

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1558-MA of 2014

DATE OF DECISION: March 14,2016

Poonam Kakkar

...Applicant

Versus

State of Haryana and others

...Respondents

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

Present: Mr.Bikram Chaudhary, Advocate for the applicant.
Mr.Salil Bali, Advocate for respondents No.2 and 3.

RAMENDRA JAIN, J.

The instant application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 31.7.2014 passed by Judicial Magistrate Ist Class, Hisar, acquitting respondents No.2 and 3.

The prosecution case was that the marriage between the applicant and Vinod Kumar (since deceased) was solemnized on 11.7.1987 at Hansi, District Hissar. Two children had born to them. By filing the petition under Section 9 of the Hindu Marriage Act at Hisar, her husband misled the Court as he was residing at Faridabad. However, on contest, the aforesaid petition was dismissed on 19.4.1997. Her deceased husband Vinod Kumar was missing since last seven years w.e.f. 16.4.1997 and was not being heard of. A DDR No.28 dated 16.4.1997 was got recorded at Police Station Hissar in this regard. In the year 2005, she got a decree declaring her husband-

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deceased (Vinod Kumar) as civilly dead. The share of her deceased husband in properties i.e. H.No.669, Sector 15-A, Hissar and H.No.210 situated at Police Line Area, Hissar was got transferred by respondents Nos.2 and 3 in their names illegally and fraudulently by cheating and impersonation by producing some other person in place of her husband Vinod Kumar.

With these allegations, the applicant approached the Court for sending the complaint under Section 156(3) CrPC for registration and investigation of the case. Accordingly, FIR No.229 dated 21.5.2007 under Sections 420,465,467,468,471 read with section 34 IPC was registered. After conducting investigation, the police filed cancellation report. Protest petition was filed. The preliminary evidence was led. The respondents were summoned under Sections 420,465,467,468,471 read with section 34 IPC vide order dated 16.1.2010.

In support of her case, besides herself as PW3, the applicant examined PW1 Satbir Singh, PW2 SI Manjeet Singh, PW4 Shamsher Singh Malik, PW5 EASI Rameshwar, PW6 Tirth Sharma, PW7 Dharambir Singh Jain, Advocate and PW8 J.D.Kalra, Advocate and placed reliance on certain documents. In their defence, respondents No.2 and 3 examined DW1 Yashpal Chand Jain, DW2 Harsh Vardhan and DW3 Ram Nath and placed reliance on the documents.

After hearing learned counsel for the parties, the trial Court dismissed the complaint.

Learned counsel for the applicant argued that the impugned judgment of trial Court is based on surmises and conjectures. There was ample evidence on the record that the respondents fraudulently got transferred the property in their names and as such, she has been deprived of her legal rights being the widow of Vinod Kumar. Thus, on the evidence available on record, respondent Nos.2 and 3 are liable to be convicted.

We have thoughtfully considered the arguments advanced by learned counsel for the parties and are of the view that the application deserves to be dismissed for the reasons to follow.

The dispute is of two properties, namely, House No.669, Sector 15-A, Hisar in the name of Smt. Shanti Devi and House No.210, Police Line Area, Hissar in the name of Ram Dayal. After their death, there were four legal heirs, namely, Ram Nath, Vinod Kumar (deceased-husband), Prem Sagar (respondent No.2) and Dev Raj (respondent No.3). The allottees were the parents of respondent Nos.2 and 3, Ram Nath and Vinod Kumar (deceased-husband). Later on, these two properties were transferred in the names of respondent Nos.2 and 3. As to how and in what manner, these two properties were transferred are summarised as under:

The house No.669, Sector 15-A, Hisar was transferred in the name of respondent No.2-Prem Sagar from the name of Smt.

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Shanti Devi, mother of respondent Nos.2 and 3, Ram Nath and Vinod Kumar (deceased-husband). In that process, an affidavit Ex.PW1/C/Ex.D25 dated 10.11.1995 was furnished by respondent No.3-Dev Raj, Ram Dayal (father), Ram Nath (brother) and Vinod Kumar (deceased-husband). The second plot No.210, Police Line Area, Hisar was transferred in the name of respondent No.3-Dev Raj from the name of Ram Dayal (father). In that process, an affidavit Ex.PWH/1/Ex.D24 dated 20.2.1997 was furnished by respondent Nos.2 and 3 and their brothers, namely, Ram Nath and Vinod Kumar (deceased-husband).

It is the case of prosecution that the deceased-husband (Vinod Kumar) was missing since 16.4.1997. In this regard, DDR No.28 dated 16.4.1997 was got recorded at Police Station Hissar. Thus, it is apparent on the face of it that the process of transfer of the aforesaid property was completed before his missing. Even the signatures furnished on the disputed affidavits dated 10.11.1995 and 20.2.1997 were got compared from the Forensic Science Laboratory, Madhuban. It was opined that the signatures on the aforesaid affidavits were of Vinod Kumar (deceased-husband). Thus, the allegations that the aforesaid properties were transferred in the names of respondent Nos.2 and 3 was the result of cheating and impersonation by producing some other person in place of Vinod Kumar have no substance,

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inasmuch as, the entire process of transfer of the aforesaid plots stood completed earlier to his missing.

The appreciation of evidence by the trial Court that the respondent Nos.2 and 3 had not cheated the applicant by impersonating Vinod Kumar for getting transferred the above properties in their names, does not require any interference by this Court. The dispute was of civil nature, therefore, it was proper for the applicant to approach the Civil Court.

In view of the aforesaid discussion, we find no force in the prayer made in the application 378(4) CrPC for grant of leave to appeal against the judgment of acquittal dated July 31, 2014 passed by the learned Judicial Magistrate Ist Class, Hisar and accordingly, it is rejected. Leave to appeal is declined.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 14,2016
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