

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

CRM No.A-1562-MA of 2015 (O&M)
Date of decision: April 03, 2017

Avtar Singh

...Applicant

Versus

Jagmail Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kanwal Goyal, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Avtar Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Jagmail Singh, challenging the impugned judgment dated 07.08.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which 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 further stated that learned JMIC, Jalandhar, has wrongly acquitted the accused against the law, facts and evidence on record. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Avtar Singh filed a complaint against accused Jagmail Singh under Section 138 read with Section 142 of the Negotiable Instruments Act. As per complainant's

version, accused entered into an agreement to sell for the purchase of land

from the complainant for total sum of ₹55,00,000/- and gave him ₹3,00,000/- in cash and for the remaining amount of ₹52,00,000/-, accused issued two cheques in favour of complainant. In the first instance, accused issued cheque No.187592 dated 31.10.2008 for ₹22,00,000/- in favour of complainant in order to discharge his legally enforceable liability, which on presentation for encashment, was returned back dishonoured, with the remarks 'Payment Stopped by Drawer'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In the defence, the accused took the plea that Avtar Singh entered into agreement to sell dated 31.10.2008 with accused but complainant had already entered into agreement in respect of said land with Hardeep Singh and others on 27.03.2006 and also with Sukhpal Kaur. The complainant had cheated him and played fraud with him. In defence, accused examined DW-1 Amrit Lal Bagla, Ahlmad attached to the court of learned CJM, Jalandhar, who has proved on record copy of FIR dated 19.11.2008 mark DA. Accused also got examined DW-3 Arun Kumar, Ahlmad attached to the Court of learned Additional District Judge, Jalandhar, who has proved on record certified copy of judgment and decree dated 20.03.2014 passed by the court of learned Civil Judge, Junior Division, Jalandhar in Civil Suit No.52787/2013 titled as “Hardeep Singh & others Vs Avtar Singh and another” Ex.DW3/A and Ex.DW3/B, certified copy of agreement dated 27.03.2006 pertaining to 41 kanal 18 marla land Ex.DW3/C and certified copies of endorsements Ex.DW3/D and Ex.DW3/E and certified copies of agreement dated 27.03.2006 pertaining to 27 kanal 9 marla land Ex.DW3/F and certified copies of endorsements Ex.DW3/G and

witnesses in the said suit. Accused also got examined DW-4 MHC Satnam Singh, who has proved on record certified copy of FIR No.80, dated 15.05.2014, under Section 379 IPC and 21 Mines Act. Therefore, accused got examined Rajiv Kumar, Halqa Patwari, Bakhu Nangal, Pada Pind, Jalandhar as DW-5, who proved the certified copy of jamabandi for the year 2013-14. Other documents were also placed on the record by the accused.

Learned JMIC, Jalandhar after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 07.08.2015.

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

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 these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out 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 are perverse or against the law and what illegality has been committed by learned Court below.

The perusal of the record shows that accused has raised probable defence, which is duly supported and corroborated by the documents and defence evidence. The perusal of the judgment passed by learned Magistrate shows that neither sale deed has been executed by the complainant in favour of the accused nor he can execute the sale deed on the basis of agreement to sell in favour of the accused because he had earlier

entered into agreement to sell with Hardeep Singh etc., who had filed the civil suit against the present complainant, which is stated to have been decreed. There is no mention in the agreement to sell, on the basis of which the cheques in question have been issued, regarding earlier agreement to sell with Hardeep Singh etc. Material facts have been concealed by the complainant in that agreement. The complainant, due to his own conduct and wrong committed by him or fraud played upon the accused, cannot execute the sale deed on the basis of agreement to sell, therefore, he is not entitled to any amount as earnest money or on the basis of sale consideration. Even, he is not entitled to canceling the agreement or forfeiting the earnest money. Therefore, there is no liability of the accused towards the complainant and the payment of the cheque has been stopped by the accused correctly and as per law.

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 07.08.2015 passed by learned JMIC, Jalandhar, 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.

April 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No