

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

Criminal Revision No. 2830 of 2015

Date of Decision: January 19, 2017

Smt. Sudesh wife of Sh.Jai VeerPetitioner

Versus

Kaptan Singh and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Ms.Mannat Anand, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the judgment dated 29.4.2015 passed by the learned Additional Sessions Judge, Rewari and in terms of which the judgment of acquittal dated 19.2.2014 rendered by the Judicial Magistrate Ist Class, Rewari acquitting the accused/respondents herein of the charges under Sections 420/406/120-B/34 of the Indian Penal Code has been affirmed.

2. Brief facts that emanate from the pleadings on record are that Jai Veer, husband of the complainant, was confined in District Jail, Mohindergarh in a case under Section 376 of the Indian Penal Code as an under-trial. Bhim Singh (respondent No.3) herein, was also confined in the same jail in a case under Section 302 of the Indian Penal Code. It was asserted by the complainant that Bhim Singh had approached Jai Veer, i.e. her

husband, to arrange some money so that he could be got released at the earliest possible. Upon Jai Veer expressing his inability to arrange the money, he was advised by Bhim Singh to sell his land and to which Jai Veer agreed. At such point of time, Bhim Singh called his brother Harbir (respondent No.2 herein) and Kaptan Singh, his brother-in-law (respondent No.1 herein) to negotiate and to finalize a deal for purchase of five acres of agricultural land of Jai Veer. A deal is stated to have been negotiated for a sum of ₹13,75,000/- between the parties. In pursuance thereto, Jai Veer sought permission from the competent authority to be produced before the Sub Registrar concerned so as to facilitate the execution of the sale-deed. Necessary permission is said to have been granted and Jai Veer was produced by the Jail Authorities before the Sub Registrar and the sale-deed was executed on 4.1.2005 in favour of Kaptan Singh. Harbir was an attesting witness to the same. It was asserted by the complainant that out of the total sale-consideration amount of ₹13,75,000/-, only ₹4,80,000/- were given to Jai Veer at the time of registration of sale-deed and which were deposited in his name in the Punjab National Bank, Secretariat Branch, Rewari and the balance amount was kept by Harbir and Kaptan Singh. After execution and registration of the sale-deed, Jai Veer was brought back under police escort to Mohindergarh Jail. Precise accusation levelled is that a sum of ₹9,50,000/-, as such, has been mis-appropriated by the accused persons in connivance with each other.

3. Prima facie offence under Sections 420/406/120-B/34

of the Indian Penal Code having been made out, FIR No.250 dated 1.11.2005 was registered at Police Station Model Town, Rewari and the process of investigation was set into motion. Challan against the accused was filed in Court and the private respondents herein were nominated as accused to face trial. Copies of challan and documents relied upon by the prosecution were supplied to the accused under Section 207 of the Code of Criminal Procedure. In terms of order dated 8.5.2009, accused were charge-sheeted under Sections 420/406/120-B/34 of the Indian Penal Code to which they pleaded not guilty and claimed trial. Prosecution in support of the charges examined as many as 12 witnesses including Sudesh complainant as PW1, Leelu Ram, father-in-law of the complainant as PW2, Manmohan i.e. the Escort Guard on duty on the date of production of Jai Veer for execution of the sale-deed as PW6 as well as Yad Ram, the Sub Registrar concerned as PW11. The accused when examined under Section 313 of the Code of Criminal Procedure denied the allegations of the prosecution and pleaded false implication. However, no evidence was led in their defence.

4. Having adduced the evidence on record and having heard learned counsel for the parties, the Civil Judge (Junior Division)/Judicial Magistrate Ist Class, Rewari passed judgment dated 19.2.2014 acquitting the private respondents herein. Appeal having been preferred, vide impugned judgment dated 29.4.2015 passed by the learned Additional Sessions Judge, Rewari, the judgment of acquittal passed by the trial Court stands affirmed. Resultantly, the instant revision petition.

5. Learned counsel appearing for the petitioner/complainant has argued that the Courts below have proceeded on an incorrect premise that accused Harbir was only an attesting witness to the sale-deed and not a beneficiary and thereby ignoring the aspect that Harbir was the real brother of Jai Veer and was also related to Kaptan Singh, co-accused and in whose favour the sale-deed was executed and such close relationship itself reflected that the accused had acted in connivance and collusion with each other. It has been contended that the Courts below have not appreciated the facts brought on record that the sale-deed was executed having been presented for registration on 4.1.2005 when Jai Veer, vendor had been brought under police escort and no person/member of his family had accompanied him and after execution of the sale-deed, he had been taken back in judicial custody and was not found to be carrying any amount with him and no documents/Bank pass-book had been produced to reflect the deposit of the balance sale-consideration amount of ₹9,50,000/-. It is contended that the evidence adduced on record reflects only ₹4,80,000/- in the Bank account of Jai Veer and under the circumstances of the case, it would be apparent that the balance sale-consideration amount had been mis-appropriated by the accused-party. Learned counsel appearing for the petitioner would place heavy reliance on the deposition of Manmohan, EHC who had been examined by the trial Court as PW6. PW6 was stated to be the Escort Guard who had brought Jai Veer to appear before the Sub Registrar for execution of the sale-deed on 4.1.2005. Learned counsel states that PW6 in his deposition had

clearly stated that before execution of the sale-deed, Kaptan Singh handed over ₹4,80,000/- to Jai Veer, which in turn, had been deposited by Jai Veer in Punjab National Bank, Secretariat Branch, Rewari. PW6 had also deposed that no member of the family of Jai Veer was present in the Tehsil at the time of registration of the sale-deed and except for ₹4,80,000/-, no further amount was entrusted to Jai Veer in his presence. It was argued that such clinching testimony of PW6 has not been appreciated in the correct perspective and which was sufficient to nail the accused as regards the balance sale-consideration amount having been mis-appropriated.

6. Learned counsel for the petitioner has been heard at length. Even the record of the case, that had been requisitioned, has been perused.

7. The deposition of Yad Ram, Sub Registrar, Rewari PW11 would be crucial in the present case. He was, undoubtedly, the material witness to depose as regards passing of the entire sale-consideration in favour of Jai Veer. In his deposition, he has categorically stated that at the time of execution of the sale-deed, Jai Veer had stated that he has received the entire sale-consideration from Kaptan Singh, vendee. The sale-deed dated 4.1.2005 is a part of the record. Perusal of the same reveals that there is a specific and categoric recording of vendor Jai Veer with regard to entire sale-consideration having been received. The testimony of PW11 Yad Ram, concerned Sub Registrar cannot be discarded merely for the reason that Manmohan Singh, Escort Guard PW6 had deposed that in his presence Kaptan Singh

entrusted to Jai Veer a sum of ₹4,80,000/- only. PW6 has not deposed in so many words as regards the balance amount having not been received by Jai Veer from Kaptan Singh before the Sub Registrar at the time of registration of the sale-deed. That apart, if full and final payment had not been made by Kaptan Singh, it was always open for Jai Veer to have raised an objection before the Sub Registrar. No such objection/protest was made. Under such circumstances, the ingredients of offence under Sections 405/406 of the Indian Penal Code are clearly not made out.

8. Even as regards the allegation of Jai Veer having been dishonestly induced to sell/deliver his immovable property, the same has not been substantiated on the part of the prosecution. The inducement as per complainant is that Jai Veer had been promised an early release from prison. In what manner was such inducement to be made effective and implemented has remained a completely grey area. The ingredients of offence under Section 420 of the Indian Penal Code are also not made out.

9. There are two other aspects as well which would create a doubt in the prosecution version. Firstly, the sale-deed was executed on 4.1.2005. Assuming that a major chunk of the sale-consideration amount had not been paid by the vendee Kaptan Singh to Jai Veer, the FIR was registered after a delay of almost 11 months in November, 2015. This is in spite of the fact that the complainant while appearing before the trial Court as PW1 stated in her cross-examination that she used to visit her husband in Jail once every month. Secondly, it was open to Jai Veer to have laid a challenge to have sale-deed executed in favour of Kaptan Singh

on grounds as per law, but it has been admitted by learned counsel that no such civil suit was instituted by him.

11. In the considered view of this Court, merely for the reason that no record has been forthcoming as regards deposit of ₹9,50,000/- by Jai Veer, does not make out a case as regards entrustment and mis-appropriation at the hands of the accused.

12. Even if two views were possible in the case, the view that supports the accused is the one to be followed.

13. The judgment of acquittal recorded by the trial Court and affirmed in appeal is based on cogent and valid reasoning and based on due appreciation of evidence adduced on record. Learned counsel has not been able to point out any perversity or illegality in the same that would justify intervention by this Court in exercise of its revisional jurisdiction under Section 401 of the Code of Criminal Procedure.

14. For the reasons recorded above, no merit is found in the instant revision petition and the same is dismissed.

January 19, 2017
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: *Whether speaking/reasoned?* *Yes/No*
 Whether Reportable? *Yes/No*