

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1836-MA of 2014

.....

Date of decision:14.1.2016

Prem Singh

...Applicant

v.

Sunita Rani and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rakesh Gupta, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.PC. against Sunita Rani etc.- respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 13.10.2014 passed by learned Judicial Magistrate Ist Class, Nabha, whereby the complaint filed under Section 3 of Prevention of Damage to Public Property Act, 1984 (hereinafter referred to as 'the Act') and under Sections 406, 379 and 120-B IPC has been dismissed.

It is submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It is further stated that the present appeal is directed against the order and judgment dated 13.10.2014 passed by Judicial Magistrate Ist Class Nabha vide which the accused/respondents have been acquitted of charges under Section 3 of the

Act and under Sections 406, 379 and 120-B IPC. It is further stated that the order passed by the learned Judicial Magistrate Ist Class, Nabha acquitting the respondents is contrary to facts and evidence on record.

I have heard learned counsel for the applicant and have gone through the record, specially the judgment dated 13.10.2014.

From the record, I find that the complainant-Prem Singh filed complaint against Sunita Rani, Ram, Singh, Kaka Singh, Karamjit Kaur, Harbans Singh and Prem Singh for the offences under Section 3 of the Act and under Sections 406, 379 and 120-B IPC. It is stated in the complaint that there were trees of `Tahli, Toot and Kikkar and Ex-Sarpanch Sunita Rani in connivance with other persons made a theft of 10 Tahli trees, 2 Toot trees and 2 Kikkar trees and after selling the same, misappropriated their proceeds. The complainant and other persons had stopped Sarpanch Sunita Rani and asked her if she had taken permission from the concerned department and she showed them some documents and told that the trees were being uprooted as per law and the money derived from the same would be spent on the welfare of the village. It is also stated that the said trees were 25-30 years old and their market value was more than ₹1.50 Lakhs and she had not done any work for the welfare of the village nor she cleared the accounts regarding the sale of trees and on enquiry by the complainant, it was found that the above Ex-Sarpanch in connivance with her other accomplices illegally uprooted and committed theft and sold the above mentioned trees by preparing false and fabricated documents and misappropriated the same and the amount was not spent on welfare of

village.

The learned Judicial Magistrate Ist Class, Nabha, after appreciating the evidence acquitted all the accused of the charges framed against them. The learned trial Court observed that the main allegations against the accused persons are that they have cut down the trees standing on the Panchayati land comprising in Khasra Nos.271, 272 and 386 and had sold the same and misappropriated their proceeds and in order to prove these allegations against the accused persons, the complainant was required to prove firstly, the existence of those trees on the aforesaid land, but from the evidence on record, it appears that the complainant has failed to prove that very fact beyond reasonable doubt, so the accused persons cannot be held guilty for the theft of those alleged trees or for the misappropriation of their sale proceeds. The contention of the learned counsel for the complainant was not held as convincing because no doubt said Jamabandi had been placed on record, but same does not contain any entry showing that the trees allegedly cut down from Khasra Nos.271, 272 and 386 were ever existing in those Khasra numbers. Rather, in Jamabandi Ex.C.1 Khasra Numbers 271 and 272 have been shown as 'Banjar Kadeem' and Khasra No.386 has been shown as 'Gair Mumkin Toba' i.e. 'Gair Mumkin' pond. The Court also held that the reports of BDPO as well as ADC, which are placed on record, cannot be read into evidence. The BDPO as well as ADC have not appeared in the Court to prove these reports. The order of Director, Rural Development and Panchayat Department relying upon the report of ADC was also not relied upon as this report has not been proved as

per Evidence Act. The Court rightly held that the accused have been deprived of the right to cross-examine the witnesses. The Court further held that no demarcation report has been proved to show from which land these trees were uprooted.

Keeping in view the findings given by the learned Judicial Magistrate Ist Class in the judgment dated 13.10.2014, I find that the findings given by the learned trial Court are correct, as per evidence and law and no interference is required from this Court. Nothing has been pointed out at the time of arguments as to which material evidence has been misread and which material evidence has not been considered by the Court in right perspective. Nothing has been pointed out as to how the findings given by the learned Judicial Magistrate Ist Class, Nabha, are perverse.

Therefore, I do not find any ground to grant leave to file appeal. Hence, finding no merit, the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

January 14, 2016.

(Inderjit Singh)
Judge

hsp