

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1919-MA of 2014 (O&M)

Date of decision: May 05, 2016

Nirvair Singh

...Applicant

Versus

Takdir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.Arya, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Nirvair Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Takdir Singh and other respondents, challenging the impugned judgment dated 19.09.2014 passed by learned Sub Divisional Judicial Magistrate, Batala, whereby the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that impugned judgment dated 19.09.2014 is liable to be set aside being based on conjectures and surmises and non-appreciating of material evidence available on record. The detailed facts have been mentioned in the application. It is also stated if the leave is not granted, then the applicant will suffer irreparable loss. It is, therefore, prayed that leave to appeal be granted.

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

From the record, I find that Nirvair Singh complainant filed the complaint against Takdir Singh, his real brother, Jasbir Singh Bedi, Bank Manager and Lajwant Masih, Halqa Patwari under Sections 420 and 34 IPC. The brief facts of the case as noted down in the judgment passed by learned SDJM, Batala, are as under:-

*"The present complaint has been filed by Nirvair Singh under Sections 420, 34 of Indian Penal Code on the allegations that complainant is an Ex-Army Personnel and is a marginal farmer having small ancestral land and he has five brothers. Accused Takdir Singh is youngest one and he has a habit of cheating the family members but the complainant believes in doing right things and he also supports the truth. At the time of consolidation, there was a sufficient Govt. land known as Central Govt. Land and out of some allottees of this land, some persons had not come to village Nabi Nagar for claiming their land. Out of this land, khasra number 24R/24 and 25, Khewat Khatauni No.98/219 (total 14-15) was **Banjar Qadim** and the complainant and his entire family changed the nature of the land by making it cultivable. The land was divided into six shares i.e. 2½ kanals each till the consolidation uptil now. The allottee of the land i.e. Balwant Singh son of Hira Singh has not come so far and it is not known as to whether he is alive or not. In the year 1994, accused No.1 in connivance with the witnesses as well as revenue officials committed impersonation and cheating and prepared a forged and fabricated sale deed relating to this land and transferred it into his name. Regarding this, a criminal case under Sections 420, 467, 468, 471, 34 IPC. FIR No.94/98 dated 10.09.1998 at Police station Dera Baba Nanak was also registered on behalf of complainant. He lodged a separate report with the Higher Authority for cancellation of the said sale deed as well as mutation. Out of khasra number 24R/24 and 25, the land measuring 2½ kanal was given to complainant for cultivation and for legal purpose by a duly attested affidavit datd 20.09.2003 and the complainant is in possession of the land from the last more than 20 years. On 19.01.1999, accused No.1 illegally damaged the wheat crops of the complainant and also filed a false complaint. Now, he has come to know*

that accused No.1 has taken a loan of ₹80,000/- from accused No.2 Primary Co-Operative Agriculture Bank Development Dera Baba Nanak. He immediately approached the Halqa Patwari and procured copy of Jamabandi for the year 2001-02 and 1996-97, from which it is clear that he got the said land illegally and unlawfully. When the complainant approached the accused for doing said omission, they could not give any satisfactory reply, so they shall be summoned to face trial for causing wrongful loss to Takdir Singh on the basis of false sale deed dated December 2014 and for destroying the wheat crops regarding which a compromise was effected on 29.01.1999, in which he admitted that he will not interfere into 2½ kanal land of complainant.

Learned SDJM, Batala, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 19.09.2014.

I have gone through the judgment dated 19.09.2014 passed by learned SDJM, Batala. I find that that the findings given by learned Magistrate are correct, as per evidence and law. In no way, the findings can be held as perverse i.e. against the evidence and law. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court below.

Learned Magistrate, after discussing the evidence held that present case has been filed on the allegation that from the year 1996-97 to 2001-02, accused Takdir Sigh took a loan of ₹80,000/- from accused No.2 Jasbir Singh Bedi on the land belonging to Govt. on the basis of forged sale deed. The Court held that no effort was made by the complainant to summon the witnesses from the bank and to produce loan documents in the Court from where it can be inferred

that loan has been rightly or wrongly sanctioned in favour of accused No.1. The copy of the sale deed has also not been produced on record and merely a Jamabandi showing the entry of the sale deed does not prove that sale deed is forged and fabricated. Next, the allegation is that accused damaged his standing wheat crop but no document has been placed on the record that wheat crop was sown by the complainant in the land belonging to Central Government nor the girdawari proves the possession of the complainant. The Court also held that the complainant has not proved on record the copy of any application, which he gave to accused Lajwant Masih for supplying him the copy of jamabandi. The Court further held that only complainant and his brother have been examined and no independent witness has been examined.

Furthermore, from the record, I find that regarding sale deed of the Government land, the FIR was already registered bearing No.94/98 dated 10.09.1998 by Police Station Dera Baba Nanak and regarding that, again complaint cannot be filed. As regarding the damage to the wheat crop, I find that the wheat crop was stated to be damaged on 19.01.1999, whereas the complaint has been filed on 04.01.2005 i.e. after delay of about six years.

In view of the above discussion, I find that the findings have been given by learned SDJM, Batala, while appreciating the evidence in right perspective. The impugned judgment dated 19.09.2014 passed by learned SDJM, Batala, 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.

May 05, 2016
Vgulati

(INDERJIT SINGH)
JUDGE