

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

CRM-A-1351-MA-2014 (O&M)

Date of decision : 02.08.2016

Dr. Shiv Kumar Chopra

...Appellant

Versus

Ashok Kumar and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ravi Gakhar, Advocate
for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal is directed against the impugned judgment dated 14.01.2011, passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, whereby the accused-respondents were acquitted of the charges framed against them under Sections 420, 467, 468, 471, 427, 448, 506 and 120-B of the Indian Penal Code (for short 'the IPC').

It is contended that the learned trial Court has erroneously passed the impugned judgment whereby acquitting the respondents, as the appellant is the general power of attorney of original owner of the suit property (Plot No.50, situated in Krishan Colony, Yamuna Nagar) Ram Kishan; the ownership of the said Ram Kishan is duly proved; the alleged occurrence of illegal and forcible encroachment upon the suit property is established by the statements of the appellant and eye-witnesses, namely

Om Parkash and Sandeep; and in the sale deed dated 22.04.1996, whereby respondent Nos.1 and 2 had purchased the suit property from respondent No.3, number of plot is not mentioned.

Along with special leave to appeal, the applicant-appellant has filed CRM-26414-2014, seeking condonation of delay of 3 years, 6 months and 21 days in filing the special leave petition on the ground that the appellant filed an appeal before learned Additional Sessions Judge and during the pendency of the same, Hon'ble Full Bench of this Court in M/s Tata Steel Ltd. Vs. M/s Atma Tube Products Ltd. and ors., held that appeal against acquittal in a complaint case should be filed before this Court. Therefore, the appellant had withdrawn the same on 03.06.2014. Due to this, the said delay has occurred.

The plea of applicant-appellant appears to be an afterthought.

Even, on merits the applicant-appellant has no case at all.

I have heard the learned counsel and perused the entire record on file.

The case of the applicant-appellant is that Ram Kishan is the original owner of the suit property and being his general power of attorney holder, the applicant-appellant had set up a clinic and constructed number of rooms thereupon. Respondent Nos.1 and 2 had demolished the part of the construction and illegally and forcibly encroached upon the suit property. To prove his case, the applicant-appellant had relied upon the statements of eye-witnesses, Sandeep and Om Parkash. However, statement of said

Sandeep is not trustworthy as the applicant-appellant in his statement recorded under Section 313 Cr.P.C. in the Sessions Case No.33 of 2001/2002, Ex.D29, had specifically stated that said Sandeep was not present at the time of alleged occurrence and statement of another witness, namely, Om Parkash cannot be relied upon being an interested witness as he is known to the applicant-appellant. Further, the alleged occurrence itself is belied by Ex.C6, reminder dated 28.01.2002, sent by the owner, Ram Kishan to the Collector, wherein it has been stated that due to the construction raised by respondent No.1 his roof had fallen down. The only stand taken by the applicant-appellant to prove the sale deed dated 22.04.1996 to be fake is that no number of plot has been mentioned in the same, but he himself has admitted that disputed land does not bear any number.

It is a settled law as has been held in *C. Antony Vs. K.G. Raghavan Nair*, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Keeping in view the above, the finding of acquittal recorded by the trial court cannot be said to be perverse or contrary to the material on record. In fact, there is no infirmity in the reasoning assigned by the trial

Court for acquitting the respondents. This Court feels that learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, has passed the impugned judgment dated 14.01.2011, after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly, the special leave to appeal is declined.

Dismissed on merits as well as being time barred.

02.08.2016

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No