

IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA, CHANDIGARH

CRM NO.23869 of 2014 in/and
CRM-A-1244-MA of 2014
Date of Decision : 21.05.2015

Dhari RamAppellant

Vs.

Partap Singh and OthersRespondents

CORAM : HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MR.JUSTICE RAMENDRA JAIN

Present:- Mr.Mukesh Kumar Bhatnagar, Advocate
for the applicant/appellant-Dhari Ram

RAMENDRA JAIN, J.

Being aggrieved, the complainant-Dhari Ram has preferred the present appeal against the impugned judgment dated 06.05.2014 acquitting respondent-Partap Singh, for the offence under Section 420, 467, 468, 471 read with Section 34 IPC. Alongwith the appeal an application seeking condonation of 29 days delay in filing the appeal has also been filed. Due to typographical mistake in the impugned judgment Section 468 IPC has been mentioned as Section 467 IPC while holding that the complainant had failed to prove the offence under Section 467 IPC.

Brief facts of the case, relevant for decision of this appeal are that complainant-appellant-Dhari Ram filed a complaint against the respondent-Partap Singh and two others

namely Nirmal Singh and Gurvel Singh sons of Mohinder Singh residents of Village Pandori Sidhwan, Tehsil Tarn Taran, District Amritsar, for the offences under Sections 420, 467, 468, 471 read with Section 34 IPC. It was alleged by the complainant that one sale deed dated 06.12.1990 and three sale deeds dated 11.03.1991 were allegedly executed by him in favour of the accused in respect of his land situated in village Pandori Sidhwan, Tehsil Tarn Taran, Distt. Amritsar. These were the result of duress and threat, at gun point by Sukhdev Singh Chabba, a known terrorist of Babbar Khalsa and real maternal uncle of accused, who came at the shop/clinic of the complainant and by illegally detaining him, got executed the same without any consideration. The suit challenging the said sale deeds was also pending in the Civil Court, in which the complainant had summoned the Clerk of Punjab State Electricity Board to prove that the electricity connection bearing account number GREC-37 stood in his name. Accordingly, Ram Sunder, Clerk of the said Electricity Board appeared in Court and deposited the file of the said electricity connection. On its perusal, however, the complainant came to know that the aforesaid electricity connection in fact had wrongly been transferred in the name of respondent-Partap Singh on the basis of a false affidavit allegedly signed by him, though, he never signed any such document. Hence, the aforesaid affidavit was a result of fraud. In fact, all the accused

in connivance with each other prepared a false affidavit, knowing fully well, the same to be false. Not only this, they also got the aforesaid affidavit attested by producing some other person in his place, before the Executive Magistrate, Jhabal Kalan, District Amritsar and thus were liable to be tried and punished under Section 420, 467, 468, 471 read with Section 34 IPC.

Complainant-appellant in support of his above complaint examined CW-1 Vikram Devgan, Clerk in the Court of Sh.A.S.Grewal, Civil Judge (Sr.Divn.) Amritsar, Sukhjinder Singh, Handwriting and Finger Print Expert as CW-2 and himself as CW-3, in his preliminary evidence.

Thereafter, after hearing learned counsel for the complainant, the learned Judicial Magistrate Ist Class, Amritsar, dismissed the complaint against accused No.2 and 3, namely Nirmal Singh and Gurvel Singh sons of Mohinder Singh holding that no prima facie case was made out against them while summoning only respondent-Partap Singh for prima facie being liable for the offences under Sections 420, 467, 468, 471 IPC to face trial under Sections 420, 467, 468, 471 IPC vide order dated 15.07.2011.

Feeling aggrieved, the complainant filed revision No.40 of 2011 against the said order dated 15.07.2011, dismissing his complaint qua accused namely Nirmal Singh and Gurvel Singh, before the Court of Sessions, Amritsar, but

remained unsuccessful, as it too, was dismissed by the learned Additional Sessions Judge, (Ad-hoc) Fast Track Court, Amritsar vide order dated 14.05.2012.

In pre-charge evidence, the complainant examined Sukhjinder Singh, Handwriting and Finger Print Expert as CW-1 and himself as CW-2 and closed his pre-charge evidence by tendering, grounds of Regular Second appeal No.3961 of 2012 pending in this Court as Mark-A on 15.03.2013. Thereafter, after hearing learned counsel for the appellant/complainant, the learned trial Court charge-sheeted the respondent-Partap Singh for committing offences under Section 420, 467, 468, 471 read with Section 34 IPC vide order dated 11.04.2013.

Complainant did not lead any, fresh evidence after charge and closed the same on 25.07.2013, vide his separate statement. Consequently, the statement of the respondent-accused under Section 313 Cr.P.C. was recorded on 13.08.2013, putting the entire material brought against him by the complainant to which he denied and pleaded his false implication. He opted to lead evidence in his defence. The respondent in his defence moved an application for comparison of the disputed signature of the complainant with his standard signature, which was allowed by the learned trial Court vide order dated 16.09.2013. Accordingly, the respondent got compared the same from Mr.Sanjeev Sharma, Handwriting and Finger Print Expert DW-1, who filed his report Ex.DW1/1 to the

effect that basic writing characteristics of the disputed signatures and standared signature were of the same person i.e. complainant-Dhari Ram. The respondent-accused also tendered in his defence evidence the Civil Court judgment dated 04.06.2010 passed in *RBT Civil Suit No.35 dated 26.02.1997/24.01.2003 filed by the complainant titled as Dhari Ram Vs. Partap Singh and Others as Ex.D1*, judgment dated 28.02.2012 passed in *Civil Appeal No.125 of 2010 dated 02.08.2010/25.06.2011 titled Dhari Ram Vs. Partap Singh and Others also* filed by the complainant/appellant against the said judgment and decree dated 04.06.2010 Ex.D2, Judgment dated 24.03.2011 passed in *Civil Miscellaneous Appeal No.224 of 2006 dated 20.12.2006/09.12.2010* filed by the appellant-complainant titled as *Dhari Ram Vs. Partap Singh and Others*, against the order of learned trial Court dated 15.11.2006, dismissing his contempt application under Order 39 Rule 2-A CPC as Ex.D3. Statement of the appellant/complainant in the shape of his affidavit Ex.PW2/A as PW-2 in the aforesaid Civil Suit No.35 dated 26.07.1997 decided on 04.06.2010, Ex.D4 and his cross-examination as Ex.D5 and closed his defence evidence on 16.01.2014.

Thereafter, after hearing learned counsel for the parties, the learned trial Court acquitted the respondent-Partap Singh by dismissing the complaint vide impugned order dated 06.05.2014.

Being aggrieved, the applicant-appellant-Dhari Ram has preferred the present appeal against the impugned order dated 06.05.2014, alongwith an application for condonation of 29 days delay in filing it.

We have heard learned counsel for the applicant-appellant on merit as well as upon his application for condonation of delay and have gone through the case file very carefully.

Learned counsel for the applicant-appellant argued that the delay of 29 days in filing the present appeal is not intentional or deliberate, rather is bonafide, because of the reason that he being an old and poor person could not arrange, the necessary funds to pay legal fees to file it, in time. As soon as he could arrange funds, he approached his counsel and got the present appeal filed without any delay.

After giving our thoughtful consideration, we find merit in the application, because, by this time it is well settled that no one should be condemned-unheard on technical considerations. In the instant case, there is a negligible delay of only 29 days. Therefore, the application seeking condonation of delay in filing the appeal is hereby allowed and delay of 29 days in filing the present appeal is condoned.

On merits, learned counsel for the appellant submitted that the impugned judgment is based on conjectures and surmises, as the learned trial Court did not appreciate the fact

that all the aforesaid sale deeds said to be executed by the appellant-complainant were the result of duress and undue influence upon him by kidnapping him. The learned trial Court, it is submitted, erred in not appreciating that no sale consideration was ever passed, because the respondent-Partap Singh did not lead any evidence in this respect. The learned trial Court has also erred in not relying upon the report of Sukhjinder Singh PW1-handwriting and finger print expert, which clearly shows that the disputed affidavit for transfer of tubewell connection was not executed by the appellant-complainant.

After giving our thoughtful consideration to the submissions, as made above by the learned counsel for the appellant-complainant, we find the present appeal completely devoid of any merit, for the reasons to follow:-

Admittedly the complainant-appellant, before filing the present complaint in the year 2004, had much earlier filed Civil Suit No.35 dated 26.02.1997/24.01.2003 titled as Dhari Ram Vs. Partap Singh and Others Ex.D1 with the similar averments that one sale deed dated 06.12.1990 and three sale deeds dated 11.03.1991 were got executed from him by the respondent under duress and at gun point with the help of one known terrorist of Babbar Khalsa, namely Sukhdev Singh Chabba under threat of killing him, during the peak days of militancy and thus the same were liable to be set aside.

The said suit was dismissed by the learned Civil Court vide judgment dated 04.06.2010 Ex.D1, being barred by the principle of constructive res-judicata with the observations that appellant-complainant should have raised all the pleas in the earlier suit filed by the respondent against him. Not only this, his appeal too, was dismissed by the first appellate Court vide judgment and decree dated 28.02.1012 Ex.D2. As discussed above, the appellant-complainant also remained unsuccessful in his appeal against the order dated 15.11.2006 passed by learned Civil Judge (Jr.Division), Amritsar, dismissing his contempt application under Order 39 Rule 2-A CPC vide judgment dated 24.03.2011 Ex.D-3. The applicant-complainant has specifically admitted in his cross-examination about the dismissal of his above appeals.

Although the findings of the Civil Court may not be binding upon criminal Court, the same have probative value expecially when these refer to the same set of allegations between the same parties. The appellant-complainant having lost his case on the civil side for the same relief, the same would have a bearing on the present complaint as well, which has rightly been dismissed by the learned trial Court, vide impugned judgment dated 06.05.2014.

More so, the main contention of the appellant/complainant has been that he did not execute the alleged affidavit dated 23.05.1991 to transfer his tubewell connection in favour of the

respondent-Partap Singh and as such, the same, if any, was the result of fraud and misrepresentation. However, he in his cross-examination admitted that he had filed a complaint mark-B on 12.01.1995 against respondent-Partap Singh and others before Senior Superintendent of Police, in this respect. The learned trial Court after perusing the same has rightly observed that his assertion in his above complaint that 42 Kanals 5 Marlas of his land was got transferred from him on 06.12.1990 and 16 Kanals and 16 Marlas on 11.03.1991, total measuring 59 Kanals and 1 Marla along with one tubewell connection, fraudulently under the pressure of Sukhdev Singh, terrorist at gun point, made it abundantly clear that the land along with the disputed tubewell was transferred by him in favour of the respondent, may be under the alleged pressure of Sukhdev Singh Chabba, which has though not been proved on the record. The appellant-complainant did not deny the contents of his above complaint Mark-B, rather has categorically admitted about its filing before SSP.

Another glaring feature in the instant case is that the signatures of the appellant-complainant on the disputed affidavits are in *Gurmukhi*, whereas, on the present complaint, on his statements etc. he has signed in English, which proves his malafide and dishonest intention, because, had he been honest, in that event, he would have signed his present complaint and his statement, before the learned trial Court also

in Gurmukhi, so as to enable the Court to compare his admitted signatures with his disputed ones. His above conduct of signing his complaint and statement in English and not in Gurmukhi would warrant the drawing of an adverse inference against him, that he has intentionally done so, to mislead the Court or in other words to suppress the truth from the Court.

In view of the discussion above, we find no illegality or perversity in the impugned judgment acquitting the respondent. The present appeal is accordingly dismissed, being devoid of any merit.

(S.S.SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

21.05.2015
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