

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-938-MA-2016

Date of Decision: 21.11.2017

Jaipal *through LRs*

... Appellant

VS.

State of Haryana & Ors.

... Respondents

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

Present: Mr. Ashok Kaushik, Advocate for the appellant

Mr. Kuldeep Tiwari, Addl. AG Haryana

SURYA KANT, J. (Oral)

(1) This application under Section 378(4) CrPC seeks leave to appeal against the judgment and order dated 05.03.2016 whereby Sub Divisional Judicial Magistrate, Hathin has dismissed the private complaint filed by the applicant/appellant and acquitted the respondents of the charges framed against them under Section 420/467/471/120-B IPC.

(2) The applicant/appellant – Jaipal (since deceased) and represented by his Legal heirs is real brother of respondent-accused No.1,2&9 (in the original complaint). The allegations were that grandfather of the applicant/appellant, namely, Mehtab Singh was owner of the agricultural land and after his death the said land was inherited by Babu Singh (father of the applicant/appellant) and his aunts Attar Bai and Rattan Bai @ Rattna. Attar Bai was married at Jaipur and remained there till her death on 18.10.1996. Rattan Bai @ Rattna also expired at the place of her inlaws in Village Khorani on 15.03.1994. Smt. Attar Bai was succeeded by her two sons Prabhati Singh and Budh Singh who died during her lifetime. Now she is succeeded by her sole legal heir Parkash Kaur, who also resides at Jaipur.

(3) Accused No.1&2, namely, brothers of the applicant/appellant (since deceased) allegedly in conspiracy with other accused, got executed Relinquishment Deed No.4080 dated 23.03.2009 in their favour by way of impersonation of Attar Bai and Rattan Bai @ Rattna. Based upon that relinquishment deed, Mutation No.1318 dated 25.06.2009 was entered and sanctioned in their favour. The relinquishment deed was claimed to be never thumb marked by Attar Bai and Rattan Bai @ Rattna as they had already died way back in the year 1996 and 1994, respectively.

(4) On the basis of preliminary evidence led by the applicant/appellant, accused party were summoned to face trial; charges were framed and thereafter both the parties led their respective evidence.

(5) As may be seen from the facts noticed above, the 'victims of the fraud' played by respondent-accused No.1&2 were Legal heirs of Attar Bai and Rattan Bai @ Rattna. One of the legal heir, namely, Sunil grand-son of Attar Bai filed a civil suit titled "Suneel etc. vs. Kanwar Pal" challenging the fraudulent relinquishment deed but it appears that accused No.1&2 and their co-accused entered into a compromise with him. Consequently, the civil suit was withdrawn and in the FIR No.384 dated 12.11.2009 u/s 420/467/468/471/120-B IPC which was got registered at the instance of legal heirs of Attar Bai and Rattan Bai @ Rattna, a cancellation report was filed and the matter was closed.

(6) The applicant/appellant who happens to be brother of accused No.1&2 is apparently aggrieved of the fact that he has got no share in the land which accused No.1&2 have managed to secure through the disputed relinquishment deed.

(7) Before learned Judicial Magistrate, the respondents relied upon the judgment of the Civil Court dated 07.01.2015 whereby the Civil suit filed by

the applicant/appellant for setting aside the relinquishment deed was dismissed as also the judgment in the civil suit filed by the Legal heirs of Smt. Attar Bai which was compromised between the parties. The applicant/appellant in his evidence relied upon the death certificate of Attar Bai and Rattan Bai @ Rattna Ex.CW2/A and Ex.CW-3/A to urge that both had died in the year 1994 & 1996 i.e. much before the alleged relinquishment deed was executed in the year 2009.

(8) Learned Judicial Magistrate has not accepted the allegation made by applicant/appellant for the reason that there was no evidence led on record to show as to what was the actual date of death of Attar Bai and Rattan Bai @ Rattna. Similarly, no evidence of impersonation was led. Still further, the legal heirs of Attar Bai and Rattan Bai @ Rattna have made no allegation of committing fraud on them or of forging the relinquishment deed, rather daughter of Attar Bai, namely, Parkash Kaur filed the affidavit in favour of respondents/accused.

(9) In the light of the above-mentioned evidence, where the applicant/appellant has failed to substantiate the allegation of forging of relinquishment deed, the findings returned by the learned Judicial Magistrate do not call for any interference. The application for leave to appeal is accordingly declined.

(10) Dismissed.

(Surya Kant)
Judge

21.11.2017
vishal shonkar

(Sudhir Mittal)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No