

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-533-MA-2015 (O&M)

Date of decision: 18.03.2016

Ranbir Mehta

..... Applicant

Versus

Suman Kumar and others

..... Respondents

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

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Lovkesh Gupta, Advocate
for the applicant.

RAMENDRA JAIN, J.

CRM-10544-2015

Sufficient cause has been shown to condone the delay in filing the application for grant of special leave to appeal.

Therefore, the application is accepted. The delay of 1366 days in filing the accompanying application under Section 378 (4) Cr.P.C. is condoned.

CRM-A-533-MA-2015

The instant application has been filed by the applicant for setting aside the impugned judgment dated 17.03.2011, passed by the learned Judicial Magistrate Ist Class, Jalandhar, acquitting the respondents.

2. Briefly stated, in the year 1995, the applicant-complainant entered into an agreement to sell with respondent No. 1-Suman Kumar for sale of land measuring 3 Kanal and 404 Sq. Yards. Out of the entire agreed sale consideration of ₹ 9,10,000/-, ₹ 1,10,000/- was paid in cash and the remaining ₹ 7,00,000/- through various cheques. The balance sale consideration of ₹ 1,00,000/- was to be paid at the time of execution and registration of the sale deed on 30.05.1995. Simultaneously, the applicant-complainant had executed a registered general attorney bearing dated 24.04.1995 in favour of respondent No. 1, authorizing him to sell some specific portion of his land. However, respondent No. 1 in connivance with the remaining respondents under the garb of said attorney fraudulently and illegally sold excess area of the land of applicant-complainant. Since, respondent No. 1 had failed to fulfill his part of contract, therefore, the applicant-complainant as per default clause in the agreement forfeited the earnest money.

3. On the above complaint, a case under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code (IPC) was registered against the respondents. However, after completion of investigation, the police submitted cancellation report. Upon notice of the same to the applicant-complainant, he filed a protest petition. Consequently, the cancellation report was rejected and the case was treated as a complaint case. The respondents were summoned and put to trial.

4. After scanning the evidence brought on record and hearing learned counsel for both the sides, the learned trial Court did not find itself with the side of the applicant-complainant and thus, acquitted all

the respondents vide the impugned judgment.

5. Learned counsel for the applicant-complainant contended that the impugned judgment is based on surmises and conjectures. The learned trial Court has failed to appreciate that the general attorney given to respondent No. 1 by the applicant-complainant was qua western side of the land i.e. adjacent to plot No. 3, but respondent No. 1 sold the plots from the land of applicant-complainant falling on the eastern side.

6. After giving our thoughtful consideration to the submissions made by learned counsel for the applicant-complainant, we find no merit in the instant application for the reasons to follow.

- (i) The matter in dispute between the parties is purely of civil nature. A person cannot be vexed twice for the same cause of action. Admittedly, civil litigation is already been pending between the parties for the same dispute.
- (ii) Admittedly, the applicant-complainant had given registered general attorney to respondent No. 1. Undisputedly, at the time of sale transactions between respondent No. 1 and respondents No. 2 to 4, the said general attorney was in force. Hence, the matter in dispute requires appreciation of evidence which can only be done by the Civil Court.
- (iii) In criminal jurisprudence, a fact has to be proved beyond any reasonable shadow of doubt. In the instant case, the applicant-complainant has miserably failed to

lead any definite evidence about the alleged
commission of crime by the respondents.

7. We have carefully gone through the impugned judgment and
find no illegality or perversity in the same.

8. In view of the above discussion, the instant application being
completely devoid of any merit is dismissed. Special leave to appeal is
declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 18, 2016
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