

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. AS-7 of 2016 (O/M)

Date of decision : 15.1.2016

Charanjeet

..... Appellant

Versus

Karambir and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ajay Jain, Advocate, for the appellant.

Mr. Aditya Sanghi and Ms. Prerna Chandna, Advocates,
for Mr. Ashwani Bhardwaj, Advocate,
for respondents.

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

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KULDIP SINGH J. (ORAL)

CRM No. A-66-MA of 2014

This is an application under Section 378 (4) Cr.P.C. for grant of leave to appeal against the order of acquittal dated 13.11.2013, passed by the learned Judicial Magistrate 1st Class, Hisar.

For the reasons mentioned in the grounds of appeal, the leave to appeal against the order of acquittal dated 13.11.2013, passed by the learned Judicial Magistrate 1st Class, Hisar, is granted. The Registry is directed to assign the number to the main appeal.

Application is disposed of.

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Main case

Impugned in the present appeal is the order dated 13.11.2013, passed by the learned Judicial Magistrate 1st Class, Hisar, vide which, after recording the pre-charge evidence, the complaint filed by the present appellant under Sections 419, 420, 467, 468, 471, 475, 477, 120 IPC, Police Station Barwala, was dismissed, holding that the prosecution has failed to prove its case beyond all reasonable doubts.

The brief facts of the case are that a complaint, alleging that the accused has forged his signatures as well as the signatures of his brother Om Parkash in agreement to sell dated 16.9.2004, vide which 40 kanals land is stated to be agreed to be sold, was filed by the appellant. Accused also filed a civil suit. The complainant alleged that his signatures and signatures of his brother Om Parkash are forged. When the agreement to sell dated 16.9.2004 was produced before the lower Court, it was found that it was intentionally destroyed by water and chemicals. The fingerprint/handwriting expert opined that certain points have been scratched off with sharp edged blade.

I have heard the learned counsel for the appellant, learned counsel for the respondents and have also carefully gone through the file.

The learned Judicial Magistrate 1st Class, Hisar, has

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referred to the evidence and stated that Shri Shamsheer Singh Malik, Fingerprint/Handwriting Expert (PW2) has not opined that the signatures are forged. Rather, he has opined that the person possessing the document, has mutilated it intentionally with mala fide intention. It is further held by the lower Court that except the oral testimony of the present appellant, there is no other evidence on the file. Consequently, the complaint was dismissed, vide impugned order.

I am of the view that the lower Court has failed to properly appreciate the evidence.

Section 245 Cr.P.C. in this regard is reproduced as under:-

“S.245. When accused shall be discharged.

- (1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.
- (2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

It shows that the Magistrate is to examine at the stage of charge as to whether any case is made out against the accused, if unrebutted, would warrant his conviction.

In the light of the said parameters, the perusal of the original file shows that the original agreement to sell dated 16.9.2004, which is claimed to be forged, was intentionally made

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wet, so as to destroy the evidence of forgery. The report of the fingerprint/handwriting expert clearly indicates that the said wetting was done intentionally to hide the real facts. Regarding the signatures of deed writer Shri Tej Mohinder Singh, Advocate, marked as 'Q3', it was observed that his signatures were also in wet condition, but the indent line under the signature of the deed writer (advocate) is clear. Regarding the signature of first witness marked as 'Q4' on the document in question, it was observed by the handwriting expert that from the pictorial appearance, overwriting is clearly visible. Regarding the signature of another witness marked as 'Q5', it is stated that the baseline of this signature is extended towards left down side to this signature and same is very clear. A careful joining of extended stroke is clear, which proved the malafide intention in this signatures. On the reverse side of the said document marked as 'EB', there was mechanical erasing with sharp edged blade. In the portion marked as 'Q6', some disturbed fibers due to scratching of the paper to remove some particular writing were found. The said document was in possession of the accused.

It is clear that in this case, the document was intentionally made wet and mutilated and some erasing was done. The document in question was in possession of the accused and it was within the special means of knowledge of the accused as to how the wetting and erasing was done.

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Section 106 of the Indian Evidence Act, 1872, reads as under :-

“S.106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

Therefore, the lower Court was required to take the aid of the said provisions also to see whether the accused have been able to shift the burden satisfactorily.

In this case, if the evidence of the complainant, as supported by the statement of handwriting expert, is taken into consideration, it would indicate that some forgeries were done and in order to destroy the evidence of said forgery, the document was made wet and some erasing was done, for which a separate charge under Section 201 IPC could be added. In any case, it is not a case where the evidence of the complainant, if unrebutted, would result in the acquittal of the accused.

It being so, this Court is of the view that the learned Judicial Magistrate 1st Class, Hisar, failed to properly appreciate the evidence in the right perspective and has erred in dismissing the complaint. Consequently, the impugned order dated 13.11.2013, passed by the learned Judicial Magistrate 1st Class, Hisar, is set aside. The case is remanded back to the learned Judicial Magistrate 1st Class, Hisar, for re-hearing the arguments on the question of charge and for fresh and well reasoned order, in the light of the

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observations made above. The parties are directed to appear before
the learned Judicial Magistrate 1st Class, Hisar, on 24.2.2016.

(KULDIP SINGH)
JUDGE

15.1.2016
sjks