

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

CRM No.A-87-MA of 2014 (O&M)

Date of decision: January 18, 2017

Hakam Singh

...Applicant

Versus

Bhagwant Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mayank Mathur, Advocate
for the applicant.

Mr.Hardip Singh, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-Hakam Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Bhagwant Singh and other respondents, challenging the impugned judgment dated 24.04.2013 passed by learned Chief Judicial Magistrate, Patiala, vide which the accused-respondents were acquitted.

It is mainly stated in the application that acquittal of all the accused-respondents has caused grave injustice. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Hakam Singh filed a complaint against accused Gurcharan Singh, Bhagwant Singh, Sanandan

Singh and Zail Singh, under Sections 468, 471, 419, 420, 196, 120-B and 34

IPC. The brief averments of the complaint as noted down in the judgment passed by learned CJM, Patiala, are as under:-

“2. Brief facts as submitted in the present complaint are that the complainant and the accused no.1 and 2 are real brothers. Complainant alongwith his father Niranjana Singh and mother Jai Kaur lived jointly in their house situated in village Karhali and they were joint in mess and boarding. The accused No.1 and 2 used to live at Patiala and they were not on speaking or visiting terms with their parents and they in collusion with the accused No.3 and 4 hatched a conspiracy to grab the immovable property owned by Niranjana Singh. In furtherance of the conspiracy, the accused fabricated a false and fake writing dated 2.5.1991 under the forged signatures of Niranjana Singh, on which the accused No.3 and 4 appended their signatures as marginal witnesses. Thereafter, the accused No.1 and 2 filed a false suit for declaration on the basis of said forged and fabricated writing dated 27.5.1991 against Niranjana Singh, which was marked to the Court of Sh.S.K.Garg, the then learned Sub Judge Patiala and then to the Court of Sh.Gurmej Singh Dhillon, the then learned Sub Judge III Class, Patiala and the summons issued by the Court were got served malafidely on some other person impersonating as Niranjana Singh. In fact, no summons were served to real Niranjana Singh. It is further alleged that accused No.1 and 2 produced some other person personating as Niranjana Singh in the Court in place of real Niranjana Singh and engaged counsel in fictitious name of Niranjana Singh and got filed false and fabricated written statement admitting their claim, which was signed by some fictitious person personating Niranjana Singh.

3. It is also alleged that thereafter, Niranjana Singh expired on 14.3.1992 leaving behind widow of Jai Kaur and three sons i.e. Complainant and the accused No.1 and 2 and two daughters as his natural heirs. The accused No.1 and 2 tendered the said forged and fabricated writing dated 27.5.1991 in the Court and examined accused No.3 and 4 as marginal witnesses, who with criminal intention made false statements in the Court, to prove the execution of the said forged and fabricated writing dated 27.5.1991, knowing it fully well that the real Niranjana Singh son of Ude Singh has not executed or signed the said writing. Thus, the accused No.1 and 2 fraudulently obtained a decree for declaration of ownership over the immovable property of deceased Niranjana Singh with intent to grab the same and to cause unlawful loss to the complainant, his mother and two sisters. It has further been submitted that the accused were knowing well that the person on whom the service of summons was got effected and the person who has signed the

Vakalatnama and written statement in place of Niranjana Singh, was not real Niranjana Singh. They were also knowing that the writing dated 27.5.1991 was not signed by the real Niranjana Singh, rather the same was a forged and fabricated document. Thus, the accused persons have committed the offences punishable under Sections 468/471/419/420/196/120-B/34 IPC with criminal intention to grab the immovable property of Late Niranjana Singh and to cause to the complainant, his mother Jai Kaur and his two sisters, for which they are liable to be convicted. Hence, this complaint.”

The accused were ordered to be summoned by the Court under Sections 468, 471, 419, 420, 196 and 120-B/34 IPC. During the proceedings, accused Gurcharan Singh expired and proceedings against him were abated. On the basis of pre-charge evidence, charges were framed under sections 120-B, 468, 471, 419 and 196 read with Section 34 IPC, to which the accused pleaded not guilty and claimed trial. After the charge, the complainant produced the witnesses namely Kulwant Singh CW-1, Kiran Jain CW-2 and complainant himself stepped into witness box as CW-3 and further examined Navdeep Gupta, Handwriting and Fingerprints Expert CW-4 and Raj Kumar CW-5.

CW-1 Kulwant Singh mainly deposed that he was known to Niranjana Singh and stated that power of attorney dated 25.10.1991 has been executed by Niranjana Singh in his favour. CW-2 Kiran Jain brought the summoned record regarding power of attorney in favour of Kulwant Singh. CW-3 Hakam Singh, complainant deposed as per the complaint. CW-4 Navdeep Gupta, Handwriting and Fingerprints Expert compared the signatures of Niranjana Singh on the writing dated 27.05.1991 with the power of attorney and sale deed etc. and found that these are not of the same person. CW-5 Raj Kumar deposed that his father Ram Kishan died on

attorney dated 25.10.1991 Ex.P1.

Learned CJM, Patiala, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 24.04.2013.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Notice of motion was issued and learned counsel for the accused-respondents appeared and contested the application.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that the findings given by the Court below are correct, as per evidence and law. The judgment passed by the Court below, in no way, can be held as perverse or against the evidence. No illegality has been committed by the Court below while acquitting the respondents. Nothing has been pointed out as to how the findings are illegal or against the law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below.

It is settled law that the finding of acquittal given by the trial Court cannot be lightly interfered with. Even if the appellate Court has second view, it cannot set aside the findings, if the view taken by the trial Court is also correct. The findings of acquittal can be interfered only if the findings given by the trial Court are perverse or illegal or material evidence has not been considered or has been misread etc. In the present case, the complainant is alleging that civil suit was filed and Niranjana Singh was

impersonated and some other person has given the power of attorney and

has also engaged the Advocate and has also signed on the written statement but Niranjana Singh never appeared before Court. Learned trial Court has considered this fact and found that neither the Advocate was examined nor the process server was summoned nor there is any cogent evidence to prove the Vakalatnama and written statement given in the Court and oral statement only given by complainant will not prove that Niranjana Singh did not appear in the civil proceedings. Learned Court below considered the report of the Handwriting and Fingerprints Expert very minutely. It is settled law that science of handwriting is not a perfect science. The Court has discussed the fact that sale deed was executed on 10.04.1962 about 30 years ago from the writing dated 25.07.1991. Secondly, the handwriting was compared with power of attorney dated 25.10.1991 but the Court below after discussing the facts minutely held that reasonable doubt exists regarding the authenticity of this power of attorney as to why Niranjana Singh executed the power of attorney in favour of Kulwant Singh, who is neither related to him nor closely known to him. Furthermore, the attorney Kulwant Singh executed sale deed of the property of Niranjana Singh in favour of wife of the complainant. Civil proceedings are pending in the Court. Learned Court below further held that the original writing has never been seen the light of the day in the proceedings of this case. The Court held that the foundation of the complaint is that the alleged impugned writing dated 27.05.1991 mark C also Ex.DX is a forged document. But the original of the said writing was never produced. Handwriting and Fingerprints Expert has admitted in cross-examination that he has not seen the original of the disputed signatures Q4. He also admitted that he had examined the said

27.05.1991.

In view of the evidence on record, I find that the trial Court has appreciated the evidence in right perspective. The impugned judgment dated 24.04.2013 passed by learned CJM, Patiala, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

January 18, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No