

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

CRM No.A-1608-MA of 2014 (O&M)

Date of decision: August 11, 2016

Iqbal @ Bale Shah

...Applicant

Versus

Banarsi Lal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Manjeet Kaur, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Iqbal @ Bale Shah has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Banarsi Lal and Jaswant Singh Patwari, challenging the impugned judgment dated 31.07.2014 passed by learned Judicial Magistrate Ist Class, Batala, whereby the accused-respondents were acquitted.

It is mainly stated in the applications that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that the impugned judgment passed by learned JMIC, Batala, is contrary to facts and evidence on the record. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Iqbal @ Bale Shah filed a complaint against accused Banarsi Lal and Jaswant Singh Patwari under

Sections 420, 467, 468, 471 read with Section 34 IPC. The brief facts of the

case as noted down in the judgment passed by learned JMIC, Batala, are as under:-

“The complainant has filed this complaint against the accused under Sections 420/467/468/471 read with Section 34 of Indian Penal Code on the facts that complainant is permanent resident of village Chatha, Tehsil Batala and serving the Khangah known as “Baba Karim Shah” at village Chatha. Said Khangah known as “Baba Karim Shah” exists in the land measuring 3 kanals 7 marlas bearing khasra no.57 khewat no.105 khatauni no.220 and the entries of khasra girdawari in respect of said land was in the name of grandfather of the complainant who has since expired. Banarsi Lal filed a civil suit No.10 dated 20.04.2004 for permanent injunction against the complainant, his father Baba Hans Raj and brother Dilbagh Singh was dismissed as withdrawn on 26.05.2004. In the said case the accused no.1 filed the jamabandi for the year 1999-2000 in which the entry of the order of A.C.I.G., Batala vide rapat no.396 dated 27.07.2002 of proceedings of possession in respect of patta no.16884 dated 15.03.2004 of khasra no.56 area 3 kanal 7 marla in favour of Banarsi Shah son of Hadayat Shah is entered by accused no.2. The complainant filed an application under order 11 rule 14 CPC dated 18.05.2004 in the said civil suit for production of original order passed by the Assistant Collector Ist Grade, Batala vide rapat no.396 dated 25.07.2002 in the proceedings of possession of patta no.16854 in respect of khasra no.56, area 3 kanal 7 marlas in the case. On the next date fixed in the said civil suit, the accused no.1 produced the copy of rapat no.396 of proceedings of possession dated 22.07.2000. It is submitted that vide rapat no.396 only demarcation was effected and no warrant of possession was ever issued by any court. In the said document produced by accused no.1 in the civil suit the name of Balkar Singh Patwari mentioned while during that period Balkar Singh Patwari was not posted in the said circle and accused no.2 Jaswant Singh Patwari who was appointed at that time in the said circle, with common intention of each other, have prepared a false document to cheat and to cause loss to the complainant and to gain benefit to themselves. Accused no.2 has made wrong entries in the revenue document and entries are without order of any competent revenue official. Balkar Singh Patwari never visited the village of complainant to deliver the possession of land. It was prayed that accused be summoned under relevant sections of law and punished accordingly.”

Learned JMIC, Batala, after appreciating the evidence on

record, acquitted the accused-respondents vide impugned judgment dated

31.07.2014..

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

At the time of arguments, nothing has been pointed out as to how the findings given by learned Magistrate are perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings given by learned Court below are illegal.

The perusal of the findings show that there is no cogent evidence or in other words, direct evidence that as to who did cutting in the revenue record. There is no expert report to prove the handwriting nor any witness has been produced, who has seen the accused doing the cutting in the record. It is in the cross-examination of the complainant that he has seen the revenue record, which is correctly coming in name of correct person i.e. Hadayat Shah. He also admitted that now Banarsi Shah (accused No.1) is coming in cultivating possession of the suit land, who is son of Hadayat Shah. Even the complainant failed to show that what right he was having with the land in question as he has failed to produce on record any document in this respect. He also stated that on 03.07.1989, Hadayat Shah had given Gaddi to Banarsi Shah through Rasam Pagri. He even admitted that Banarsi Shah got the Patta of land in question from Wakf Board. CW-2 Sukhjinder Singh, Patwari, deposed that possession was delivered with the orders of Tehsildar/A.C. Ist Grade. In his cross-examination, he stated that as per record produced by him, there is no cutting in his record. As per the record, demarcation was conducted by Halqa Patwari and Halqa Girdawar.

He also stated that in roznamcha the order of patwari are not usually attached. In these circumstances, learned Magistrate acquitted the accused-respondents.

The perusal of the findings given by learned Court below shows that these have been given while appreciating the evidence on record in right perspective. In no way, the findings can be held as perverse. The impugned judgment dated 31.07.2014 passed by learned JMIC, Batala is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

August 11, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No