

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

**CRM A-2235-MA of 2016
Date of Decision : August 14, 2018**

Bagh SinghApplicant

Versus

Ashok Kumar Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present : Mr. L.S. Bhangu, Advocate
for the applicant.

T.P.S.MANN, J.

The complainant has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 20.7.2016 passed by learned Judicial Magistrate 1st Class, Gurdaspur, whereby, the accused/respondent was acquitted of the charges under Sections 420, 467, 468 and 471 IPC.

According to the complainant, he is resident of Dina Nagar and owns property in village Deeda where one Kesar son of Ganga Ram also owned property. The property belonging to Kesar comprised in Rectangle No. 24 Killa No.7/2 South measuring 5 kanals 16 marlas. Ashok Kumar accused and his mother Kala Wanti had nothing to do with this land. Both Ashok Kumar and Kala Wanti entered into an agreement to sell 2 kanals 18 marlas comprised in Rectangle No. 24 Killa No. 7/2 min South

and received an amount of Rs.1,000/- from the complainant as earnest money vide agreement dated 15.11.1973. Both Ashok Kumar and Kala Wanti were aware of the fact that their names did not figure in the record as owner and for that reason they promised that after change in the column of ownership, they would execute the sale deed in favour of the complainant. However, in connivance with the Halqa Patwari, both Ashok Kumar and Kala Wanti produced a forged receipt regarding redemption of the said property and on its basis mutation was got changed by the then revenue Patwari. In the original mutation, it was recorded that mutation was changed pursuant to the order passed by the Court but in the jamabandi for the year 1991-92 Kala Wanti was shown to be the owner alongwith other persons. Kesar son of Ganga Ram moved an application before the Collector for redemption of half share of land comprised in Rectangle No. 24 Killa No. 7/2, which was mortgaged with Mahan Devi, Kala, Deepak Kumar, Devinder Kumar, Ashok Kumar, Sumitra Devi, Kaushalya Devi, Shanti Devi, Ravi Kanta and Indu Bala. The property was redeemed on payment of Rs.82.50 paise and the Court passed order on 2.8.1967. The complainant had moved an application before the Copy Branch in order to ascertain, if any other order was passed by the Senior Sub Judge on 26.6.1972 but Copying Branch reported that there was no such file, which could be supplied to him. The complainant is still

in possession of the land measuring 2 kanals 18 marlas comprised in Rectangle No. 24 as is evident from the jamabandi for the year 1986-87. The accused had cheated him by way of deceitful means by receiving an amount of Rs.1,000/- and the remaining amount was also taken by them by giving false assurance and they prolonged the matter whenever the complainant asked them to execute the sale deed by flatly refusing to do the same. Hence, the complaint.

Having heard learned counsel for the applicant and on going through the impugned judgment, this Court finds that CW2 Hazara Singh, who was examined by the complainant in support of his case admitted in his cross-examination that he had not seen the agreement dated 15.11.1973 in original till date. He was also not a witness to any such agreement. He further admitted that no money transaction between the parties ever took place in his presence. He had also not seen the revenue record regarding the subject matter of the agreement to sell. He also admitted that he had no knowledge with regard to the ownership of the land, which was subject matter of the agreement in question. He admitted that he was told regarding the agreement by the complainant, who was his uncle. He finally deposed that there was no agreement to sell between the complainant and Ashok Kumar accused.

Copy of agreement to sell has been brought on record

by the complainant as Ex.C1. The complainant admitted in his cross-examination that he had not brought the original agreement to sell. Merely exhibiting a document would not prove the same. Moreover, the agreement Ex.C1 was merely witnessed by the accused. The complainant failed to bring on record any evidence from which it could be inferred that the accused had induced the complainant at any point of time to enter into agreement to sell with Kala Wanti.

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

(T.P.S. MANN)
JUDGE

August 14, 2018
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No