

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1497-MA of 2014 (O&M)
Date of decision: February 12, 2015

Dharambir

...Applicant

Versus

Rajbir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Narender Singh, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents challenging the judgment of acquittal dated 09.07.2014 passed by learned Judicial Magistrate Ist Class, Charkhi Dadri, whereby accused-respondents were acquitted.

It is stated in the application that accompanying appeal is being filed before this Court which is likely to succeed on the strength of the grounds stated therein. The appeal is directed against the judgment dated 09.07.2014 passed by learned JMIC, Charkhi Dadri whereby the complaint of the applicant-complainant under Sections 420, 468, 471 and 120-B IPC has been dismissed while acquitting the accused.

I have heard learned counsel for the applicant and have

gone through the record, especially the judgment passed by learned JMIC, Charkhi Dadri.

As per the record, Dharambir filed a complaint against Rajbir, Jagir, Krishan, Shimbhu, Smt.Saroj Bala, Sukhbir and Hari Singh under Sections 420, 468, 471 and 120-B IPC on the allegations that complainant is owner in possession of a house measuring 322 sq. yards 25 inches situated in the Abadi Deh of village Badhra as he has received the same from his father. The complainant is the absolute owner in possession of the same. On 07.01.2008, accused Shimbhu Dayal had filed a wrong suit for partition of that house in which the complainant appeared and filed his reply. Accused persons hatched a conspiracy and while showing the house of the complainant as a vacant plot of accused No.1 to 3 and one Sube Singh (deceased), got executed a sale deed No.1040 dated 06.10.2008. It is further alleged that said sale deed has been executed on the basis of forged documents only with a view to commit fraud with the complainant. It is further in the complaint that the matter was reported to the DSP, Dadri and SHO, Badhra but no action was taken.

In the present case, after framing of the charge, complainant examined PW-1 Ram Phal Yadav, PW-2 Surender Singh, PW-3 Swaran Singh, PW-4 Jagbir Singh Takshak, PW-5 Balwan Singh, PW-6 Dilbag Singh and examined himself as PW-7. After closure of the complainant's evidence, statements of accused under Sections 313 Cr.P.C. were recorded. Learned JMIC, Charkhi Dadri, after discussing the evidence on the record, dismissed the complaint

and acquitted accused.

From the record, I find that the findings given by learned JMIC, Charkhi Dadri in the impugned judgment dated 09.07.2014 are correct, as per law and evidence. The mere filing of suit for partition and then withdrawing the same, does not show any commission of the offence. There is nothing on the record to show as to how accused hatched conspiracy. The main allegation is that accused No.1 to 4 got transferred the land measuring 162 sq. yards through sale deed Ex.PW5/A in favour of accused No.6 Saroj Bala. Learned JMIC, Charkhi Dadri, from the evidence, came to the conclusion that there is no cogent evidence on the record to show as to how the complainant was absolute owner in possession of the total land measuring 322 sq. yards 25 inches, more particularly when it is clearly admitted fact on the part of the complainant that the land in dispute in the present case falls under the Lal Dora of the village. The Court further held that both the complainant as well as accused No.1 to 4 have their rights in all the property of their ancestors and more particularly the land in dispute as both the complainant as well as accused No.1 to 4 belong to same family as per Ex.D1. It is a criminal case. The prosecution/complainant is to prove the same by leading cogent evidence beyond reasonable doubt and if any reasonable doubt exists in the case, then benefit of doubt goes to the accused.

The argument of learned counsel for the applicant that the accused have not led any defence evidence and have not proved that they are owner of property, has no merit because the accused are

allowed to keep silent during the criminal trial and the onus is on the prosecution/complainant to prove its case by leading cogent evidence beyond reasonable doubt. Learned counsel for the applicant cannot argue that accused have not led evidence to prove some facts.

Learned Court has correctly held that complainant had not been able to prove the fact that he was owner in possession of the land measuring 322 sq. yards 25 inches. The Court has further correctly held that prosecution is to prove each and every fact against the accused.

Keeping in view the facts and circumstances of the present case, I find that the impugned judgment dated 09.07.2014 passed by learned JMIC, Charkhi Dadri is correct and as per law and does not require any interference from this Court. Accordingly, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

February 12, 2015
Vgulati

(INDERJIT SINGH)
JUDGE