

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Misc. No. A-797-MA of 2017

Date of Decision : September 04, 2017

Hawa Singh

....Applicant

Versus

Umed Singh Namberdar

....Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. J.S. Mehndiratta, Advocate
for the applicant.

T.P.S. MANN, J.

The complainant has filed the present application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated 23.1.2017 passed by learned Judicial Magistrate 1st Class, Charkhi Dadri, District Bhiwani whereby accused Umed Singh Namberdar, respondent herein, stood acquitted of the charges under Sections 419, 420, 467, 468, 471 and 120-B IPC.

The case of the prosecution, in nutshell, was that complainant's father Mangali Ram and his brothers Uma Dutt and Kanhaya were owners in possession of land in equal shares compromised in Khewat No.517/483, Khatoni No.578 and Khasra No.92/8/2 measuring 2 Kanals 12 Marlas having 1/4th share each, i.e. 13 Marlas as per

Jamabandi for the year 1984-85 situated in village Kamod. Mangali Ram had died on 8.9.1982, Kanhaya died on 11.5.1993, whereas Uma Dutt had died in the month of May, 1998. The accused, namely, Subhash Chand, Umed Singh Namberdar, Ranbir, Udey Singh, Badal Singh and Devi Dutt, with a view to cheating the complainant, impersonated for his father and uncles and got prepared registered sale deed No.1811 dated 20.12.21988. Umed Singh Namberdar identified the vendors at the time of execution of the sale deed, Ranbir witnessed the sale deed, Udey Singh scribed the sale deed and Badal Singh, Tehsildar-cum-Sub Registrar and Devi Dutt, Registry Clerk registered the sale deed. Inspector Hira Singh and ASI Rajpal did not perform their duties by not acting upon the complaint submitted by the complainant. The complainant came to know about the aforementioned sale deed while getting mutation No.18543 of his father sanctioned and taking copy of the Jamabandi. Subsequently, he obtained copy of mutation No.10412 and of sale deed followed by asking the accused to cancel the same but they refused.

It may be worthwhile to mention here that on the basis of the preliminary evidence led by the complainant, only Subhash Chand, Umed Singh Namberdar and Ranbir were ordered to be summoned under Sections 419, 420, 467, 468, 471 and 120-B IPC, whereas Inspector Hira Singh and ASI Rajpal were summoned for offences under Sections 217, 219 and 120-B IPC. During further proceedings, Ranbir accused died, ASI Rajpal was declared proclaimed offender and the proceedings against Inspector Hira Singh were set aside by the revisional Court. Subhash

Chand accused also died and the trial proceeded only against Umed Singh Namberdar.

Having heard learned counsel for the applicant and on going through the impugned judgment, this Court finds that the sale deed in question was registered on 20.12.1988, whereas according to the complainant his father Mangli Ram had died on 8.9.1982. Further, the only role attributed to Umed Singh Namberdar was of identifying the vendor. In order to show that his father Mangli Ram had died on 8.9.1982, the complainant had tendered the death certificate wherein the date of death of Mangli Ram stood mentioned as 8.9.1982. Kuldeep Sangwan, Statistical Assistant, Civil Hospital, Bhiwani while stepping into the witness box as CW4 deposed that there were several irregularities in the summoned record pertaining to the death certificate. Therefore, it cannot be said that the death certificate was genuine. The complainant could have examined the Namberdar or the Chowkidar of the village to prove the actual date of death of his father but he failed to do so.

According to the complainant, he learnt about the sale deed in question while getting mutation sanctioned pertaining to the death of his father. In the copy of the said mutation, the date of death of complainant's father stood mentioned as 20.8.1988, which further creates doubts regarding the actual date of death of the complainant's father. Copy of mutation bearing No.765, which was sanctioned on 5.3.2003 also indicates that Mangli Ram had died two years prior to the said mutation. Moreover, the attested copy of the power of attorney

No.244 dated 20.12.1988 Ex.DB executed by Mangli Ram and others in favour of Ram Narayan is on the record as Ex.DB. On the basis of the said attorney, Ram Narayan had executed sale deed bearing No.2159 dated 7.2.1989 in favour of Sham Kumar. Udey Singh, Deed Writer who had scribed the aforesaid sale deed has appeared in the witness box as DW2 and proved the said sale deed. The existence of the power of attorney Ex.DB and the sale deed bearing No.2159 dated 7.2.1989 has not been denied by the complainant. All these documents raise serious doubt regarding the date of death of Mangli Ram as mentioned in the death certificate Ex.C5. Thus, it cannot be said that the deceased Mangli Ram has expired on 8.9.1982, as mentioned in the death certificate Ex.C5 or that he was not alive on the date of execution of the sale deed dated 20.12.1988.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the trial Court. The application is without any merit and, therefore, dismissed. Special leave to appeal is declined.

September 04, 2017**(T.P.S. MANN)
JUDGE****(MAHABIR SINGH SINDHU)
JUDGE**

satish

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO