

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

Criminal Misc.No.A-1016-MA of 2012 (O&M)
Date of decision: 20th May, 2016

Mohinder Kaur

...Applicant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Gaurav Singla, Advocate,
for the applicant.

INDERJIT SINGH, J.

Criminal Misc.No.75588 of 2012

This is an application for condonation of delay of 95 days in filing the application for grant of leave to file an appeal.

Heard. For the reasons, mentioned in the application, the same is allowed. Delay of 95 days in filing the said application is condoned.

Criminal Misc.No.A-1016-MA of 2012

Applicant Mohinder Kaur has preferred the instant application under Section 378 (4) Cr.P.C. against respondents-State of Punjab and others, for grant of permission to file an appeal against the impugned judgment dated 05.07.2012, passed by the learned Addl. Sessions Judge, Fast Track Court, Patiala, vide which respondent Nos.2 to 4-accused have been acquitted.

It is stated in the application that the accompanying appeal has been filed which is likely to succeed. The learned Judicial Magistrate Ist Class, Rajpura, rightly convicted and sentenced the accused vide judgment of conviction and order of sentence dated 30.05.2011 whereas the judgment, passed by the learned Addl. Sessions Judge, Fast Track Court, Patiala,

acquitting them in the appeal, is wrong, illegal erroneous, untenable, unsustainable and it has been resulted in grave miscarriage of justice and it is prayed that leave to file an appeal be granted.

Complainant Nasib Singh filed a complaint against accused Karnail Singh etc. under Sections 467, 471, 468, 420, 34 read with Section 120-B IPC. Brief facts, as mentioned in the impugned judgment dated 30.05.2011, passed by the learned Judicial Magistrate Ist Class, Rajpura, are as under:-

“The present complaint was filed by the complainant Nasib Singh on the grounds that he is paternal uncle of Smt. Mahinder Kaur wife of late Nirmal Singh son of Nasib Singh Saud. Mahinder Kaur is having two minor daughters and her husband had died in the year 1982. One Nasib Singh was father in law of Mahinder Kaur and he was father of accused Nos.1 to 3. Said Nasib Singh died intestate on 14.06.1998 and never executed any will. However, accused Karnail Singh, Baljit Singh and Rachpal Singh in conspiracy with Gurnam Singh, Gurdev Singh and Gurmail Singh forged a Will dated 08.05.1998 in order to grab the share of Mahinder Kaur and her two daughters which would have come to husband of Mahinder Kaur if he had been alive, after the death of Nasib Singh. It has been alleged that the Will in question dated 08.05.1998 was forged by the accused persons which was got registered on 10.09.1998. Thereafter, accused persons used that forged Will as a genuine document in the mutation proceedings as will in the Civil Court. Said Will came to the notice of

complainant and his niece Mahinder Kaur when they obtained copy of mutation on 23.11.1999. Hence the present complaint, the complainant led his preliminary evidence and after considering the preliminary evidence on record, the accused were ordered to be summoned under Sections 427, 471, 468, 420, 34 IPC.”

The learned trial Court, after appreciating the evidence convicted and sentenced the accused vide judgment dated 30.05.2011. The learned trial Court mainly relied upon the findings given in the civil proceedings by the Civil Courts even by the High Court in RSA.

Against the said judgment of conviction and order of sentence, the accused preferred an appeal before the Sessions Court and the learned Appellate Court, after reappreciating the evidence acquitted the accused vide impugned judgment dated 05.07.2012.

I have heard learned counsel for the applicant and have gone through the record as well as the judgments passed by both the learned Courts below.

The findings returned by the learned Appellate Court are correct and as per evidence and law. The learned Appellate Court has correctly appreciated the evidence in the right perspective. Firstly, in this case, there is evidence of the complainant stating that the Will is forged one. An expert has been examined in this case by the complainant. Similarly, an expert has also been examined by the accused and both the experts have given different views. Otherwise also, the science of hand writing is not a perfect science. The learned Appellate Court has held that there is no corroboration to the statement of complainant and there is no cogent

evidence on the record to prove the forgery. The signatures of the attesting witnesses on the alleged will have not been compared. There is no evidence as to who has scribed the Will. Further, the Court held that the learned Court of Civil Judge has not given any findings that the Will is forged. Rather, the Court has upheld the Will in question. The learned Appellate Court has mainly given the findings that the property was ancestral and found suspicious circumstance surrounding the Will. The learned Appellate Court, has held that as the property was ancestral property, therefore, the Will in question is also of no relevance. The learned Appellate Court further held that this Court, while deciding the RSA, has also not given the findings that the Will is forged one, therefore the learned Appellate Court has correctly held that no reliance can be placed upon the findings of Civil Court to hold the accused guilty for the offence of forgery. It is to be proved by leading cogent evidence. The findings returned by the learned Appellate Court, acquitting the accused are correct and the reliance placed upon the findings of Civil Court by the learned trial Court is incorrect and not as per law. Therefore, the judgment of conviction and order of sentence, passed by the learned trial Court have rightly been set aside by the learned Appellate Court. The findings of the learned Appellate Court in the impugned judgment in no way can be held as perverse. Nothing has been pointed out as to which material evidence has been misread and as to which evidence has not been considered by the learned Court below. Therefore, from the above, this Court finds that the findings returned by the learned Appellate Court are correct and as per evidence and law and do not require any interference by this Court.

Therefore, finding no ground to grant leave to file an appeal,

the application under Section 378 (4) Cr.P.C. is dismissed.

Perusal of the record shows that vide order dated 12.01.2016, passed by this Court, the petitioner was burdened with costs of Rs.5,000/- to be deposited with the Legal Services Committee of this Court. However, as per office report, the said costs has not been deposited so far.

In view of above, the Registry is directed to recover the said costs of Rs.5,000/- from the petitioner, as per law.

20th May, 2016
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(INDERJIT SINGH)
JUDGE