

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRM-A-207-MA of 2016**

DATE OF DECISION: JANUARY 30, 2017

NARINDER SINGH (DECEASED) ...APPLICANT
THROUGH HIS SON SUDHIR

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

2. **CRR No.248 of 2016**

NARINDER SINGH (DECEASED) ...PETITIONER
THROUGH HIS SON SUDHIR

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI.**

PRESENT: MR. ASHISH AGGARWAL, SR.ADVOCATE
WITH MR. ANKIT CHAUDHARY, ADVOCATE
FOR THE APPLICANT/PETITIONER.

M. JEYAPPAUL, J.

1. Aggrieved by the judgement of acquittal passed by the appellate Court qua respondents No.2, 3 and 4 in the appeal preferred by them against conviction and the judgement of confirmation of acquittal recorded by the trial Court qua Joginder Singh by the appellate Court, the present appeal CRM-A-207-MA of 2016 and criminal revision CRR No.248 of 2016, respectively, have been preferred by the son of late Narinder Singh who was the complainant.

2. It is the case of the prosecution that complainant Narinder Singh purchased a house in Karnal under registered sale deed dated 11.2.2002 and has

been in possession and enjoyment of the same. After coming to know that some bad elements had intended to take possession of his house after breaking upon the locks on 30.5.2005, he proceeded to the house and found that 3-4 miscreants had entered the house after breaking open the lock. Initially, a case under Section 323, 452 and 506 IPC was registered at Police Station City Karnal. Later on it was revealed that accused Satpal Kaur @ Shanti Devi executed General Power of Attorney in favour of Pawan Kumar on 1.8.2001 and on that basis, Pawan Kumar sold the above house to the complainant under the above registered sale deed. Subsequently, Satpal Kaur @ Shanti Devi sold the said house vide registered sale deed dated 12.5.2005 in favour of accused Nishan Singh, Lakhwinder Singh, Darshan Singh and Chashampal Singh Nain having hatched a conspiracy with each other in order to cheat the complainant. The offence punishable under Section 420, 467, 468, 471 read with Section 120-B IPC were added on 5.6.2005.

3. We heard the submissions made by learned counsel for the applicant.

4. We find that complainant had purchased the subject property from one Pawan Kumar who was the alleged General Power of Attorney of accused Satpal Kaur @ Shanti Devi on 1.8.2001. Respondents No.2 to 4 have purchased the subject property on 12.5.2005 directly from Satpal Kaur @ Shanti Devi. It is found that the said Power of Attorney Pawan Kumar was not even associated during the course of investigation. It is only the Civil Court which can decide whether the sale deed obtained by the complainant from Pawan Kumar who was allegedly the Power of Attorney is valid or the direct

sale deed executed by Satpal Kaur @ Shanti Devi, being the owner of the property is valid. Accused Satpal Kaur @ Shanti Devi who resided in Thailand had come all the way to India and got the sale deed executed in favour of respondents No.2 to 4. The photographs Ex.D1 to D17 would demonstrate that Satpal Kaur @ Shanti Devi was a handicapped lady. She had delivered possession to respondents No.2 to 4 on 12.5.2005 whereas the FIR was lodged by the complainant only on 31.5.2005. The possession of respondents No.2 to 4 from 12.5.2005 to 31.5.2005 was not at all challenged by the complainant. No one from the locality had also come forward to support the claim of the complainant that he was in possession of the house in question. No electricity or water bills were also produced by the complainant to demonstrate that he was in possession of the suit property. It appears that respondents No.2 to 4 were *bona fide* purchasers from the real owner of the property. There was nothing on record to demonstrate that they had purchased the property subsequently from the real owner in order to cheat and defraud the complainant who purchased the same property earlier in point of time through Power of Attorney of the real owner of the property. There is also no evidence to establish that respondents No.2 to 4 hatched a conspiracy to cheat and defraud the complainant. Pawan Kumar, the General Power of Attorney of the real owner of the property, was not examined to demonstrate that he delivered vacant possession to the complainant immediately on execution of the sale deed. The complainant had come out with a case that his Chowkidar one Baru Ram informed him that on 30.5.2005, some persons trespassed upon the subject property by breaking open the lock. But unfortunately, the said Baru Ram was not examined to establish

the charge of trespass levelled against respondents No.2 to 4.

5. Coming to the role of accused Joginder Singh, it is found that the prosecution miserably failed to establish his identity. It is the admitted case of the complainant that he had never mentioned in the complaint the name of accused Joginder Singh and that the allegation of fraud had been attributed only to the other accused. The prosecution also failed to prove beyond reasonable doubt that on 30.5.2005, accused Joginder Singh was present along with the other accused and trespassed upon the subject property. Therefore, in our considered view, the appellate Court has rightly allowed the appeal preferred by respondents No.2 to 4, upsetting the judgement of the trial Court and the appellate Court has rightly confirmed the acquittal of accused Joginder Singh. Therefore, the criminal appeal as well as criminal revision stand dismissed.

(M. JEYAPPAUL)
JUDGE

January 30, 2017
Gulati

(AUGUSTINE GEORGE MASHI)
JUDGE

Whether Speaking/Reasoned : Yes
Whether Reportable : No