

CRM-11853-55-2016 in/and
CRM-A-742-MA-2016 (O&M)

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HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-11853-55-2016 in/and
CRM-A-742-MA-2016 (O&M)
Date of Decision: October 23, 2017

Balwant Singh

.....Applicant

Versus

Dev Raj and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL**

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Bikramjit Aroura, Advocate for the applicant.

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SURYA KANT, J.

CRM-11854-2016

The prayer in this application is for condonation of delay of 30 days in filing the accompanying application seeking leave to appeal. It is averred that the applicant was under a mistaken impression that the appeal could be filed within 90 days, whereas the same was to be filed within 60 days due to which the delay has occurred.

The explanation appears to be plausible. The same is accordingly accepted. Application is allowed. Delay in filing the accompanying application seeking leave to appeal is condoned.

CRM stands disposed of.

CRM-A-742-MA-2016

This application under Section 378(4) Cr.P.C. seeks grant of leave to appeal against the judgment dated 04.01.2016 passed by the Sub Divisional Judicial Magistrate, Khadur Sahib whereby a private complaint filed by the applicant-appellant against the respondents under Sections 420, 467, 468, 471, 120-B IPC has been dismissed. The complaint alleged that the respondents sold the land measuring 26 kanals 08 marlas, fully described in para 1 of the impugned judgment to the applicant-appellant and his co-vendee vide sale deed dated 09.06.1994. The applicant-appellant later on came to know, when he approached *Halqa Patwari* for effecting mutation, that Khasra Nos.29//20 and 21 were not under the ownership of the respondents-accused, hence the same could not have been sold. This act of the respondents was alleged to be an offence under different provisions of the Indian Penal Code, referred to above.

[2] Learned Judicial Magistrate, however, dismissed the complaint after giving a detailed finding that only share in the joint *khata* was sold by the respondents though with specific *khasra* numbers. It has been further established that the respondent-accused party purchased the land measuring 26 kanals 08 Marlas out of the joint holding of land measuring 131 kanals 19 marlas, the possession whereof was delivered to them at the spot. That very land was subsequently sold to the applicant-appellant. Learned Judicial Magistrate in the above-stated back drop, thus, has concluded as follows:-

“ The accused being co-owner, though sold specific khasra no's. However it will be deemed to be the sale of their share and after the sale, the complainant alongwith his

brother stepped into the shoe of co-sharer. Now the only remedy with the complainant was to go for partition. The complainant has not placed on record any such document from which it can be inferred that the accused sold land more than their share to the complainant and his brother. No fard hakiat or an other revenue record has been placed on record. It is also not alleged by the complainant in his complaint that accused sold the land more than their share due to which the complainant could not get the possession of joint holding. The best remedy with the complainant was to go for partition, if there was any grievous or to approach the civil court to get the appropriate remedy. The main ingredients of Section 420 IPC is not attracted.”

[3] Since it was a case of sale of land which the accused-party had earlier purchased out of a joint *khata*, learned Judicial Magistrate appears to be right in observing that it does not amount to 'deception' and 'inducement' so as to attract the ingredients of Section 420 IPC. Still further, the original sale-deed in respect whereof the alleged forgery or cheating was committed has not been produced on record and the learned trial Court appears to be right in drawing the adverse inference against the complainant-party due to non-production of the most relevant document. It further appears to us that the dispute was essentially of civil in nature and could be effectively resolved by way of appropriate proceedings before the Civil Court. No case to interfere with the order under appeal is thus made out. Leave to appeal is declined.

[4] Dismissed.

CRM-11853 and 11855-2016

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there is no need to pass separate orders in both the applications, which have become infructuous.

**(SURYA KANT)
JUDGE**

October 23, 2017
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**(SUDHIR MITTAL)
JUDGE**

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|---------------------------------------|---------------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |