

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-833-MA-2016

Date of Decision: 21.11.2017

Gurinderpal Singh

... Appellant

VS.

State of Punjab & Anr.

... Respondents

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

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Swati Verma, Advocate for the appellant

Ms. Manjari Nehru Kaul, Addl. AG Punjab

SURYA KANT, J. (Oral)

(1) This application under Section 378(4) CrPC seeks leave to appeal against the judgment and order dated 29.01.2016 passed by the Judicial Magistrate 1st Class, Ludhiana whereby the private complaint filed by applicant/appellant under Section 466/467/471/420/120-B IPC has been dismissed.

(2) The original complaint was filed against three persons, namely (i) Inderjit Singh s/o Harcharan Singh s/o Manohar Singh, (ii) Asa Singh s/o Manohar Singh, and (iii) Rajinder Kaur d/o Asa Singh w/o Surinder Singh.

(3) Learned trial court has held and it is not disputed by the learned counsel for the applicant/appellant that during the pendency of the complaint, accused No.1&2 (Inderjit Singh s/o Harcharan Singh and Asa Singh s/o Manohar Singh) have passed away and the complaint *qua* them stood abated.

(4) As regards respondent No.3 Smt. Rajinder Kaur d/o Asa Singh, learned trial Court has held that there is no evidence on record to connect her with the alleged act of cheating or fabrication of record or that she was, in any manner, beneficiary of the sale deed in question. The allegations *qua* her have

been consequently disbelieved and she has been acquitted by giving benefit of doubt.

(5) The facts are like this.

(6) Hari Singh father of the applicant/appellant migrated from Pakistan. The certificate of compensation was issued in his favour and property measuring 308 sq.yards bearing No.B-XII-487, Kucha No.8, Field Ganj, Ludhiana was allotted to him in lieu of the property left in Pakistan. Hari Singh died on 04.06.1964. The Conveyance Deed of the property was executed in favour of the mother, brothers and sisters of the complainant on 07.08.1969. The said original conveyance deed was lost on 29.03.2005. The complainant and his mother nevertheless remained in possession of the property throughout.

(7) It was further averred that the complainant was of tender age at the time of death of his father and the family was being maintained by his mother.

(8) Accused No.2 was a collateral brother of the applicant/appellant's mother. Accused No.1 was son of one of the brother of accused No.2 and accused No.3 is daughter of accused No.2. It is alleged that the mother of applicant/appellant Surjit Kaur also died in 1984 and upon her death, the subject property was duly entered into record of Municipal Corporation, Ludhiana in favour of the applicant/appellant and his brothers and sisters.

(9) To cut the story short, subsequently the property in question was statedly got transferred in favour of accused/respondent No.2 and his three brothers, namely, in the records of Municipal Corporation, Ludhiana on the basis of a non-existent sale deed allegedly executed by the mother of applicant/appellant Surjit Kaur in their favour. After getting the house transferred in their favour, accused No.2 sold a part of the said property

measuring 38 sq.yards to accused No.1 by way of registered sale deed dated 01.08.1990.

(10) The precise allegation of the applicant/appellant in the complaint thus was that accused No.2 in collusion and connivance with the accused No.3 forged the document Ex.P3 on the basis of which the subject property was entered in the name of accused No.1 in the record of Municipal Corporation, Ludhiana. He further alleged that accused No.3 was also signatory to the transfer document vide which part of the subject property was transferred in the name of accused no.1 in the records of Municipal Corporation, Ludhiana.

(11) As noticed at the outset, accused No.1&2 passed away during the pendency of the trial hence proceedings *qua* them stood abated. So far as accused No.3, namely, the sole surviving accused in the accompanying appeal is concerned, the learned trial court has held that she was not beneficiary of the sale deed allegedly forged by respondent/accused No.2 to get the subject property transferred in his favour. Secondly, she was also not the beneficiary of sale transaction vide which 38 sq.yards was sold by Asa Singh in favour of accused No.1 (Inderjit Singh).

(12) This may be true that respondent/accused No.3 had signed the transfer document vide which a part of the property measuring 38 sq.yards was entered in favour of accused No.1, however, such participation of respondent/accused No.3 *per se* does not establish that she conspired with accused No.1&2 in the fraudulent transaction. The signing of transfer document was a post-transaction event, namely, after accused No.2 had executed the sale deed in favour of accused No.1 *qua* 38 sq.yard share. The signature of respondent No.2 would not and cannot lead to any inference that she was

beneficiary of the transaction as no part of the property was transferred or fell to her share in any manner.

(13) The allegation made by the applicant/appellant that respondent No.3 was employed in the Municipal Corporation, Ludhiana and she actively participated in the conspiracy has also been disbelieved by trial court and rightly so, for no record was produced as to when was she appointed in the Corporation, and if so, how did she connived with other accused for the entry in the record of Municipal Corporation, Ludhiana.

(14) The charge of conspiracy or fabrication of record cannot be established merely on the basis of inference. The applicant/appellant was required to lead direct evidence and to show that participation of respondent No.3 at any stage and in any manner of the transaction was a result of *quid pro quo* or that she gained out of the fraudulent transaction. In the absence of an *iota* of evidence, the order of learned Judicial Magistrate does not call for any interference and consequently, the application seeking leave to appeal is declined.

(15) It may be noticed that the Civil Court has already decided the *lis* in favour of applicant/appellant and that judgment has been upheld upto this Court. The concurrent finding of the Civil Court in favour of the applicant/appellant also cannot be the sole foundation to hold respondent No.3 guilty of the alleged offence.

(16) Dismissed.

(Surya Kant)
Judge

21.11.2017
vishal shonkar

(Sudhir Mittal)
Judge