

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1580-MA-2015 (O&M)

Date of decision: 25.02.2016

Risal Singh

..... Applicant

Versus

Manoj Kumar and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

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

PRESENT: Mr. Shokeen Singh Verma, Advocate
for the applicant.

RAMENDRA JAIN, J.

CRM-30889-2015

Sufficient cause has been shown to condone the delay of 155 days in filing the accompanying application. Therefore, the application is accepted and delay of 155 days in filing the accompanying application under Section 378 (4) Cr.P.C. is condoned.

CRM-A-1580-MA-2015

The instant application has been filed by the applicant, seeking leave to file accompanying appeal against acquittal of respondents No. 1 to 3 vide impugned judgment dated 20.01.2015, passed by the learned Judicial Magistrate Ist Class, Charkhi Dadri.

2. As per the applicant, respondents No. 1 to 3 had committed fraud, forgery and cheating with his father Nekiram by delivering a defective second hand tractor of 35 horse power against the purchase of a new tractor of 60 horse power make Sonalika. Consequently, he got registered FIR No. 66 dated 15.04.2010 under Sections 420/467/468/471 IPC. However, police did not take any action against respondents No. 1 to 3 in collusion with them. Hence, he filed a complaint in the Court.

3. After recording preliminary evidence, respondents No. 1 to 3 were summoned to face trial under the aforesaid sections vide order dated 31.07.2012.

4. After recording pre-charge evidence and after charge-evidence, statements of accused under Section 313 Cr.P.C. were recorded putting entire incriminating evidence brought on record against them, to which they denied and pleaded their false implication. In defence, they produced the copy of plaint of Civil Suit No. 130 of 2014 titled as “Nekiram etc. Vs. HGB etc.” Ex. D-1 and copy of order dated 09.10.2014 Ex. D-2 passed in the said suit.

5. After hearing learned counsel for the parties and scanning the evidence brought on record, respondents No. 1 to 3 were acquitted by the trial Court vide the impugned judgment.

6. Learned counsel for the applicant contended that the impugned judgment is based on surmises and conjectures. It was fully proved beyond any doubt on the record that respondents No. 1 to 3 had supplied a second hand tractor to the father of applicant and he came to know about the same, when he approached the insurance company on

meeting their tractor with an accident.

7. After giving our thoughtful consideration to the submissions made by learned counsel for the applicant, we find the present application is completely devoid of any merit for the reasons to follow:-

- (i) The instant dispute is purely of civil nature. Nekiram, father of the applicant had filed a Civil Suit No. 130 of 2014 (Ex. D-1) titled as "Nekiram etc. Vs. HGB etc." raising the similar dispute. Thus, the present complaint has rightly been dismissed by the learned trial Court.
- (ii) The police did not take any action upon FIR No. 66 dated 15.04.2010, under Sections 420/467/468/471 IPC, registered by the applicant raising the similar dispute, because on investigation the same was found to be false. A person cannot be vexed twice for the same cause of action. Hence, the learned trial Court has rightly dismissed the complaint.
- (iii) The grouse of the complainant is that his father has been defrauded by handing over a defective and second-hand tractor against a brand new tractor sold and delivered to Harkesh and Jaswant sons of Meer Singh, vide invoice No. 387 dated 14.08.2009 (Ex. P-5). However, the aforesaid allegation is falsified from the fact that invoice No. 394 dated 03.10.2009 Ex. P-2 and the insurance cover note

Ex. P-2/A, wherein the model number of the tractor and its price are similar to that of mentioned in invoice Ex. P-6. The only difference in both the aforesaid invoices is only of engine and chasis numbers. Thus, the learned trial Court has rightly held that the same was nothing, but a clerical mistake. As per deposition of PW-1 Bharat Bhushan, Senior Manager, Oriental Insurance Company, the tractor bearing model No. DI-60 make Sonalika purchased by aforesaid Harkesh etc. was much more expensive in comparison to the tractor purchased by the father of applicant. More so, the applicant and his father, both have admitted that they had purchased the tractor by obtaining loan from HGB, Chhapar. However, in their civil suit Ex. D-1, they have disputed obtaining of any loan facility from HGB, Chhapar to purchase the tractor by mortgaging their land with aforesaid bank. Hence, the contradictory version of the applicant and his father raises a suspicion about their version. It is apparent that the applicant has tried to take undue advantage of the clerical mistake. It is not that respondents No. 1 to 3 have cheated or tried to cheat the applicant, rather it is he and his father who have tried to defraud respondents No. 1 to 3 by taking undue advantage of some clerical mistake.

8. No other point was urged before us.

9. From the above discussion, it can safely be said that the prosecution has failed to prove its case beyond any shadow of doubt against respondents No. 1 to 3. They have been rightly acquitted by the learned trial Court. The instant application being completely devoid of any merit, is dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 25, 2016
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