

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A No.625-MA of 2013 (O&M)

Date of decision : 27.11.2017

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Hanuman

.....Appellant

vs.

Bhup Singh

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Vikas Kumar, Advocate for the applicant-appellant

Mr. Subhash Godara, Advocate for the respondent.

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H. S. Madaan, J.

Complainant Hanuman, President Bishnoi Sabha, Hisar, had brought a complaint under Sections 406, 408, 420, 467, 468, 471 and 120-B IPC, against accused Sahi Ram Dudi and Bhup Singh, Secretary, Bishnoi Sabha, Hisar, on the allegations that Bishnoi Sabha, Hisar is a registered society; that land measuring 18561 square yards was purchased in the name of Bishnoi Sabha, Mukam, for the purpose of construction of an Ashram to provide facilities to the visitors coming to attend two festivals at Mukam in a year, in which

lacs of people belonging to Bishnoi community participate; that as per bye laws of the Sabha no portion of the property in the name of Bishnoi Sabha can be sold or transferred to any other person or for that matter used for any other purpose. However, Sahi Ram, claiming himself to be the President of Bishnoi Sabha had sold 3272 square feet of the land to Smt. Jasma Devi, wife of Chaudhary Bhajan Lal, for a sum of Rs.1,16,000/- vide sale deed dated 9.2.2005 and it is specifically mentioned in the sale deed that an amount of Rs.1,16,000/- had been received by Sahi Ram. As per allegation in the complaint, actually Sahi Ram was not President of Bishnoi Sabha, since he was not elected by any general body and had no right to sell or transfer the land of Bishnoi Sabha to any person; that on 22.7.2005 a receipt No. 8831, book No. 89, was issued in the name of Jasma Devi in the sum of Rs. 51,000/- but in cash book of Sabha, the amount had been shown to be deposited on 19.4.2006, at Serial No. 20, vide receipt No. 8831, whereas on the previous entries the serial number running is 10451 onwards and the said amount was shown to be deposited in the bank on 22.7.2005; that Sahi Ram, President in connivance with Bhup Singh, Secretary of the Sabha had sold the land of Sabha, without permission and consent of Sabha, in the sum of Rs. 1,16,000/- , but in the cash book this amount has been shown to be Rs.51,000/- and the remaining amount has been embezzled by Sahi Ram and Bhup Singh, Secretary, in connivance with each other by preparing forged record, therefore, they be summoned.

During the course of preliminary evidence complainant got his own statement recorded as PW1 besides examining PW-2

Puran, Clerk, PW-3 Krishan Dev. He tendered several documents in evidence. After hearing arguments advanced by learned counsel for the complainant, the complaint was dismissed by the trial Magistrate vide order dated 14.12.2006.

Feeling aggrieved, the complainant preferred a revision petition, which was allowed by the Additional Sessions Judge, Hisar, vide judgment dated 14.11.2008. Resultantly, the impugned order dated 14.12.2006, was set aside and the trial Court was directed to reconsider and re-appreciate the evidence produced on record by the complainant and then dispose of the matter in accordance with law.

The Chief Judicial Magistrate, Hisar, summoned both the accused for commission of offences punishable under Sections 406, 120-B IPC, vide order dated 20.4.2010. The case was fixed for pre-charge evidence of complainant, during the course of which complainant appeared as PW-1 and in addition to that examined Puran Singh as PW2 and Krishan Dev as PW3. Thereafter, his pre-charge evidence was closed. Finding that prima facie charge for offences under Section 406 read with Section 120-B IPC was disclosed, the accused were charge sheeted accordingly, to which they pleaded not guilty and claimed trial. In after-charge evidence, the accused further cross examined PW1 Hanuman Singh, PW-3 Krishan Dev.

Statements of the accused were recorded under Section 313 Cr.P.C. and all the incriminating evidence circumstances appearing against them was put to them, to which they denied and pleaded innocence and false implication.

Sahi Ram accused had expired on 12.4.2013. His death certificate Exhibit D1 was placed on file, as such proceedings against him stood abated.

No evidence was lead in defence.

After hearing arguments, Judicial Magistrate Ist Class, Hisar, vide its judgment dated 11.6.2013, acquitted the accused of the charge framed against him. The operative part of the judgment which contains the reasoning by the trial Magistrate for acquittal of the accused as as follows:-

“PW1 Hanuman has supported his complaint in his examination in chief. He has deposed that accused Bhoop Singh and Sahi Ram on account of forged documents shown an amount of Rs.51,000/- in account of Bishnoi Sabha. The receipt was given by Bhoop Singh. In his cross examination, he has denied the suggestion that case has been false instituted due to polITICAL rivalry with accused. PW2 Puran Singh has brought the summoned record. According to record Ex.PW2/A Rs.51,000/- have been shown deposited on 23.7.2005 in account, PW3 Krishan Dev has supported the evidence of PW1 Hanuman. He has brought cash book copy of which Ex.PW3/B, according to the entry the money deposited on 22.7.2005 is bearing different receipt number than of receipts which are in continuation. In his cross

examination he has also denied the suggestion that on 16.7.2006 the record was taken in possession forcefully and forgery was committed at that time by them. He has been further cross examined as PW2 in after charge evidence where he denied the suggestion that the case has been filed falsely due to political rivalry.”

Feeling aggrieved by the said judgment, complainant has filed an application under Section 378(4) Cr.P.C. for grant of leave to appeal, notice of which was given to accused Bhup Singh, who put in appearance.

I have heard learned counsel for the parties, besides going through the record of the case.

Learned counsel for the appellant has contended that accused Bhup Singh, in conspiracy with accused Sahi Ram (since deceased) has committed embezzlement, besides forgery of record, which was duly proved on file, but the trial Magistrate wrongly acquitted the accused and that wrong be undone and the accused be convicted and sentenced.

Whereas learned counsel appearing for respondent Bhup Singh has contended that sale deed had in fact been executed by Sahi Ram, who had received the consideration amount. Bhup Singh was only office Secretary and that money was deposited with him and he had issued a receipt and made entry in the record. He was not part of any conspiracy, therefore, he was rightly acquitted by the trial Magistrate.

After hearing the rival contentions, I find that the complainant had failed to establish on record that accused Bhup Singh had any prior meeting of mind with Sahi Ram to commit criminal offence of criminal breach of trust or forgery on record. Furthermore, since it was Sahi Ram who had received the money at the time of execution of sale deed, criminal breach of trust, if any, might have been committed by him and for want of entrustment, there was no occasion for Bhup Singh to commit criminal breach of trust in respect of any money belonging to Bishnoi society.

The judgment passed by the trial Magistrate is well reasoned one, based on proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. No ground is made out to upset the said judgment.

There is no ground to grant leave to appeal. The application is without any merit and is dismissed accordingly.

(H.S. Madaan)
Judge

27.11.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No