

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No. A-679-MA of 2015

Date of Decision : September 21, 2015

Durga Dass Sharma

.....Applicant

VERSUS

Vijay Kumar and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE GURMIT RAM

Present : Mr. S.S. Grewal , Advocate.

T.P.S. MANN, J.

Complainant-Durga Dass Sharma has filed the present application under Section 378(4) Cr.P.C. wherein he has prayed for grant of special leave to appeal against the judgment dated 25.11.2014 passed by learned Additional Chief Judicial Magistrate, Ambala whereby respondents Vijay Kumar and Sudesh Kumar stand acquitted of the charges under Sections 417, 467, 468, 469, 471 and 120-B IPC.

In his complaint, complainant-Durga Dass Sharma had stated that his father Mulakh Raj was old, weak, lean and used to tremble, besides walking with great difficulty. Both the accused, while conspiring with each other, played a fraud with Mulakh Raj, their father, by taking advantage of his old age, weakness, lack of memory and not being in a position to understand as to what was good or bad for him. The complainant used to live in Delhi as he was doing service there. In June, 2004, when he came back to the village and enquired about his land, both the accused declared that they had got the decree of the land from Mulakh Raj in their favour.

They started interfering in his peaceful possession over the land. The complainant enquired from the Halqa Patwari and learnt that the accused, with dishonest intention and by producing some other person in place of his father, obtained false decree with regard to the land left by his father. His father had never appeared in any Court nor signed any document nor also made any statement. Fraud was played by the accused by producing some other person in order to cause wrongful gain to them and wrongful loss to the complainant so as to grab his share of the property. The complainant, while visiting his native village, had served his father. The complainant had reposed faith in his brothers, but they betrayed and cheated him. Both the accused prepared a forged written statement and had presented some other person in place of their father.

Having heard learned counsel for the complainant/applicant and on going through the impugned judgment, this Court finds that while deposing before the trial Court as CW1, the complainant testified that his father Mulakh Raj had four acres of agriculture land at Patti and after selling the same, purchased land at Zira. However, he had no knowledge whether the accused, who were his brothers, had purchased land at village Peer Mohammed from their earnings. He stated that he did not visit his father when land was purchased at village Ugala. He also stated that he had not met his father after 1965-70. He, however, admitted it to be correct that his father and mother used to reside with his brothers who had been looking after them. Though he stated that his father expired on 4.5.1997 but he could not state about the death of his mother. Under these circumstances, it cannot be stated that the complainant who had not met his father after 1965-70, had ever served him.

It is a fact that in order to challenge the decree dated 22.3.1994 suffered by his father Mulakh Raj, the complainant filed a civil suit which came to be dismissed by the Additional Civil Judge (Senior Division), Ambala on 23.4.2014. Further, CW2 Dr. Jassy Anand, Document Expert produced by the complainant deposed that the disputed signatures on the written statement and the Vakalatnama did not match with the standard signatures of Mulakh Raj but that is not sufficient to return a finding of guilt against the accused as the accused also examined Sumit Arora, Handwriting and Fingerprints Expert as DW3, who testified to the contrary.

For the aforementioned reasons, no case is made out for any interference in the impugned judgment of acquittal.

The application is without any merit and, therefore, dismissed.

Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

September 21, 2015
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