

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-537-MA of 2015 (O&M)
Date of decision: February 18, 2016

Om Parkash

...Applicant

Versus

Kamal Phool Sharma and another

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.C.Shahpuri, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Om Parkash has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Kamal Phool Sharma and State of Haryana, challenging the impugned judgment dated 22.01.2015 passed by learned Chief Judicial Magistrate, Yamuna Nagar at Jagadhri, 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 learned CJM, Yamuna Nagar at Jagadhri has committed a grave error of law while acquitting the respondent-accused by holding that the applicant had failed to prove the case beyond the shadow of reasonable doubt. 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 Om Parkash filed a complaint against accused Punita Sharma and Kamal Phool Sharma under Sections 363, 361, 384, 420, 464, 467, 468, 471, 201, 193, 196, 199, 203 and 34 IPC. As per complainant's version, he is permanent resident of village Adhoya and is married with accused No.1 Punita Sharma on 02.12.1996. Out of this wedlock, two sons were born. It is further stated that from the very beginning, the relations of the parties were strained due to irresponsible and irregular behaviour of accused No.1. Accused No.1 was not interested in continuing matrimonial life with the complainant, which forced the complainant to file a divorce petition at Ambala and in counter blast, accused No.1 got registered an FIR No.161 dated 04.05.2005 under Sections 498-A and 406 IPC registered at Police Station Farakpur. It is also stated that later on a compromise was effected in Panchayat and accused No.1 withdrew her case. As per compromise, it was decided that the complainant and accused No.1 would take on rent one house and would reside there. They also got admitted both the children in MLN Senior Secondary School, Yamuna Nagar. In the FIR, accused No.1 had alleged that the passport of accused No.1 and the children are with the complainant. It is also stated in the complaint that on 23.06.2005, complainant had gone to his ancestral village and on his return, found the house locked and accused No.1 was missing from the house along with children. The complainant enquired from

his father-in-law accused No.2, but found no reply as his house was also locked. Later one, after one day, accused No.2 told the complainant that accused No.1 along with her children had gone to Roorkee and would come back on next day but she never returned. Accused No.2 kept on concealing the true facts and never presented the true picture regarding his wife. The complainant was never aware of the fact that accused No.1 had made false representation of the fact that original passports had been lost by her. She also got lodged the DDR by filing the false affidavit. Accused No.1 on the basis of misrepresentation, managed to get duplicate passport from the authorities and also managed to get Visa from the Spain Embassy. It is alleged that accused No.1 in connivance and conspiracy with accused No.2 has illegally taken away the minor children.

After appreciating the evidence, learned CJM, Yamuna Nagar at Jagadhri, acquitted the accused-respondent vide impugned judgment dated 22.01.2015.

The perusal of the record shows that the findings given by learned Court below are correct, as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed as to which material evidence has been misread or which material evidence has not been considered by the Court below. It is case of matrimonial dispute and on the face of it, no offence is made out against the accused. The complainant has failed to prove any of the offence committed by the accused, by leading cogent evidence. The complainant has nowhere stated that passports were lying with him.

Even if it is taken that the passports are lying with the complainant and have not been given to accused No.1, even then, no offence of cheating or false representation is made out.

From the above facts, I find that the complaint has been filed only with the motive to harass the accused there being matrimonial dispute between the parties.

In view of the above discussion, I find that the findings given by learned CJM, Yamuna Nagar at Jagadhri, are correct, as per evidence and law. In no way, the findings given by learned Court below, can be held as perverse. The impugned judgment dated 22.01.2015 passed by learned CJM, Yamuna Nagar at Jagadhri, 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 18, 2016
Vgulati

(INDERJIT SINGH)
JUDGE