

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-116-MA of 2014 (O&M)
Date of Decision : 03.09.2015

Gurdeep Singh

.....Appellant

Versus

Atma Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Parminder Singh, Advocate
for the applicant-appellant.

R.P. Nagrath, J. (Oral)

CRM No. 2625 of 2014

Learned counsel for the applicant-appellant contends that the delay has occurred because the appeal initially was filed before the Sessions court and it remained pending till 29.10.2013, when the appeal was withdrawn on the statement that the appeal is to be filed before the High Court. It cannot be gainsaid that the appeal against acquittal in a private complaint is tenable only in this Court, in view of the law laid down by a Full Bench of this Court in ***M/s Tata Steel Ltd. vs. M/s Atma Tube Products Ltd. and others, 2013(2) RCR (Criminal) 1005.***

For the reasons stated in the application, which is supported by affidavit, the same is allowed and delay of 389 days in filing the instant appeal is condoned.

CRM-A-116-MA of 2014

Prayer is made by the appellant in terms of Section 378 (4) Cr.P.C. for the grant of Special Leave to Appeal against acquittal of respondents for offences under Sections 420 and 506 of Indian Penal Code (IPC).

The complaint was filed in January, 2005 for offences under Sections 420, 506, 166, 167, 218, 425, 430 and 120-B IPC against two of the accused. Respondent was the *sarpanch* and the second accused was Secretary of *Gram Panchayat*.

The facts of the case relevant for disposal of the controversy are that the complainant had taken 10 acres of land of the Gram Panchayat on lease for one year in an open auction held on 09.06.2005 for a lease amount of ₹ 38,000/-. The respondent no. I at that time ensured to get tubewell motor installed in the aforesaid land. The complainant deposited the lease amount and a receipt dated 09.06.2005 for ₹ 38,000/- was issued by respondent no. I. It was further stated that the accused persons had malafide intention and that is why, they did not depict the khasra numbers of the land, which was given on lease to the complainant, on the receipt dated 09.06.2005. Thereafter the complainant was delivered the possession of 8 acres of land only and despite the repeated requests, the motor was never got installed despite the fact that all the articles for installation of the motor etc. had been lying in custody of the accused persons.

It was further stated that on 09.10.2005, when the

complainant was present at Kullan-Manghera turn, the respondent-accused no. I threatened him with dire consequences, if he pursued any further with the complaint which he moved to the Block Panchayat and Development Officer.

Only respondent no. I was summoned for offences under Sections 420 and 506 IPC on the basis of preliminary evidence. The complaint was, however, dismissed qua the second accused. After the appearance of the respondent, the pre-charge evidence was recorded and finding *prima facie* case on the basis of evidence led charge was framed against respondent no. I for offences under Sections 420 and 506 IPC.

Three witnesses statedly present at the time of bid were re-called for further cross-examination. The respondent made a statement that he does not want to further cross-examine the other witnesses after framing of the charge. The accused was also examined under Section 313 Cr.P.C. No evidence was led by the accused in defence.

The trial Court on analysis of evidence found the charge to be not proved beyond doubt and acquitted the respondent of the charges framed against him.

I have heard learned counsel for the appellant, carefully perused the judgment and the record.

The bone of contention of learned counsel for the appellant is that *gram panchayat* through the respondent who was *sarpanch*, had agreed to provide tube-well motor in the land which was leased out to the appellant on the basis of lease

register copy of which is Ex. R-2. There is no other document in writing settling the terms of lease for supporting the contention of appellant that *gram panchayat* had agreed to provide tube-well motor also in this land. Ex. R-2, which is lease register, does not referred to the term of providing the tube well motor. Such a term in writing could be the only basis to support the complainant's version.

Learned counsel for the appellant submits that there was also evidence of the complainant in support of allegation that the respondent extended threat to the appellant for attracting Section 506 IPC.

The learned trial Court observed as under:-

“19. However, the aforesaid plea of the complainant seems to be a flimsy one. It has been admitted by the complainant (PW5) as well as by his son Amarjit (PW1) that in the year 2003 also, the present complainant had taken the land in question on lease for a lease consideration of ₹ 30,000/-, out of which, a sum of ₹ 25,000/- had been deposited by him with the Gram Panchayat, whereas, a sum of ₹ 5000/- had been withheld by him. In such situation, it is evident that the complainant had been taking the land in question on lease earlier also, irrespective of the fact as to whether any source of irrigation/water had been there in the land in question or not.

20. Moreover, the auction record has been placed on the file as Ex. R2 and as per the aforesaid record, no

term/obligation had been there on the part of the accused to get installed a motor in the land in question after letting out the same on lease. In such situation, it cannot be inferred or assumed that the accused would have promised to get installed the motor in the land in question orally as when some land is auctioned publicly/the terms and conditions thereof are always reduced into writing and any oral assurance on the part of the auctioneer, if any, is liable to be ignored in this regard.

21. XXX XXX XXX XXX

22. *The complainant and his son Amarjit have admitted that they had never applied for any electric connection to get the motor installed in the land in dispute and in such situation, now the complainant is estopped from raising a plea that any cheating has been played by the accused upon him by not keeping his promise/word to get installed the motor in the land which was let out to him on lease in the open auction on 09.06.2005. Had there been any such term at the time of auction, the complainant must have brought it to the notice of accused and the authorities while issuing notice dated 31.08.2005 as it was the first opportunity for him to disclose his grievances. Later on, while filing this complaint, the possibility of exaggerating and twisting the true facts cannot be ruled out.*

23. *The next grudge of the complainant is that khasra numbers of the land let out to him had never been reflected on the receipt Ex. P3. First of all, there is no column for reflecting the khasra numbers of the land in question in the aforesaid receipt Ex. P3. Still otherwise, the complainant had taken the land of Gram Panchayat on lease for a lease consideration of ₹ 30,000/- in the year 2003 also and out of the aforesaid amount, he deposited a sum of ₹ 25,000/- on 09.06.2004. The copy of the aforesaid receipt is proved on the file by the accused as Ex. R5 and in the aforesaid receipt also, the khasra numbers of the land which was released on lease to the complainant during the year 2003/2004 have nowhere been reflected.*

24. *Meaning thereby that there has not been any such practice to reflect the khasra numbers of the land proposed to be let out on lease on the receipt which is issued to the lessee on account of the deposit of the lease money.*

25. *Coupled with the aforesaid fact, if we go through the auction register/lease register (Ex. R2), it is evident that the khasra numbers of the land proposed to be let out on lease had been reflected therein. The son of the complainant PW1 (Amarjit) has identified the signature of his father and other bidders on the aforesaid document (Ex. R2) and as such the contention of the*

complainant or his son that the aforesaid khasra numbers had been reflected by the accused in the aforesaid register at a later stage by way of forgery etc. seems to be nothing but a false allegation, for had it been so, the signatures of the bidders or of the complainant himself could never be obtained by the accused on the aforesaid register after alleged forgery, especially when the dispute had arisen between the parties in almost no time after auction held on 09.06.2005 and notice was issued by the complainant to the accused on 31.08.2005 culminating finally into this complaint filed on 14.10.2005.

26. It has been admitted by the complainant that out of the lease consideration of ₹ 30,000/- for which he let out the land on lease for the year 2003-04, a sum of ₹ 5000/- was still outstanding towards him. It has also come on the record that the repeated notices dated 16.08.2005, 27.08.2005, 08.09.2005 and 07.04.2006 (Mark-R6 to Mark-R8 and Mark-R10) were got issued by the accused to the complainant and since the accused pursued further/hushed up the aforesaid issues, the possibility of filing this false complaint by the complainant against the accused on the basis of flimsy allegations to divert him from his track cannot be ruled out. No cheating allegedly played by the accused on the complainant could be proved on the file.

27. So far as the ingredients of the offence punishable under Section 506 of Indian Penal Code attributed to the accused are concerned, the same also seem to be the frivolous allegations levelled by the complainant against the accused. The complainant has alleged that the accused had threatened him with dire consequences on 09.06.2005, if he pursued further with the proceedings initiated by him by virtue of notice dated 31.08.2005 (Ex.P2) any further. However, the accused had no reason to threaten the complainant on the aforesaid date. The Court is of the considered view that the aforesaid allegations levelled by the complainant against the accused are frivolous.”

In the absence of any term of the lease in writing, the aforesaid contention could not have been ever accepted. There is proper analysis of evidence.

In view of the fact that contention about promise by the respondent to provide motor connection having been found incorrect, there was no scope of accepting the other allegation regarding threat given by respondent to attract section 506 IPC. Therefore, there is no scope of finding even the slightest fault in the conclusions reached by the trial Court. The prayer for Special Leave to Appeal is declined as a result of which the appeal against acquittal also stands dismissed.

September 03, 2015
jk

(R.P. NAGRATH)
JUDGE