

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1649-MA of 2015 (O&M)
Date of decision: February 25, 2016

Amritsar Development Authority

...Applicant

Versus

Harbhajan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kushagra Mahajan, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.32119 of 2015

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 149 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-1649-MA of 2015

Applicant-Amritsar Development Authority has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Harbhajan Singh, challenging the impugned judgment dated 13.02.2015 passed by learned Judicial Magistrate Ist Class, Amritsar, whereby the accused-respondent was acquitted.

It is mainly stated in the application that accompanying

appeal is likely to succeed on the grounds taken therein. It is further stated that impugned judgment is against the law, facts and injustice having been done to the applicant. The impugned judgment is not based on a complete or comprehensive appreciation of all the features of the case. It is, therefore, prayed that leave to file appeal be granted.

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

As per the record, the complainant Amritsar Development Authority filed a complaint against accused Gurbax Singh, Harbhajan Singh, Swaran Kuar, Gurcharan Singh and Nirmal Singh under Section 36 read with Sections 3, 5, 8, 9, 14(2), 15, 18 and 21 of the Punjab Apartment and Property Regulation Act, 1955 and section 120-B IPC. As per complainant's version, accused persons being the owner of land as described in the complaint, have set up a colony by dividing the aforesaid land into plots which is more than 1000 sq. meter in connivance with each other without obtaining any certificate of registration as promoter and even have not submitted any application along with requisite fee for registration as promoter as required under the provisions of the Act and as such they have committed offence under aforesaid Sections.

After appreciating the evidence, learned Judicial Magistrate Ist Class, Amritsar, acquitted the accused-respondent vide impugned judgment dated 13.02.2015.

The perusal of the impugned judgment shows that it is

held by learned JMIC, Amritsar that complainant has only placed on record jamabandi as Ex.P1, in which the mutations with respect to the sale of the land by the accused persons in favour of different persons have been mentioned. Learned Magistrate, while appreciating the evidence held that no cogent documentary evidence has been produced. No site plan has been placed on record to show that colony has been developed. No photographs have been placed on record. No certified copies of sale deeds have been obtained and placed on record. The photocopies of sale deeds cannot be read into evidence. The Court also held that no documentary evidence has come on the record in support of the averments of the complaint that the land has been sold in plots to various persons to set up a colony.

Learned Magistrate further held that CW-1 Satwinder Singh stepped into the witness box and admitted that he has not brought any document showing the powers given to him in the year 2007. He came to know the fact of division of the land in field survey. He has not maintained any field book in the department regarding his field survey. No entry regarding the field survey is made in any register. When he visited the plots, some plots have already been sold and some were in the process of being sold. He further stated that he cannot tell the number of pots which had already been sold nor he can tell which were under sale. He made enquiries from the neighbours of the land, who told him that the owners are preparing road. CW-2 Dwarka Dass had admitted in his cross-examination that he has never met with the vendees, whose names are mentioned in the complaint.

I have gone through the impugned judgment. In no way, the findings can be held as perverse. Rather, the findings have been given while appreciating the evidence in right perspective. The findings given by learned Court below are correct and as per law. There is nothing on the record that any material evidence has been misread nor there is anything to show that any material evidence has not been considered by the Court below.

In view of the above discussion, I find that the impugned judgment dated 13.02.2015 passed by learned JMJC, Amritsar, 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.

February 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE