

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

**CRM-A-591-MA-2013 (O&M)**

Date of decision:- September 01, 2016

**Jogi Ram**

**.....Applicant..**

**Vs.**

**Ram Niwas and others**

**....Respondents..**

**CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH**

Present:- Mr. S.S. Dinarpur, Advocate  
for the applicant.

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**JASPAL SINGH, J.**

**CRM No. 36710 of 2013**

In view of averments made in this application, the same is allowed and delay of 114 days in filing the instant application, is condoned.

**CRM-A-591-MA of 2013**

Vide this judgement, this Court shall dispose of application under Section 378 (4) of the Code of Criminal Procedure preferred by Jogi Ram seeking special leave to appeal against the judgment of acquittal dated December 20, 2012 passed by Additional Chief Judicial Magistrate, Kurukshetra.

2. The contention of learned counsel for the applicant is that the applicant/complainant availed financial assistance from the Land Mortgage Bank, Kurukshetra, which was re-payable by way of installments. He was required to deposit a sum of ₹1,09,000/- with the Bank and for that purpose he approached respondent No.2 and requested him to deposit a sum of ₹1,09,000/- with the Bank and to pay him a ₹41,000/-. On pretext of getting the receipt of the afore-said amount, respondents No.1 to 3 took him to the Court premises on December 20, 2002 and respondent No.1 obtained his signatures on various blank stamp papers. Subsequently, respondents No.1 to 3 in collusion with respondents No.4 and 5 converted those blank stamp papers into an agreement to sell in respect of his one acre land in which tubewell is installed. In short, respondents in connivance with each other committed fraud upon him.

3. He further contends that the respondents have been acquitted on the basis of conjectures and surmises. In fact, there is/was cogent and convincing evidence adduced by the applicant/complainant before learned trial Court, consisting of statements of complainant/Jogi Ram further corroborated by CW-1/Hawa Singh and CW-3/Mohan Singh. From their statements, it stands fully proved that respondent No.1 in connivance with attesting witnesses and the deed writer obtained the signatures of the applicant/complainant on blank stamp papers and then converted the same into agreement to sell. Thus, fraud

upon the applicant/complainant has been established.

4. After bestowing due consideration to the afore-said submissions made by learned counsel for applicant and appraisal of evidence as well as impugned judgment of acquittal, this Court is not in agreement with the various submissions made by learned counsel for the applicant/appellant.

5. Before proceeding to delve deep on the merits of the submission made by learned counsel for applicant, it would be desirable to consider the scope and jurisdiction of an appellate court to interfere with an order of acquittal.

6. Section 378 of the Code of Criminal Procedure provides that the complainant or aggrieved person may prefer an appeal to the High Court against an order of acquittal but sub-section 3 of Section 378 of the Code of Criminal Procedure explicitly envisages that no appeal under subsections (1) and (2) shall be entertained except with the leave of the High Court which is a stage between an order of an acquittal and consideration of the judgment by the Appellate Court on merits as in the case of a regular appeal. It depicts that a judgment of acquittal is annexed with a definite value, which cannot be ignored by the Court. A presumption of innocence attached to an accused stands further fortified or reinforced by an order of acquittal. No doubt, Appellate Court, is empowered to re-appreciate, review and re-consider evidence before it but this power is required to be exercised keeping in

view relevant principles of law relating to review, reweighing and re-appreciating of evidence in order to come to independent conclusions. The scope of interference by an Appellate Court in an order of acquittal was laid down by the Hon'ble Apex Court in case ***Sanwat Singh v. State of Rajasthan***; 1961 SCR (3) 120 as follows:-

*“The foregoing discussion yields the following results:(1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as (i) “substantial and compelling reasons”, (ii) “good and sufficiently cogent reasons”, and (iii) “strong reasons”, are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”*

7. This principle was further reiterated by the Hon'ble Supreme Court in case ***Govindaraju @ Govinda v. State by***

*Sriramapuram P.S. and another*; AIR 2012 SC 1292.

9. Adverting to the facts of the case in hand, it is evident that the applicant/appellant approached respondent No.1 for obtaining financial assistance. It is not the case of the applicant/appellant that respondent No.1 did not deposit the amount in the Bank or did not pay the balance amount to him out of the settled amount.

10. Here it would be pertinent to mention that the applicant/appellant preferred the suit for declaration challenging the agreement to sell with a consequential relief of permanent injunction but that suit was dismissed by the Civil Court vide judgment Ex.D-1 reference of which finds mention in the impugned judgment. When the applicant has failed to prove the commission of fraud and cheating in the Civil Court, the complaint is not sustainable, especially in view of the fact that his statement made before the Civil Court alleging commission of fraud and cheating with him by respondents has not been accepted. As far as evidence brought on record by the applicant before trial Court is concerned, he examined CW-1/Hawa Singh who is one of the attesting witnesses of the agreement to sell. When he was subjected to cross-examine, he has categorically admitted that agreement to sell was executed between the applicant and respondents/accused Ram Niwas.

11. Not only this, he also identified his signatures as well signatures of other attesting witnesses thereon. Even, the

complainant/applicant has also admitted his signatures on the agreement to sell referred to above. Apart from it, there is another material aspect, which goes against the applicant/appellant. The applicant examined CW-1/Hawa Singh and CW-3/Mohan Singh apart from himself appearing in the witness box as CW-2 when the case was listed for preliminary evidence. After the summoning of respondents as an accused, the witnesses were not examined in chief or fresh during pre charge evidence. Rather, a simple statement was made by the applicant that the statements of the witnesses already recorded during preliminary evidence be read in the case on his behalf. Though an opportunity to cross examine the afore-said witnesses was granted to the respondents/accused but the statements, which were recorded in the absence of accused cannot be taken into consideration. Thus, this Court is of the considered view that there is no sufficient ground for the grant of leave to appeal.

12. In the light of aforesaid discussion, this Court does not find any merit in the instant application. As such, the same stands dismissed. Consequently, the accompanying appeal also stands dismissed.

September 01, 2016

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**(JASPAL SINGH)**  
**JUDGE**

*Whether speaking/reasoned*      *Yes/No*

*Whether reportable*              *Yes/No*