

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-325-MA-2017

Decided on: 28.11.2017

Jhandu Ram (since deceased) through Kiranjit Kaur

....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: Ms. Gurjeet Kaur, Advocate,
for the applicant.

MAHABIR SINGH SINDHU, J.

The present application under Section 378(4) Cr.P.C. has been filed by the Kiranjit Kaur, daughter of the applicant-Jhandu Ram (since deceased) for seeking leave to appeal against the impugned judgment dated 21.09.2016 vide which learned Additional Sessions Judge, SBS Nagar, for short 'First Appellate Court' acquitted private respondents No.2 to 4 by giving benefit of doubt and set aside their conviction and sentence under Sections 420, 465, 467, 468, 471 read with Section 120-B of Indian Penal Code, for short 'IPC' passed by Sub-Divisional Judicial Magistrate, Balachaur, for short 'Trial Court' vide its judgment and order dated 08.01.2015.

2. The brief facts of the case are that applicant filed a criminal complaint under Sections 419, 420, 465, 467, 468, 471 & 120-B IPC against five accused including the present respondents, i.e. respondents No.2 to 4 in the Court of Illaqa Magistrate by alleging that he has got landed property measuring 71 kanals, 5 marlas in village Dalelpur/Sarowal

and on account of faith in Sarwan Ram-respondent No.2, who is his real brother, appointed him as his attorney on 24.03.1981. Thereafter, he started acting detrimental to his interest and on losing faith, the power of attorney was cancelled by him on 25.04.1990. It is further alleged that intimation regarding cancellation was duly given to Sarwan Ram and he was called upon to return the original, but he did not do so by saying that he has lost the same. However, despite the cancellation of the power of attorney, Sarwan Ram in connivance with original accused Nos. 2 to 5 including present respondents No.3 and 4 got executed forged and fabricated sale deed regarding the property owned by him in favour of accused No.2-Som Nath and accused No.3 and 4, namely Ram Pal and Harmesh Lal as the attesting witnesses, whereas accused No.5- Som Ram Saharan Deed Writer scribed the sale deed dated 01.09.2008 by misusing the power of attorney which had already been cancelled way back on 25.04.1990.

3. In usual course, after recording preliminary evidence, accused No.3 was summoned to face trial and thereafter pre-charge evidence was recorded and charges were framed under Sections 420, 465, 467, 468 and 120-B IPC to which accused pleaded not guilty. After framing of charge, CW-2 Kamal Kishore and CW-3 Kiranjit Kaur were cross-examined on behalf of accused, but no other witness was cross-examined after framing of the charge and pre-charge cross-examination of other witnesses was ordered to be read as evidence. During the course of after charge evidence, accused Harmesh Lal died and proceedings qua him stood abated.

4. Ld. Trial Court while taking into consideration, the provisions of Section 313 Cr.P.C. put all the incriminating evidence to the accused to

which they pleaded false implication and in their defence they examined DW-1 Gurinder Kumar (Clerk, Tehsil Office, Balachaur) and tendered into evidence various documents.

5. Ld. Trial Court after taking into consideration, the material available on record found that the accused Sarwan Ram criminally conspired with other accused and executed the sale deed dated 01.09.2008 on the basis of cancelled power of attorney and Ld. Trial Court also observed that the sale deed has already been set aside by Ld. Civil Court. Therefore, respondents No.2 to 4 were convicted and sentenced under Sections 420, 465, 467, 468, 471 read with Section 120-B.

6. All three convicts filed separate appeals which were allowed by Ld. First Appellate Court and all of them were acquitted while passing the impugned judgment dated 21.09.2016.

7. Hence, the present application for leave to appeal.

8. It is argued by learned counsel for the applicant that impugned judgment passed by Ld. First Appellate Court is based on surmises and conjectures and Ld. First Appellate Court erroneously acquitted the private respondents No.2 to 4. It is further contended that there is sufficient material available on record to prove the guilt of the respondents and thus, the impugned judgement is not legally sustainable and deserves to be set aside and the judgment and order dated 08.01.2015 passed by Ld. Trial Court be restored.

9. Heard Ld. counsel for the applicant and perused the paper book and the record, but this Court does not find any substance in his contention.

10. Perusal of impugned judgment reveals that applicant-Jhandu Ram had executed a power of attorney dated 24.03.1981 in favour of

Sarwan Ram which is alleged to have been cancelled on 25.04.1990. It is the case of the respondents that power of attorney dated 24.03.1981 was not cancelled on 25.04.1990 and he acted as attorney of applicant-Jhandu Ram even after 25.04.1990 and their acquittal is recorded by learned Additional Sessions Judge on the basis of conclusion that applicant-complainant has failed to discharge the onus that power of attorney was cancelled on 25.04.1990.

11. Ld. First Appellate Court in para 24 of its judgment has recorded that original cancellation deed has not seen the light of the day and only photocopy of the same has been placed on record as Ex.C-5.

12. PW-5 Kiranjit Kaur daughter of Jhandu Ram, who is the star witness has admitted in her cross-examination that she has seen the original power of attorney, but she has not seen any document regarding cancellation of the same. Consequently, Ld. First Appellate Court rightly came to the conclusion that cancellation deed as claimed by Sarwan Ram is not duly proved; rather Sarwan Ram remained power of attorney of Jhandu Ram throughout his life.

13. This is an admitted fact that Jhandu Ram died in the year 2010 and in Ex.D-6 (certified copy of order dated 19.05.2013) Sarwan Ram being his power of attorney, filed a revision on 20.08.2001 and thereafter, Ex.D-7 (certified copy of order dated 21.09.2000) before the Financial Commissioner in the year 2003. Thereafter, it is clearly proved that till 2003, Sarwan Ram had been working on the basis of power of attorney executed in his favour by Jhandu Ram. Although, there is an allegation that Dharam Singh was a witness to the cancellation deed and he has seen the same, but he has not been examined as a witness to prove the allegation.

14. During the course of hearing, learned counsel for the applicant has brought to the notice of this Court that a suit for declaration had been filed by Jhandu Ram against Sarwan Ram and Som Nath bearing Civil Suit No. 248 of 2008, which was decreed by Additional Civil Judge (Sr. Division), Balachaur (SBS Nagar) vide judgment and decree dated 19.03.2013, but the same has been set aside by Ld. Additional District Judge, SBS Nagar vide judgment and decree dated 30.04.2015 and thus, as on today, the cancellation of power of attorney is not proved on behalf of complainant-applicant; rather it is the other way round. Proceedings qua other two accused, namely, Soni Ram and Harmesh Lal already stand abated by the Ld. Trial Court.

15. In view of the above, this Court does not find any merit in the application and is fully in agreement with the reasoning given by learned First Appellate Court while acquitting respondents No.2 to 4 of the charges punishable under Sections 420, 465, 467, 468, 471 read with Section 120-B of IPC, being the possible view.

16. Consequently, the application under Section 378(4) Cr.P.C. for leave to file the appeal against the judgment dated 21.09.2016 passed by Ld. First Appellate Court is hereby dismissed and leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

28.11.2017
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No