

CRM-A-152-MA-2017 (O & M)

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

CRM-A-152-MA-2017 (O & M)
Date of Decision: 05.04.2017

Ravi Dutt

... Applicant

Versus

Gyan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. B.K.Bagri, Advocate,
for the applicant.

INDERJIT SINGH, J.

CRM-3948-2017

This is an application seeking condonation of delay of 70 days in filing the application for leave to appeal.

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 70 days in filing the application seeking leave to appeal, is condoned.

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Applicant-Ravi Dutt has filed this application under Section 378(4) of the Code of Criminal Procedure, 1973 seeking permission for leave to appeal against respondents-Gyan Singh, Praveen, Ram Singh Lambardar, Rajesh Kumar and Narender Kumar challenging the

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impugned order dated 07.09.2016 passed by learned Judicial Magistrate Ist Class, Rewari, in criminal complaint No.43 of 28.09.2011, titled as 'Ravi Dutt vs. Gyan Singh and others', filed under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code (for brevity, 'IPC'), vide which the respondents-accused were discharged.

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 further stated that the impugned order passed by learned Judicial Magistrate Ist Class, Rewari is based on surmises and conjectures and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal be granted.

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

From the record, I find that applicant-complainant filed a criminal complaint under Sections 420, 467, 468, 471 and 120-B IPC against the aforesaid respondents-accused. The brief facts of the case, as noted down in the impugned order passed by learned Judicial Magistrate Ist Class, Rewari, are as under:

“2. Briefly stating, complainant's case is that his father Gyan Singh (accused No.1) was owner in possession over land comprised in khewat No.36, khatoni no.39, rect. no.18, killa no.13/2 (1-12), 14(8-0), 15(8-0), rect. no.19, killa no.11(7-8), rect. no.24, killa no.19/2 (1-16), 20(8-0), 21(8-0), 22(8-0), 23(8-0), rect. no.25, killa no.14 (2-1), 15(7-11), 16(7-10), 25(2-12), rect. 32, killa

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no.1(5-9), 2(7-7), 3(7-7), 8(8-0), total kitta 17 area 107 kanal 5 marla and khewat no.77, khatoni no.81, rect. no.18, killa no.16(7-7), 17(7-7), 18/1(1-9), rect. no.19 killa no.20(6-16), total measuring 22 kanal 19 marla to the extent of its 36 kanal situated in Village Rajpura Khalsa, Tehsil and District Rewari. It has been alleged that accused no.1 had executed a release deed no.808 dated 22.04.2011 in his favour vide which 11 kanal land out of the said 36 Kanal land was released by accused No.1 in his favour and a mutation no.442 dated 30.06.2011 was sanctioned in his favour. Thereafter accused no.1 executed a release deed no.9035 dated 09.08.2011 in favour of his brother's son namely Parveen Kumar (accused no.2) of remaining 25 Kanal land illegally and with mala fide intention to harm him whereafter vide another release deed no.9036 dated 09.08.2011 (release deed in dispute) executed by accused no.1 the 11 kanal land released by accused no.1 in his favour vide release deed no.808 dated 22.04.2011, was reduced to 6 kanal and in his place accused no.4 had appended his signatures upon release deed no.9036 dated 09.08.2011 whereas he never authorized accused no.4 Parveen to append his signatures on his (complainant's) behalf. Since accused no.1 had no land left so as to execute release deed no.9036 dated 09.08.2011 therefore the same was executed fraudulently with mala fide intention of reducing his share from 11 kanal land to 6 kanal land and as such cheating was committed upon him by the accused persons by conspiring with each other and further release deed no.9036 dated 09.08.2011 was forged as accused no.4

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appended his signatures on his (complainant's) behalf. As such prayer was made that an F.I.R. Under Section 156(3) Cr.P.C. be got registered against the accused persons."

Learned Judicial Magistrate Ist Class, Rewari, after going through the evidence which was led by the complainant for the purposes of charge, found that no *prima facie* case against the accused persons is made out under Sections 420, 467, 468, 471 and 120-B IPC and the accused persons were discharged.

Aggrieved from the above said order, the present application seeking leave to appeal has been filed.

Perusal of the record shows that the complaint was filed under Sections 420, 467, 468, 471 and 120-B IPC which means it is a warrant trial case. The procedure adopted by learned Judicial Magistrate is also of warrant trial case. The complainant has produced the evidence for the purpose of charge. Discharging of accused in a warrant trial case does not amount to acquittal. Since the impugned order does not amount to acquittal, the revision is maintainable against the order of discharge. Rather, in the impugned order, it is specifically ordered that the accused persons are discharged meaning thereby the accused have not been acquitted. Therefore, the impugned order cannot be held as acquittal, therefore, no appeal is maintainable against this order. Since the impugned order cannot be treated as acquittal of the accused and appeal is not maintainable against the same, therefore, no ground is made out for granting leave to file the appeal.

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Therefore, the instant application under Section 378 (4)
Cr.P.C. seeking leave to appeal is dismissed.

05.04.2017

parveen kumar

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No