

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CRM-A-510-MA-2015 (O&M)**

**Date of Decision: 21.09.2015**

**Yog Raj Gulati**

**...Appellant**

**Versus**

**Gurnam Singh Dhillon & Others**

**...Respondents**

**CORAM: Hon'ble Mr. Justice Hemant Gupta  
Hon'ble Mrs. Justice Raj Rahul Garg**

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

**Argued By: Mr. Jagjot Singh, Advocate for the appellant.**

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**Raj Rahul Garg, J.**

This appeal is directed against the judgment dated 05.01.2015 rendered by learned Judicial Magistrate Ist Class, Gurgaon whereby accused-Gurnam Singh Dhillon son of Magar Singh, Rupinder Singh son of Gurnam Singh and Virender Singh Sidhu son of Mohinder Singh Sidhu were acquitted for the offences punishable under Sections, 467, 468, 471, 120-B of the Indian Penal Code (hereinafter referred to as 'IPC').

Appellant-complainant Yog Raj instituted a complaint under Sections 467, 468, 471 and 120-B IPC against accused with the allegations that Gurnam Singh accused had entered into an agreement to sell dated 07.02.2006

for the purchase of 2.50 acres of land along with IBP Petrol pump situated at village Sidhrawali vide mutation No. 2131 for total sale consideration of Rs. 41,50,000/-. Accused-Gurnam Singh represented that he is the owner of the aforesaid properties. Complainant paid a sum of Rs. 5 lacs in cash and two cheques bearing No. 550213 of Rs. 25 lacs and bearing No. 552014 of Rs. 11,50,000/-. The time limit for registration of sale deed and the final payment of said land and the petrol pump was mutually agreed subject to CLU. It was agreed that in case the complainant fails to get the sale deed registered by making full and final payment of said land, the earnest money will be forfeited. It was also agreed that accused-Gurnam Singh shall obtain no dues certificate from MC Gurgaon and would inform about the last date of payment otherwise the cheque will be returned with penalty to the complainant. The agreement was duly signed by accused and accused-Virender Singh Sidhu signed the agreement as a witness. Later on the complainant came to know that accused-Gurnam Singh was neither the owner of the land nor allottee of IBP petrol pump. In fact accused Rupinder Singh and Virender Singh are the allottee of IBP petrol pump. Said Gurnam Singh by hatching a conspiracy with accused Rupinder Singh and Virender Singh Sidhu induced the complainant to enter into an agreement with the accused and they also cheated the IBPL company as they have no right to transfer the rights of the petrol pump. It is further averred that Gurnam Singh has not obtained any 'no dues' certificate from the department to transfer the IBPL petrol pump. The accused Rupinder Singh and Virender Singh, despite the agreement with the complainant, sold the said land to Meena Kukreja vide sale deed No. 472 dated 07.04.2006 and accused No. 2 and 3, Rupinder Singh and Virender Singh, in collusion with accused Gurnam Singh further cheated the

complainant. The complainant after knowing this, requested the accused to return the said cheques but accused has refused to return the same and threatened to misuse the same. The IBPL company after knowing this fact has cancelled the licence of petrol pump. The complainant has moved an application regarding this fraud to the higher police officers but no action was taken by them. Hence, the complainant filed the above mentioned complaint.

After taking statement of complainant as PW-1 by way of preliminary evidence and after hearing learned counsel for the complainant, the accused were ordered to be summoned under Sections 420, 467, 468, 471, 120-B IPC, vide order dated 13.11.2009 and were admitted to bail.

In pre-charge evidence, complainant himself appeared as PW-1 and examined Vikas Verma as PW-2. By way of documentary evidence, the complainant tendered in evidence, agreement to sell as Ex. PW-1/A, lease agreement dated 30.06.2005 as Ex. PW-1/B, Sale deed dated 07.04.2006 as PW-1/C and also tendered documents Ex. PF to Ex. PL and documents Ex. PW-2/A to Ex. PW-2/D, thereafter, hearing both the counsel for the parties, accused were charge-sheeted for the offence under Sections 420, 467, 468, 471, 120-B IPC, vide order dated 15.09.2014.

By way of after charge evidence, complainant did not choose to examine any witness but adopted the evidence already on record i.e. pre-charge evidence as after charge evidence as well. Likewise, accused did not choose to recall any of the witnesses for further cross-examination. Statement of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation appearing against them and pleaded their innocence and false implication. Accused did not choose to lead any defence evidence. However,

during the course of cross-examination of PW-1 i.e. complainant, documents Ex. D-1 to Ex. D-5 were tendered in evidence. After hearing both the counsel for the parties and appraising the entire material coming on record, the impugned judgment of acquittal was recorded by the learned Judicial Magistrate Ist Class, Gurgaon.

We have heard Mr. Jagjot Singh, Advocate for the appellant besides going through the record.

Since it is an appeal against acquittal, therefore, the matter would have to be examined in the light of the observations of Hon'ble Supreme Court made in "*Ashok Kumar vs. State of Rajasthan, 1991 (1) SCC 166*", which are that: interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a misreading of the evidence and merely because appellate court was inclined to take a different view, could not be a reason calling for interference.

It is the case of appellant-complainant that accused-Gurnam Singh entered into an agreement to sell with the complainant on 07.02.2006. By this agreement, he agreed to sell 2.50 acres of land representing that he is the owner of the same and also IBP petrol pump situated at village Sidhrawali for a sum of Rs. 41,50,000/-. It is further the case of the complainant that he had paid a sum of Rs. 5 lacs in cash to the accused. Later on, complainant came to know that in fact accused-Gurnam Singh was not the owner of the aforesaid land nor allottee of IBP petrol pump. The aforesaid petrol pump was in the name of the accused No. 2 and 3 Rupinder Singh son of Gurnam Singh and Virender Singh son of Mohinder Singh. Not only this, later on, vide sale deed dated 07.04.2006, accused No. 2 and 3 in collusion with accused No. 1 Gurnam Singh had sold

away the land in question to Meena Kukreja. In this manner, accused had cheated the complainant and also committed forgery of agreement to sell.

During the course of arguments, Mr. Jagjot Singh, Advocate for the appellant-complainant candidly admitted that there is no receipt which could show that the amount of Rs. 5 lacs was paid in cash to the accused No. 1 Gurnam Singh by way of earnest money and agreement to sell in original has not been filed in the court. In the absence of original agreement to sell, even the offence of forgery cannot be said to be proved on the file nor the payment of Rs. 5 lacs in cash. Thus, when the payment is not proved on the file and original agreement is not produced, no case under Section 420 IPC or that of forgery is made out against any of the accused. Even accused No. 2 Rupinder Singh is no way concerned with this transaction. He is not the signatory of agreement to sell nor even signed this document as witness. Even otherwise, this case is of civil nature.

For the reasons recorded above, we do not find the impugned judgment of acquittal, recorded by the learned JMJC Gurgaon, either perverse or the result of misreading of evidence. As such, we find no ground to interfere in this appeal. Thus, this appeal, being without any merit, is ordered to be dismissed.

**(Hemant Gupta)**  
**Judge**

**(Raj Rahul Garg)**  
**Judge**

21.09.2015

*Waseem Ansari*