

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-890-MA of 2012 (O&M)
Date of decision: March 16, 2016

Amrit Kaur

...Applicant

Versus

B.K.Kaushal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arun Takhi, Advocate
for the applicant.

Mr.Deepak Thapar, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-Amrit Kaur has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents B.K.Kaushal and Raj Kaushal, challenging the impugned judgment dated 24.07.2012 passed by learned Judicial Magistrate Ist Class, Chandigarh, whereby the accused-respondents were acquitted.

It is mainly stated in the application that though the allegations levelled against the respondents-accused have been fully proved by way of documentary as well as oral evidence, still learned JMJC, Chandigarh has chosen to acquit the accused of the charge under Sections 403, 416 and 420 IPC. It is further stated that accompanying appeal is filed which is likely to succeed on the

grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued and learned counsel for the respondents appeared and contested the application.

Lower court record is also available.

I have heard learned counsel for the parties and have gone through the record.

As per the record, the complainant Amrit Kaur filed a complaint against accused B.K.Kaushal and Raj Kaushal under Sections 403, 416 and 420 IPC. As per complainant's version, she wanted to purchase a house at Chandigarh and contacted M/s Khosla Company and Universal Properties. The complainant was shown a house bearing No.3356 in Sector-35D, Chandigarh. After seeing the house, the complainant decided to purchase the same from its owners. After meeting the sellers, the deal was struck for ₹49 lacs and an agreement to sell was signed and executed between the complainant and the accused on payment of ₹5 lacs as earnest money. The accused signed the agreement to sell in the capacity of owners. Out of ₹5 lacs, ₹2 lacs was given in cash and ₹3 lacs was given by way of cross cheque. The sale documents were to be executed on or before 27.03.2001. The cheque was encashed. However, the accused did not comply with the terms of the agreement to sell nor they got 'no due certificate' income tax clearance, permission to sell etc. The complainant got suspicious and came to know that the accused are not the real owners and they impersonated

to be owners with intention to cheat the complainant and misappropriated the amount of ₹5 lacs.

Learned JMIC, Chandigarh, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 24.07.2012.

I have gone through the judgment dated 24.07.2012 passed by learned JMIC, Chandigarh. I find that that the findings given by learned Magistrate are correct, as per evidence and law. In no way, the findings can be held as perverse i.e. against the evidence and law. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court.

In the cross-examination, the complainant admitted that she filed a suit for specific performance. She admitted that both the accused did not approach her for a sale of house nor they gave any advertisement. She also admitted that she saw the house and finalized the deal with accused vide Ex.C1. She expressed her ignorance about the nature of the documents got signed by her and as to how many papers were got signed. The papers were prepared by the property dealer i.e. M/s Universal Property Dealer. She further admitted that she never went to any Notary to get any affidavit attested for submitting the same to EO for obtaining NOC. She expressed her ignorance as to whether she filed the proposed sale deed or not. She admitted that she was not having ₹40 lacs in her bank account on 27.12.2001 and 15.05.2001.

In her subsequent cross-examination, the complainant admitted that she does not know the accused and house in question was shown to her by Navroop Singh. She further admitted that accused never met her before seeing the house nor they tell her about their intention to sell the house in question.

At the time of arguments, learned counsel for the applicant argued on two points, that accused have violated the terms and conditions as they did not get the 'no objection certificate' by clearing the dues etc. as mentioned in para No.4 of the agreement to sell and further that the letter written by the Estate Office has not been replied by the accused.

After perusing the statement of the complainant available in the lower Court record, I find that there are no allegations in chief-examination that accused are not owners of the house. There are no allegations that they have impersonated. Mere violation of terms and conditions of the agreement to sell does not prove commission of any of the offence. At the most, it is a case of civil nature and as argued, civil case has been filed. There is nothing on the record to show that from the very beginning, the intention of the accused was to cheat the complainant.

In view of the above discussion, I find that the findings given by learned JMIC, Chandigarh, in no way, can be held as perverse. The findings have been given while appreciating the evidence in right perspective. The impugned judgment dated 24.07.2012 passed by learned JMIC, Chandigarh, is correct, as per

law and evidence and does not require any interference from this Court.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

March 16, 2016
Vgulati

(INDERJIT SINGH)
JUDGE