

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.A-315-MA of 2013 (O&M)

Date of decision: May 02, 2017

Harphool Singh

...Applicant

Versus

Balram Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sudhir Aggarwal, Advocate
for the applicant.

None for the respondent.

INDERJIT SINGH, J.

Applicant-Harphool Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Balram Singh, challenging the judgment dated 05.10.2012 passed by learned Judicial Magistrate Ist Class, Gurgaon, whereby the accused-respondent was 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, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Harphool Singh filed a complaint against accused Balram Singh under Section 138 of the Negotiable Instruments Act and under Sections 406 and 420 IPC. As per

complainant's version, he had purchased a plot 25x40 ft. measuring 111 sq.

yards situated at Basai Enclave Basai from one Shri Rambir, for a valuable sale consideration. The General Power of Attorney and agreement to sell were executed at that time in favour of the complainant. Accused wanted to purchase above-said plot from the complainant and in pursuance of which, he paid ₹5,50,000/- in cash to the complainant and issued a cheque bearing No.049469 dated 17.01.2010 amounting to ₹5,60,000/- in favour of the complainant. On this, the complainant handed over to accused; the original registry of the plot, GPA, agreement to sell, Will, possession letter and receipt of full and final payment issued by Rambir in favour of the complainant, in the presence of witness namely Shiv Kumar. When the complainant presented the cheque for encashment, it was returned back with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The accused denied all the allegations in the statement under Section 313 Cr.P.C. He further stated that complainant in collusion with real owner of the plot, has sold the plot to someone else. In defence, accused examined DW-1 Ashok Kumar, ARC to Sub-Registrar, who proved the sale deed of said plot, as Ex.DW1/A. Accused examined himself as DW-2 and deposed that he has already given about ₹8 lakhs to the complainant but till date, has not got the ownership and possession of the plot. He further stated that complainant and Rambir have already sold the plot in question to someone else and cheated him. Accused also deposed that complainant has promised him that he will return the cheque and on this pretext, he made him witness in the sale deed of the plot.

Learned JMIC, Gurgaon, after appreciating the evidence,

impugned judgment dated 05.10.2012.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Notice of motion was issued. Earlier, learned counsel for the respondent appeared but later on and today also, none appeared on behalf of the respondent.

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

The perusal of the findings given by learned Magistrate shows that the findings have been given as per evidence and law. Nothing has been argued as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings given by the Court below are perverse or against the evidence or law. The findings have been given after appreciating the evidence in right perspective

Learned Magistrate after appreciating the evidence held that to prove the liability of the accused, the complainant had presented only copy of agreement to sell Ex.C1 and General Power of Attorney Ex.C2. As per complainant, he has sold the plot to accused in lieu of ₹11,10,000/- out of which, he received ₹5,50,000/- at that time and cheque of ₹5,60,000/- but in cross-examination, he himself admitted that there is no date on the agreement to sell. He also admitted that he received different amount from accused time to time. He admitted that he has received ₹1,50,000/- on 07.10.2009 as per Ex.CW1/E. He further stated that he received ₹50,000/- on one occasion and ₹1 lakh on another. Thus, as per his own statement, he

has already received more than ₹7 lakhs from the accused. In cross-

examination, the complainant further admitted that he was in possession of the concerned plot.

Learned Magistrate further held that from the perusal of statement of Ex.DW1 and Ex.DW1/A, it is clear that plot has been sold and has been registered vide sale deed dated 20.11.2009 by Rambir in the name of one Smt.Jagwati Yadav wife of Panna Lal Yadav, for a consideration of ₹5,67,000/-. It is also held that while reading Ex.C3 along with Ex.DW1/A, it is clear that plot has already been sold on the date of issuance of the cheque in question. Learned trial Court held that there is nothing to show that for which transaction, the cheque in question has been received by the complainant because the plot in question has already been sold to someone else.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective. In no way, the judgment can be held as perverse or against the evidence. .

In view of the above discussion, I find that the impugned judgment dated 05.10.2012 passed by learned JMIC, Gurgaon, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

May 02, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No