

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-925-MA of 2014

.....

Date of decision:22.1.2016

Mariyam

...Applicant

v.

Sirajuddin

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Surinder Dagar, 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.P.C. against Sirajuddin-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 28.3.2014 passed by learned Judicial Magistrate Ist Class, Ferozepur Jhirka, vide which the complaint filed under Sections 420, 468, 471 and 120-B IPC has been dismissed.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 28.3.2014 passed by learned Judicial Magistrate Ist Class, Ferozepur Jhirka, which is likely to succeed on the grounds mentioned therein. It is stated that the learned trial Court without going through the facts of the case carefully and law

applicable to the present case and without considering the evidence of the applicant acquitted the respondent/accused. The judgment of acquittal is based upon conjectures and surmises and hence is liable to be set aside. Therefore, it has been prayed that the leave to file appeal be granted and the appeal be heard on merits in the interest of justice.

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

The brief facts of the case are that Mariyam-complainant filed a complaint for the offences under Sections 420, 468, 471 and 120-B IPC against Sirajuddin, Usman and Shyam Prakash. It is stated in the complaint that she wanted to open a shop for her son-Islam and hence, entered into an agreement for sale of her land for ₹1,45,000/- on 12.8.2004 with accused No.1-Sirajuddin. The agreement was scribed by Shyam Prakash, Deed Writer. At the time of agreement, ₹15,000/- were given as earnest money. The complainant approached accused No.1 on 23.5.2005 stating that she was in need of some money, so she requested him to advance ₹50,000/- out of balance sale consideration. The accused informed her that he was supposed to pay ₹30,000/- as balance sale consideration since the agreement to sell was for ₹45,000/- out of which ₹15,000/- had already been paid as earnest money. On hearing this, the complainant was shocked as she agreed to sell her land for ₹1,45,000/-, thus, she has been cheated by the accused and filed the present complaint.

After appreciating the preliminary evidence, the learned trial Court only summoned accused Sirajuddin for the offence under Section 420

IPC and complaint qua accused Nos.2 and 3 was dismissed by the then Sub Divisional Judicial Magistrate, Ferozepur Jhirka, vide order dated 3.3.2007.

After pre-charge evidence *prima facie* case under section 420 IPC was made out and accordingly he was charge-sheeted, but the accused pleaded not guilty and claimed trial.

The learned Judicial Magistrate Ist Class, Ferozepur Jhirka, after discussing the evidence acquitted the accused.

I have gone through the record specially the judgment dated 28.3.2014 passed by the learned Judicial Magistrate Ist Class, Ferozepur Jhirka. A perusal of the judgment shows that the findings given by the learned Judicial Magistrate Ist Class are correct, as per evidence and law. The evidence has been appreciated in right perspective. At the time of arguments, nothing has been pointed out as to why the findings given by the learned Judicial Magistrate Ist Class, Ferozepur Jhirka, are perverse i.e. against the evidence or law. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court in right perspective. A perusal of the findings shows that in the written agreement to sell (Ex.C.3/Ex.D.4), which was executed by complainant-Mariyam, an amount of ₹45,000/- had been written in figures as well as in words and similarly the half amount of ₹22,500/- had been written there. There is no over-writing, cutting or correction in the amount mentioned in the agreement. Stamp papers, on which this agreement was written, were also purchased by the complainant herself. Photograph and thumb impression over the same

were not disputed by the complainant. The learned Judicial Magistrate Ist Class, Ferozepur Jhirka, also held that this agreement was scribed by Shyam Prakash, Deed Writer in the presence of both the parties and their witnesses and the entry had been made in his register maintained in regular course of business. The complaint had already been dismissed against the Deed Writer and the attesting witnesses at the summoning stage. The Court below further found that as per Jamabandi Ex.C.4, this land measuring three Kanals had been shown as *Dehri*. The Court also perused the Collector rate for the year 2004-05 at Sub Tehsil Nagina, where market rate for *Dehri* land is mentioned ₹1,20,000/- per acre, meaning thereby as per Collector rate market value of 3 Kanals land is near about ₹50,000/-. The Court below further held that as per the copies of the sale deeds Mark-C and Mark-D, upon which reliance had been placed by the complainant, there also 8 Kanals land was sold against a sale consideration of ₹1,50,000/- and ₹1,80,000/- respectively, which also shows that the rate of 3 Kanals of land cannot be ₹1,45,000/-. These findings given by the learned Judicial Magistrate Ist Class, Ferozepur Jhirka, are correct, as per evidence and law which do not require any interference from this Court.

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

January 22, 2016.

(Inderjit Singh)
Judge

hsp