

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Misc.A No.117-MA of 2011
Date of Decision : 3.3.2015

Om Parkash Saini

.....Petitioner

Vs.

Shakti Kumar Bhardwaj and others

.....Respondents

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. Vineet Chaudhary, Advocate for the petitioner.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the judgement of acquittal dated 8.10.2010 passed by the learned Judicial Magistrate Ist Class, Ambala, whereby his complaint under Sections 419/420/463/464/471/406 and 120-B IPC was dismissed, applicant has moved the instant application under Section 378 (4) Cr.P.C., seeking leave of this court to file appeal against the abovesaid judgement of acquittal.

Learned counsel for the applicant submits that the applicant never intended to invest in Surbhi Agro Tech Limited. He approached respondent no.1 for purchasing Kisan Vikas Patra, as respondent no.1 was working as Post Master in the post office of village Pilkhani. He further submits that in fact, respondents-accused in connivance with each other, cheated the applicant by

investing his amount of Rs.60,000/- in Surbhi Agro Tech Limited. Their common intention was to deceive the applicant-complainant. Learned counsel for the applicant also submits that receipt of an amount of Rs.5825/- by way of cheque in lieu of interest for the invested amount of Rs.60,000/- by the applicant-complainant, would not absolve the accused-respondents from their mala fide common intention. Since the applicant has duly proved his case by leading cogent evidence, learned trial court ought to have appreciated the same. However, since the documentary as well as oral evidence of the applicant was not appreciated by the learned trial court in correct perspective, the impugned judgement has resulted in miscarriage of justice and the same was liable to be set aside. He prays for allowing the instant application, granting leave to the applicant for filing appeal against the abovesaid impugned judgement of acquittal.

Having heard the learned counsel for the applicant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that the applicant-complainant has failed to prove his case, by leading cogent and sufficient evidence in support of his allegations levelled in the complaint against the respondents. In this view of the matter, present one has not been found to be a fit case for interference at the hands of this court and the same is liable to be dismissed for the following more than one reasons.

It is a matter of record and not in dispute that the amount of Rs.60,000/- was invested in the Surbhi Agro Tech Limited in account No.152340. The commencement date of deposit was 26.11.1998 and the date of maturity was 26.11.1999. Applicant received as many as 12 cheques issued by Surbhi Agro Tech Limited. These cheques were issued to the applicant

towards the amount of interest on his abovesaid investment of Rs.60,000/-. It is neither pleaded nor argued case on behalf of the applicant that he never received any cheque issued by Surbhi Agro Tech Limited.

Further, applicant-complainant himself has admitted in his testimony that he received an amount of Rs.5825/-, that too by way of cheque in lieu of the interest for invested amount of Rs.60,000/-. The said cheque received by the applicant-complainant was Ex.CW-3/3 and receipt thereof as CW-3/4. The only inference that can be drawn from the abovesaid undisputed facts on record, is that applicant-complainant himself invested the amount of Rs.60,000/- with Surbhi Agro Tech Limited. He received the abovesaid amount towards interest and enjoyed the same. Till Surbhi Agro Tech Limited was performing well, applicant-complainant had no grouse against anybody, including the respondents-accused. However, the moment Surbhi Agro Tech Limited went into financial doldrum, applicant-complainant tried to play smart and filed the wholly misconceived complaint against the respondents.

Learned trial court discussed each and every aspect of the matter before passing the well reasoned judgement of acquittal. The relevant observations made by the learned trial court in para 16 to 21 of the impugned judgement, read as under :-

“16. Now, coming to the testimonies of prosecution witnesses, PW 1 Balbir Singh son of Mehar Chand has testified that the complainant was interested to invest the amount of Rs.60,000/- in the Kishan Vikas Patras, but accused Shakti Kumar told him that Kisan Vikas Patras were not available in the post office and he in place of investing the amount of Rs.60,000/- of the complainant in the Kisan

Vikas Patras, invested the amount in Surbhi company. This witness also admitted in his chief-examination that Veena Sharma was the agent of Surbhi company. He also admitted in his cross-examination that he was the brother of the complainant Om Parkash. He studied upto Matric. He also stated that he made the deposition on the asking of complainant that amount of Rs.60,000/- was paid. He also failed to give the denomination of the currency notes.

17. Now, on perusal of the testimony of this witness, it reveals that he was never present at the time of making of request as alleged by the complainant to the accused Shakti Kumar. It is also beyond stretch of imagination that how the complainant has connected the accused Rajesh Sharma with commission of any of the alleged offences. There is not a single iota of evidence against Rajesh Sharma. There is no evidence that any inducement was made by the accused Rajesh Sharma. More so, there is no evidence that any inducement was made by accused Shakti Kumar to the complainant to invest the amount of Rs.60,000/- with Surbhi Company Ltd. The complainant in his testimony has admitted that he received a cheque of Rs.5825/- in lieu of the invested amount of Rs.60,000/-. He also produced the copy of cheque Ex. CW3/3 and receipt Ex.CW3/4.

18. I am of the view that if the complainant was not interested to invest his money with Surbhi company, then why he received the cheques of the Surbhi company. The

moment he received the cheques of Surbhi company from the accused, it goes to show that he was also interested to invest the amount of Rs.60,000/- with Surbhi company. He also admitted in his cross-examination that he never filed any complaint against the accused to the police after receiving the documents of Surbhi company.

19. I am of the view that if the complainant was not interested to invest this amount with the Surbhi company and against the direction of the complainant, the accused Shakti Kumar invested the amount of Rs.60,000/- in the Surbhi company, then what was hitch for the complainant to initiate any action against the accused immediately in a prompt manner. The investment of the amount of Rs.60,000/- with Surbhi company is proved by the admission of the complainant in the manner that he also received the interest of the invested amount in the months of December and January.

20. Further, I am of the view that in order to constitute the offence of cheating, it is necessary for the prosecution to prove that there was deception to the complainant and the accused fraudulently or dishonestly induced the complainant to deliver the amount of Rs.60,000/- to the Surbhi company and they intentionally induced the complainant with a purpose to cause wrongful loss to the complainant and wrongful gain to the company. The prosecution has led no evidence in this regard.

21. Further, the present complaint was instituted by the complainant on 29.11.2000 and as per the stand of the complainant, the amount of Rs.60,000/- was paid by him to the accused in November 1998. The delay in the taking of action by the complainant against the accused, itself goes to show that he was interested in the investment of the amount with Surbhi Agro Tech Ltd. And when that company was closed by its Director, the complainant adopted a clever device to initiate the false and frivolous action against the accused.”

A bare reading of the aboveaid relevant part of the impugned judgement would show that whatever evidence was produced by the applicant-complainant, it was not only discussed in detail, but the same was rightly appreciated as well. Applicant-complainant produced PW-1 Balbir Singh, who was none else, but his own real brother. In fact, applicant-complainant miserably failed to prove his case, as set up in the complaint. It is equally important to note here that the applicant-complainant invested the amount of ₹ 60,000/- with Surbhi Agro Tech Limited, way back in the month of November, 1998, whereas the complaint was moved in the month of November 2000 i.e. after a gap of two years.

There was no explanation, even worth the name, as to why the applicant-complainant kept conveniently silent for this long period of two years. In fact, reason is obvious that applicant-complainant was enjoying interest on his abovesaid invested amount of ₹ 60,000/- from Surbhi Agro Tech Limited. Having said that, this court feels no hesitation to conclude that the

learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the applicant-complainant could not point out any patent illegality or jurisdictional error in the impugned judgement, so as to convince this court to interfere against the impugned judgement of acquittal.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered opinion that instant application is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above said observations made, the instant application stands dismissed, however, with no order as to costs.

3.3.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE