000/- issued in favour of accused no.1 which is Ex.PW5/I & also Ex.PW4/D. It is the allegation that accused no.1 by way of forging the signatures of complainant upon cheque no. 053091 got transferred amount of Rs.14,74,000/- fraudulently in his bank account. Further, voucher dated 21.07.2011 of HDFC bank which was got deposited by accused no.1 Akshay Nidhi Rathore for the purpose of deposit of cheque amount of Rs.14,74,000/- in his account, bearing the signatures of accused no.1 Akshay Nidhi Rathore, is placed on record as Ex.PW4/E &

Ex.PW5/G. Further, PW5 Anil Kumar Gupta, Handwriting and Finger Print Expert has specifically deposed that he had compared the disputed signatures of complainant Abhinay Rathore upon voucher dated 13.07.2011 of HDFC Bank (place on record Ex.PW5/H), disputed signatures upon cheque no.053091 dated 21.07.2011 shown to be issued by Abhinay Rathore in favour of accused Akshaynidhi Rathore(placed on record as Ex.PW4/D) and disputed signatures of complainant Abhinay Rathore upon letter moved for activation of dormant account (placed on record Ex.PW5/J) with the standard signatures of complainant Abhinay Rathore bearing upon registered GPA executed by complainant Abhinay Rathore in favour of Hardayal Singh (placed on record as Ex.PW3/C) and the standard signature of complainant Abhinay Rathore found on the bank account form Ex.PW4/A. He has specifically deposed that disputed signatures did not match with the standard signatures of complainant Abhinay Rathore. This thereby proves that signature of complainant Abhinay Rathore upon voucher dated 13.07.2011, cheque no.053091 dated 21.07.2011 and letter for activation of dormant account were forged one. Further, PW5 Anil Gupta had also compared the disputed signatures of complainant Abhinay Rathore upon the documents Ex. PW5/H, Ex. PW5/I and Ex. PW5/J with the standard signatures of accused no.1 Akshay Nidhi Rathore as found upon voucher dated 21.07.2011 of HDFC bank submitted by accused no.1 Akshay Nidhi Rathore in his bank for the purpose of deposit of cheque amount of

Rs.14,74,000/- in his account. PW5 Anil Gupta has specifically deposed that he found the disputed signatures upon documents Ex. PW5/H, Ex. PW5/I and Ex. PW5/J to be similar with the writing characteristic of standard signatures of accused no.1 Akshay Nidhi Rathore and the signatures were found to be written by one and the same person. This thereby implies that accused no.1 Akshay Nidhi Rathore has forged the signatures of complainant Abhinay Rathore upon cheque no.053091 dated 21.07.2011 Ex. PW4/D, voucher dated 13.07.2011 Ex.PW5/H and letter of activation of dormant account Ex.PW5/J and accused no.1 had thereby fraudulently got transferred amount of Rs.14,74,000/- from account of complainant to his own account by way of forging signatures of complainant. Thus, it stands proved that accused no.1 had forged signatures of complainant in order to cause wrongful gain to himself and further to cause wrongful loss to complainant. However, there is nothing on record to show the role of accused no.2 in the act of forging of signatures of complainant. Hence, no offence of forgery against accused no.2 is made out in the present case. Therefore, the evidence on record is convincing to prove that accused no.1 Akshay Nidhi Rathore has committed the offence punishable under sections 467,468,471 IPC.

14. Further, the accused persons have also been charge sheeted for the commission of offence of criminal breach of trust. However, in this regard, it is on record that the complainant Abhinay Rathore had revoked his earlier Power of Attorney so executed by him in favour of

accused Akshay Nidhi Rathore. Hence, it cannot be said that there was any entrustment of property by complainant to accused persons. Thus, offence punishable under section 406 IPC is not made out in the present case, against both accused persons.

15. Further, accused persons have also been charge-sheeted for the offence punishable under section 506 IPC. However, CW2 Hardayal Singh has not made any specific allegation to the effect that accused persons have threatened the complainant with life threat. There is nothing on record to show that the accused persons had given any life threat to complainant. Hence, offence under section 506 of IPC is not made out against the both the accused persons in the present case.

16. It is the contention of counsel for accused persons that present complaint has been filed by complainant Abhinay Rathore through GPA Hardayal Singh whereas only complaint under section 138 of Negotiable of Instrument Act or complaint under 494 IPC an be filed through General Power of Attorney holder and therefore, the present complaint which is filed by complainant through his power of Attorney is not maintainable in its present form. It is further submitted that complainant Abhinay Rathore neither himself came present for filing of present complaint nor appeared as a witness to prove the allegations made in the complaint. However, in this regard, this Court is of the considered view that the present case pertains to criminal complaint

alleging commission of offences punishable under Indian Penal Code. As per Section 2(d) of Criminal Procedure Code “*Complaint means any allegations made orally or in writing to a Magistrate with a view to taking action under this code, that some persons, whether known or unknown, has committed any offence, but does not include the police report*”. Hence, from definition of “complaint” as envisaged under section 2(d) of Criminal Procedure Code, no specific person is mentioned as to who is required for presentation of such complaint. It is nowhere specifically written that only the injured/aggrieved person can present a complaint. Further, there is no express bar upon any person having knowledge regarding the commission of offence from filing a complaint alleging commission of offence punishable under Indian Penal Code. Hence, the present complaint which has been filed by Hardayal Singh, who is GPA holder of complainant Abhinay Rathore and having knowledge regarding commission of offences cannot be said to be not maintainable in its present form. Further, it is the contention of counsel for accused that complainant Abhinay Rathore has himself never stepped into the witness box to prove his case and therefore, the present case is not maintainable. However, in this regard, this Court is of the considered view that in the present case, the documentary evidence as proved on record in itself is sufficient to establish the guilt of accused persons. Further, in the present case, Hardayal Singh GPA holder of complainant has appeared as CW2 and has deposed regarding the facts which were in

his knowledge. Thus, the non appearance of complainant Abhinay Rathore for his testimony as a witness does not make out the case for acquittal of accused persons in the present case in view of documentary evidence placed on record.

17. It is argued by the counsel for accused that complainant has only examined a private Handwriting and Finger Prints Expert for the purpose of comparison of signatures upon the documents. He submitted that no Government Expert has been got examined and the report given by private expert cannot be taken into consideration. It is further submitted by counsel for accused that bare perusal of documents which have been alleged to be forged by accused no.1 and perusal of the signatures of complainant Abhinay Rathore upon Ex.P11, which is copy of passport of complainant Abhinay Rathore, shows that the signatures of complainant Abhinay Rathore are identical and that signatures upon documents which are alleged to be forged have only been made by complainant Abhinay Rathore himself. It is submitted that only with a view to implicate the present accused in a false case, complainant Abhinay Rathore has later on changed his signatures. He submitted that in fact comparison of signatures upon Ex.P11 (i.e. copy of passport of complainant) was required to be made with the signature appended upon documents alleged to be forged i.e. documents Ex.P17, Ex.P20 and Ex.P21. However, in this regard, this Court is unable to accept the contention of counsel for accused. It is noted that Anil Kumar Gupta,

Handwriting and Finger Prints Expert was examined as PW5 by complainant in his evidence. Further, the said witness has been duly cross examined by counsel of accused persons with assistance of another fingerprint and handwriting expert namely Sh. Shamsher Malik. Further, there is no sufficient ground put forth which could shake the credibility of report Ex.PW5/D as given by PW5 Anil Kumar Gupta. Further, it is contention of counsel for accused that complainant Abhinay Rathore had changed his signatures later on and in order to bring out the truth, the comparison of signature of complainant Abhinay Rathore upon his copy of passport Ex.P11 was required to be compared with signatures found upon documents Ex.P17, Ex.P20 Ex.P21 (documents alleged to be forged one). In this regard, this court is of the considered view that the accused persons could have got conducted the said comparison through a Government expert in their own defence evidence in order to disprove the case of complainant. However, no such application for comparison of signatures through Government Laboratory has been made by accused persons. Hence, this contention of counsel for accused is not acceptable.

18. It is further the argument of counsel for accused that amount of Rs.14,74,000/- as withdrawn from the account of complainant Abhinay Rathore was only used by accused Akshay Nidhi Rathore for purpose of purchase of another property in the name of complainant Abhinay Rathore and therefore, accused no.1 cannot said to have committed any offence by withdrawal of the said amount of

Rs.14,74,000/-. However, in this regard, this court is of the considered view that even if another property had been got purchased in the name of complainant, however, the same does not entitle the accused to withdraw the said amount of Rs.14,74,000/- by way of forging the signatures of complainant upon cheque placed on record as Ex.PW4/D. Hence, this contention of learned counsel for accused is also not tenable.

19. It is further argued by counsel for accused that complainant had even filed a suit for declaration seeking cancellation of sale deed dated 31.05.2012 and said suit was decreed by the trial Court vide order dated 13.12.2018 and the appeal was dismissed by the First Appellate Court on 05.02.2020. He submitted that in the second appeal, Hon'ble Punjab and Haryana High Court had passed the status quo order with respect to the property in dispute. He submitted that a family settlement was entered between complainant and the accused persons and in view of family settlement, the accused persons, who filed the second appeal before the Hon'ble Punjab and Haryana High Court had withdrawn their appeal to put to end to the litigation. However, after the withdrawal of appeal, the complainant stepped back from his promise to withdraw the present complaint and did not withdraw the same. He further submitted that the present complaint is only a result of family dispute which is purely civil in nature. In this regard, this court is of the considered view that no such family settlement has been placed on record by the accused persons and more over present case has to be adjudicated on the basis of

evidence coming on record and the evidence so adduced is sufficient to prove the guilt of the accused persons. Therefore, this submission of learned counsel for accused is also not tenable in the present case.

20. Keeping in view the totality of the circumstances as discussed above, this court is of the considered view that cogent and material evidence has been adduced by the complainant in order to prove his case beyond shadow of reasonable doubt against the accused persons. Hence, accused no.1 Akshaynidhi Rathore is hereby held guilty and convicted for the commission of offences punishable under Sections 467, 468, 471 and under section 420 read with Section 120-B IPC. Accused no.2 Nisha Rathore is hereby held guilty and convicted for the commission of offences punishable under Section 420 read with Section 120-B IPC. Let accused persons be heard on quantum of sentence on **06.03.2024**.

Pronounced in open Court.
Dated:05.03.2024

(Saloni Gupta)
Judicial Magistrate Ist Class,
Sirsa. (UID No.HR0425).

Note: All pages of this judgment have been checked and signed by me.

Dated:05.03.2024

(Saloni Gupta)
Judicial Magistrate Ist Class,
Sirsa. (UID No.HR0425).

Maninder,
Stenographer-III

(Saloni Gupta),
JMIC/Sirsa.05.03.2024