

THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CRM-A-527-MA of 2014

Date of Decision: August 16, 2017

Balkaran Singh

.....Applicant

Versus

Seeta Ram and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.S. Brar, Advocate for the applicant

ARVIND SINGH SANGWAN, J.

The respondents had faced trial in criminal complaint No. 38-1 of 3-4.3.2009/ 444 of 2013 under Sections 217/ 218/ 420/ 465/ 467/ 468/ 471/ 506 and 120-B of the Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Kalanwali, District Sirsa. The trial Court, vide judgment dated 19.2.2014, ordered the acquittal of the respondents of the charges framed against them. Hence, the present application for grant of leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been filed by the applicant-complainant.

The case set up by the applicant-complainant is that he is a co-sharer in the total land measuring 275 kanals 5 marlas as per the Jambandi for the year 1970-71. Some of his co-sharers have already sold

the land and one of the co-sharer-Sarwan Singh, son of Jaimal Singh, suffered a civil Court decree in favour of his son Jagjit Singh regarding the land comprising in Rect.no. 181, killa no.15(8-18), Ret.no.182, Killa No. 11(3-16), passed in civil suit No.11/9.1.1981. Later on, the complainant challenged the aforesaid decree and the mutation by way of filing a civil suit, titled as *Tej Singh vs. Jagjit Singh*, which was dismissed by the Civil Court as well as the appellate Court. Thereafter, the complainant filed Regular Second Appeal No. 83 of 1990 which was decided on 14.3.1990 holding that status of Jagjit Singh is that of a co-sharer in the aforesaid total land and the collusive decree was set aside. It is further alleged in the complaint that later on, Jagjit Singh, son of Sarwan Singh sold 9 marlas of land in favour of accused Nos.1 and 2 and, thereafter, accused Nos. 1 and 2 further sold the land in favour of accused Nos. 3 and 4 and a mutation was sanctioned on the basis of sale deed by the revenue officials and, thus, despite the fact that Jagjit Singh was held to be a co-sharer, he has illegally sold specific land comprised in Rect.No. 182, killa no.11/2 area measuring 9 marlas. It is further submitted that accused Nos. 5 and 6 are the revenue officials, who have entered the mutation on the basis of aforesaid sale deeds, and, thus, have committed the offence by causing wrongful loss to the complainant and his family members. Accordingly, the aforesaid complaint was filed under Sections 217/ 218/ 420/ 467/ 468/ 471/ 506 and 120-B IPC.

The trial Court, after recording preliminary evidence, summoned the accused persons to face trial under Sections 217 /218/ 420/ 465/ 467/ 468/ 471/ 506 and 120-B IPC vide order dated 14.7.2012. After

summoning the accused, the pre-charge evidence was led by the complainant and PW1- Shiv Raj Singh Mal, Patwari and PW2 Krishan Kumar, Clerk was examined. The complainant herself appeared as PW3 and Major Singh, brother of complainant appeared as PW4 and Siri Ram HRC have appeared as PW5. Thereafter, the evidence of the prosecution was closed and the accused persons were charge-sheeted under Sections 420, 465, 218 and 120-B IPC vide order dated 10.10.2013 and claimed trial. Thereafter, the cross-examination of the witnesses of the complainant was conducted. After framing of the charge and on conclusion of the prosecution evidence, statements of accused under Section 313 Cr.P.C were recorded. The accused did not lead any defence evidence. Learned trial Court vide its judgment dated 19.2.2014 acquitted the accused persons of the charges and dismissed the complainant. Hence, the present application under Section 378(4) Cr.P.C.

It is submitted on behalf of the counsel for the appellant that though Jagjit Singh was declared as a co-sharer in the entire land yet he has sold specific killa number to accused Nos. 1 and 2 and,thereafter, accused Nos. 1 and 2 have further sold the same to accused Nos. 3 and 4. On the basis of the sale deeds, accused Nos. 5 and 6, who are the Patwari and Kanungo, have entered the mutation and, thus, offence under Section 420 IPC is committed by them. It is also argued on behalf of the applicant that all the accused in criminal conspiracy with each other have tried to get the best part of the land and,therefore, the complainant has been cheated.

I have heard the learned counsel for the applicant and have gone through the record carefully and find no merit in the present application.

It has come in the statement of the complainant that neither Jagjit Singh nor the accused Nos. 1 and 2 have not sold out more than their share and have not prepared any false documents in order to cause the offence of forgery. The brother of the complainant-Major Singh, PW4 has also admitted that the other co-sharers have already sold land by giving specific killa numbers and even father of the complainant-Billu Singh has sold out his share and the complainant has not filed any complaint against the aforesaid other co-sharers. Moreover, it is well settled principle of law that even if the sale of the specific killa number is made, out of the joint holdings, the same is a sale of a share by the said co-sharer and it is always subject to partition by metes and bounds.

Trial Court has recorded a finding that, while passing the judgment dated 14.3.1990, in the aforesaid RSA No. 83 of 1990, this Court has not put an embargo on the right of the co-sharers to sell their share of land and it was held that all rights of the co-sharers are subject to partition. Moreover, accused Nos. 1 and 2-Seeta Ram and Amar Nath (since deceased) were not a party to Regular Second Appeal and only Jagjit Singh was a party, who has not been arrayed as an accused in the present complaint. Nothing has come on record that Seeta Ram and Amar Nath were having any knowledge about the previous litigation especially when Jagjit Singh is not even arrayed as an accused.

Looking from another angle, the offence under Section 420 IPC is not at all made out as it is own case of the complainant that no revenue record has been forged and the only allegation is that, while executing the sale deed, Jagjit Singh has sold the specific khasra number out of the joint

holdings which itself does not constitute an offence within the provisions of Section 420 IPC. It has also come on record from the statement of PW4 -Major Singh that even the father of the complainant has sold his share by mentioning specific khasra number and, thus, action of the complainant is not a bonafide action as all the co-sharers were selling their land by giving specific khasra number which may be in their possession by way of their mutual understanding. It is well settled principle of law that a co-sharer can sell the land not beyond his share and, admittedly, it is not the case of the complainant that either Jagjit Singh or accused Nos. 1 and 2, while executing the sale deed, have exceeded their share thereby causing any loss to the other co-sharers.

So far as the allegations against accused Nos. 5 and 6 are concerned, no evidence to prove their criminal conspiracy with accused Nos. 1 to 4 has come on record. It has come in the statement of PW4 Shiv Raj Patel Mal, that mutation No. 15770 Exhibit P3 and mutation No. 14574 Exhibit P5, on the basis of both the sale deeds, was validly entered and sanctioned by accused No. 5 and 6 while performing their duties and, therefore, the allegation of conspiracy against the accused persons is not proved.

A perusal of the entire evidence further shows that even the offence under Sections 218, 465 IPC is not proved against accused Nos. 5 and 6 as there is no evidence on record to show that any false revenue record is prepared by them.

Hon'ble the Supreme Court in **Allarakha K.Mansuri vs. State of Gujarat** 2002(1)RCR(Criminal) 748, has held that where, in a case, two

views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh** 2001(1) RCR (Criminal) 775, while dealing with an appeal against acquittal, has held as under:-

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in **Ashok Kumar vs. State of Rajasthan, 1991 (1)scc 166**, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

In the facts and circumstances, the reasons recorded by the learned trial Court in acquitting the accused are just and proper and there is no merit in the criminal miscellaneous application seeking leave to appeal in terms of Section 378(4) of the Code Criminal Procedure, 1973. Accordingly, the criminal misc. application seeking leave to appeal is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

August 16, 2017
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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

