

In the High Court of Punjab & Haryana at Chandigarh.

CRM-A-404-MA-2016

Date of decision: 01.08.2017

Kuldeep Singh

..... Applicant.

vs.

State of Punjab and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN**HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU****Present:** Mr. Amit Arora, Advocate for the applicant.

MAHABIR SINGH SINDHU, J.

Complainant-Kuldeep Singh has filed the present application under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for grant of special leave to file an appeal against the judgment dated 12.12.2015 passed by learned Judicial Magistrate, 1st Class, Tarn Taran, vide which respondents No.2 to 5 have been acquitted of the charges under Sections 420, 467, 471 and 120-B of Indian Penal Code (for short "IPC")

Brief facts of the case are that complainant alleged that his grand mother, namely, Kartar Kaur, widow of Gopal Singh was co-owner in possession of land bearing khewat no.77, khatoni nos. 211 to 213 and khasra nos.93 (0-16), 30/2 (0-1), 30/1 (2-6), 34//11/2 (3-16), 19/1(4-4), 20 (3-4) situated in the area of revenue estate of village Khara, Tehsil and District Tarn Taran to the extent of ½ share in the total land measuring 14 kanals 07 marlas as per *jamabandi* for the year 2007-2008. It was further alleged that Kartar Kaur had expired leaving behind her son Avtar Singh and a daughter Gurbachan Kaur alongwith Satwinder Singh and Kuldeep Singh who are sons of pre-deceased son of Kartar Kaur, namely, Joginder Singh. The property of said Kartar Kaur was inherited by above mentioned

legal heirs. On 13.08.2009, the complainant visited the Halqa Patwari to obtain the *jamabandi* of the land in question; but he found that names of Avtar Singh and Gurbachan Kaur are shown in column No.5 of the *jamabandi* for the year 2007-08 as vendors to the extent of 2/3rd share of the land and complainant-Kuldeep Singh alongwith his brother Satwinder Singh were shown as vendors of the accused persons/respondents No.2 to 5 to the extent of 1/3rd share. It is further alleged that, as a matter of fact, neither said Avtar Singh and Gurbachan Kaur; nor complainant and his brother Satwinder Singh had sold any land to the accused persons/respondents No.2 to 5 but, they in connivance with the revenue officials got recorded their names in the revenue record illegally and fraudulently by hatching a conspiracy to grab the property owned and possessed by the complainant, his brother Satwinder Singh as well as of Avtar Singh and Gurbachan Kaur. Thus they made themselves liable to be prosecuted and punished under Sections 420,467,468,471 and 120-B IPC.

After recording preliminary evidence, respondents No.2 to 5 were summoned by learned Chief Judicial Magistrate, Tarn Taran vide order dated 04.05.2012 for commission of offence under Sections 420,467,471 and 120-B IPC. Consequently, respondents No.2 to 5 appeared and pre-charge as well as post-charge evidence was recorded.

The complainant examined Dara Singh as CW1, Surjit Singh as CW2, himself as CW3 and Puran Singh, Halqa Patwari as CW4 and produced on record certain documents in order to prove the charges. Respondents No.2 to 5 examined Puran Singh, Halqa Patwari as DW1 and placed on record documents in their defence, in addition to the statements under Section 313 Cr.P.C.

After hearing both the sides and taking into consideration the entire material available on record, learned trial Court acquitted respondents no.2 to 5. Hence the present application for special leave to appeal.

Learned counsel for the applicant has vehemently argued that in the present case, the sale deeds dated 26.06.1998 and 29.06.1998 are alleged to have been executed by Kartar Kaur in favour of respondents No.2 to 5; but as a matter of fact, said Kartar Kaur had already expired on 22.11.1997 and her death certificate is duly proved on record as Ex.P2. Thus, acquittal of respondents No.2 to 5 is based on mis-reading of evidence available on record.

Heard learned counsel for the applicant and perused the paper book.

Record reveals that on an earlier occasion Civil Suit No. 210 dated 07.08.2009 for declaration and permanent injunction was filed by the complainant against respondents No.2 to 5 as well as other persons regarding the land in question and the same had been dismissed by the learned Additional Civil Judge (Senior Division), Tarn Taran, vide judgment and decree dated 18.10.2014 and copies of the same are placed on record as Ex. D6 and D7 respectively and reference in this regard can be made to para No.27 of the impugned judgment.

Counsel for the applicant is not able to contradict the said judgment and decree (Ex. D6 & Ex. D7) and he is also not in a position to say that the same has been set aside by any Court of appeal. Even the lower Court record was summoned in the present case and we have gone through the judgment and decree dated 18.10.2014. The property in the present case as well as in Civil Suit No. 210 dated 07.08.2009 is the same. Respondents

No.2 to 5 have taken the defence in the civil suit by way of their written statement *inter-alia* on the basis of sale deeds dated 26.06.1998 as well as 29.06.1998 and both the sale deeds were exhibited as D1 and D3 before the learned Civil Court and which were held to be legal and valid and the relevant parts of Para Nos.8 and 14 of the judgment dated 18.10.2014 being relevant read as under:-

Para No.8

“XXXXX

on the other hand, the defendant Mukhtiar Singh has stepped in the witness box as DW1, who tendered his affidavit Ex. DW1/A. While Jaswant Singh, resident of defendants Village has stepped in the witness box as DW2, who tendered his affidavit Ex.DW2/A. While Kabal Singh, attesting witness of the sale deed dated 29.6.98 has stepped in the witness box as DW3, who tendered his affidavit Ex.DW3/A. While Harbinder Singh, Scribe of the sale deed dated 26.6.1998 appeared in the witness box as DW4, who tendered his affidavit Ex.DW4/A. While the sale deed dated 26.6.98 has been brought on record as Ex.D1 and endorsement at its back as Ex.D2. While second sale deed of the suit property dated 29.6.98 as Ex.D3 and endorsement at its back as Ex.D4. XXXXX.”

Para No.14

“XXXXX

On the other hand, the defendants have successfully proved the due execution of the sale deeds Ex.D1 and Ex.D3 respectively by the Gopal Singh, attorney of Kartar Kaur in their favour. They have also brought an original death

certificate Ex.D17, as per which the date of death of Kartar Kaur has been mentioned as 22.4.2004. Therefore in the absence of any convincing and cogent evidence brough on record by the plaintiff regarding the death of Kartar Kaur in the year 1997, as is being alleged by them. Therefore, both these issues are decided against the plaintiff and in favour of the defendants.”

In view of the facts and circumstances discussed here-in-above, it is apparently clear that learned Civil Court in its judgment dated 18.10.2014 had already upheld both the sale deeds dated 26.06.1998 and 29.06.1998 and thus there is no occasion to prosecute respondents No.2 to 5 by alleging that these sale deeds are forged and fabricated.

In view of the above, there is no merit in the application, which is, accordingly, dismissed and leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

01.08.2017

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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No