

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-754-MA-2017

Date of Decision: 16.5.2017

Baldev Singh

....Appellant.

Versus

Sukhdev Singh and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU.**

PRESENT: Mr. Rohit Kaushik, Advocate for the applicant-appellant.

AJAY KUMAR MITTAL, J.

1. The present application has been filed under Section 378(4) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of leave to appeal against the judgment of acquittal dated 6.2.2017 passed by the Judicial Magistrate Ist Class, Ambala.

2. A few facts necessary for adjudication of the instant application as narrated therein may be noticed. The applicant-appellant is a handicapped person having 60% disability as per the disability certificate dated 5.10.2011 (Annexure A-1). His father, namely, Gurbaksh Singh executed a Will dated 21.7.1997 (Annexure A-2) distributing his land measuring 96 kanals including two baras situated near the *abadi* of the village into his five sons including the appellant and respondent No.1. On the basis thereof, the mutation was sanctioned on 5.5.1998. In May, 2011, to grab the share of one kanal land of the appellant, respondent No.1 in

connivance with respondents No.2 and 3 forged and fabricated a Will dated 20.10.1997 (Annexure A-3) and filed a civil suit for declaration and injunction against the appellant and his wife. The trial Court vide judgment and decree dated 1.10.2014 (Annexure A-4) dismissed the said civil suit against which respondent N.1 filed an appeal before the lower appellate court. The lower appellate court vide judgment and decree dated 30.11.2015 (Annexure A-5) dismissed the said appeal. Accordingly, the appellant filed a complaint against the respondents. On the basis of the preliminary evidence led by the applicant-appellant, the trial Court vide order dated 28.7.2012 summoned the respondents for the commission of offences punishable under Sections 467/471 read with Section 120-B of the Indian Penal Code. In pre-charge evidence, the complainant-appellant besides examining himself as CW2, examined ASI Suresh Kumar as CW1, EASI Sukhdev Singh as CW3 and Varvinder Pathak as CW4. Thereafter, the charges were framed against the respondents for the said offences, to which they pleaded not guilty and claimed trial. On the direction of the Court, the police submitted its report dated 18.7.2012 (Annexure A-6). In post charge evidence, the appellant examined himself as CW1, ESI Sukhdev Ram as CW2 and Devendra Prasad as CW3.

3. When examined under Section 313 of the Code, the respondents pleaded innocence and denied the allegations of the complainant-appellant. However, he did not examine any witness in support of their defence.

4. The trial Court after taking into consideration the evidence, found that the appellant had failed to prove the document as forged and vide judgment dated 6.2.2017 acquitted the respondents of the charges framed

against them. Aggrieved by the said judgment, the applicant has filed the instant application for grant of leave to appeal.

5. Learned counsel for the applicant-appellant submitted that respondent No.1 in connivance with respondents No.2 and 3 with malafide intention had forged, fabricated a false document of Will dated 20.10.1997 allegedly executed by his father qua the land in dispute and by forging the signatures of his father, had filed a civil suit for declaration and injunction against the appellant and his wife. It was urged that the respondents had committed offence under Sections 420/467/468/471 of the Indian Penal Code and the trial Court had erroneously acquitted them.

6. After hearing learned counsel for the applicant-appellant, we do not find any merit in the application for grant of leave to appeal.

7. As per the complainant-appellant, respondent No.1 with malafide intention had forged and fabricated the Will allegedly executed by his father Gurbaksh Singh qua the land of two baras by fabricating the signatures of his father on the said Will dated 20.10.1997. The respondents filed a civil suit and the trial Court vide judgment and decree dated 1.10.2014 dismissed the said suit without recording any finding regarding the genuineness of the Will in question. In the said judgment, nowhere it was mentioned that the Will was forged and fabricated Will. Further, the lower appellate Court while dismissing the appeal against the judgment dated 1.10.2014 had nowhere recorded a finding that the Will in question was illegal, forged and fabricated. The appellant got compared the signatures on the forged Will dated 20.10.1997 with the admitted Will dated 21.7.1997 from an expert who had opined that the signatures were forged on the Will in question, i.e. 20.10.1997. However, the opinion of the expert

was based on comparison of signatures of Gurbaksh Singh on Will dated 20.10.1997 which was on the basis of photo copy examined by him. The photocopy of a Will cannot form the basis for comparison of signatures and recording of conclusive finding that forgery had been committed on a document. Since in the present case, the signatures were compared from the photocopy of the document, therefore, the trial Court had rightly recorded acquittal of the respondents.

8. In other words, the trial Court while recording that in the civil suit, there was no finding regarding forgery of the Will by the courts below and the complainant-appellant having failed to prove the Will as a forged document, acquitted the respondents. Learned counsel for the appellant was unable to show any infirmity in the findings recorded by the trial court. Accordingly, the application for grant of leave to appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 16, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes