

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

CRM-A-894-MA of 2017

Date of Decision: July 12, 2017

Sewa Dass	Versus	Applicant
State of Haryana and others		 Respondents

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

Present : Mr. Sanjiv Gupta, Advocate
for the applicant.

T.P.S.MANN, J.

Complainant Sewa Dass has filed the present application under Section 378(4) read with Section 482 Cr.P.C., for leave to appeal against the judgment dated 20.9.2012 passed by Judicial Magistrate 1st Class, Hisar.

Vide impugned judgment and order, learned trial Court acquitted Dharam Pal and Jaipal, respondents No. 3 and 4, herein, of the charges under Sections 420, 467, 468, 471 read with Section 120 IPC whereas Birbal respondent No. 2 was also acquitted under Sections 467, 468 and 471 IPC. At the same time, he was convicted under Section 420 IPC and sentenced to undergo imprisonment for two years. The applicant has prayed for

setting aside the acquittal of the accused/respondents.

While filing the complaint, the applicant had alleged that his father was married to Smt. Ompati daughter of Ami Lal son of Hardayal, resident of village Payal. The agricultural land of his maternal grand-father Ami Lal was situated at village Payal, who had expired 30 years back. He was survived by his sons Richhpal and Birsal, daughters Sarbati and Ompati and mother Samkauri. There was no other legal heir of Ami Lal excepting them. After the death of Ami Lal, Richhpal and Birbal in connivance with Baldev Singh Numberdar (since dead) got sanctioned mutation by playing fraud. The mutation was sanctioned in favour of Richhpal, Birsal, Ompati and Sarbati. After the death of Ompati and Sarbati, Birbal and complainant Sewa Dass were shown as legal representatives of Ompati. Sarbati was shown as issueless. Infact, Birbal was son of Sarbati whereas complainant was son of Ompati. Birbal was not the real brother of the complainant as he was son of his aunt Sarbati. In this manner, the accused in collusion with each other and with the intention to usurp the land of the complainant got sanctioned mutation by playing fraud and against the facts. After the death of Ram Kaur (Samkauri), widow of Ami Lal, mutation No. 852 was sanctioned in such a manner that the complainant was shown as owner to the extent of 1/8th share instead of 1/4th share. Accused Birbal showing himself to be the legal representative of Ompati,

mother of the complainant got her land entered in his name by playing fraud and in collusion with Richhpal, Dharampal and Jaipal gifted the land vide Vasika No. 2967 dated 4.6.2004 in favour of Dharampal and Jaipal. Both Dharampal and Jaipal, being the cousins of the complainant and Birbal had full knowledge about the fraud, who intentionally got executed gift deed in favour of Dharampal and Jaipal. The complainant approached the higher authorities and also visited the Police Station for lodging a report but his request was not acceded to. Hence, he filed a private criminal complaint.

During the trial Richhpal accused died and, accordingly, proceedings against him were dropped. The trial then proceeded against Birbal, Dharampal and Jaipal, which culminated in the acquittal of Dharampal and Jaipal of all the charges against them whereas Birbal was acquitted under Sections 467, 468 and 471 IPC but was convicted and sentenced under Section 420 IPC. Against his conviction and sentence, he filed an appeal but remained unsuccessful as it came to be dismissed by the lower appellate Court vide judgment dated 10.1.2017. Aggrieved of his conviction and sentence, Birbal has filed revision petition in this Court which stands admitted and he is presently on bail.

Having heard learned counsel for the applicant and on going through the judgment passed by the learned trial Court, this

Court finds that the mutations No. 665 and 852 were incorporated on the basis of rapat No. 164 and 316, respectively, which have been placed on record as Ex.D1 and Ex.D2. Both the rapats were lodged by Birsal and Richhpal whereas Birbal, Dharampal and Jaipal had no concern with the same. Therefore, they have been rightly acquitted of the charges under Sections 467, 468 and 471 IPC. As regards the liability of accused Dharampal and Jaipal under Section 420 IPC, the Gift Deed Mark-A was not signed by either Dharampal or Jaipal. There is only a thumb impression on the gift deed but the complainant did not bring any material on the record as to whose thumb mark it was. Under these circumstances, Dharampal and Jaipal could not be convicted under Section 420 IPC as had been done in the case of Birbal and, therefore, no fault can be found with the impugned judgment acquitting Dharampal and Jaipal of the charge under Section 420 IPC.

In view of the above, the application is without any merit and, accordingly, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

July 12, 2017
amit rana

(MAHABIR SINGH SINDHU)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No