

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-A No.1633-MA of 2017

Date of Decision : January 18, 2018

Bimla Applicant

Vs.

Bhupender and another Respondents

CORAM : HON'BLE MR. JUSTICE T. P. S. MANN.

HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Sandeep K. Sharma, Advocate
for the applicant.

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DEEPAK SIBAL, J. :

Through the present application filed under Section 378(3) read with Section 372 of the Code of Criminal Procedure, 1973 (for short – Cr.P.C.), the applicant seeks leave to appeal against the judgment dated 26.04.2017 passed by the Sessions Judge, Sonapat (for short – trial court), through which respondent no.1 Bhupender was acquitted of the charges framed against him under Sections 328/406/420 of the Indian Penal Code, 1860 (for short – IPC).

Briefly, the case of the applicant is that a complaint dated 25.04.2014 was submitted by her to the police alleging therein that after the passing away of her husband, her father-in-law – Balbir Singh had gifted 26 kanals 08 marlas of land (hereinafter referred to as – the land in question) to

her son – Jaipal who was a vagabond and a habitual drunkard. The applicant made several attempts to reform him by even admitting him in de-addiction centers at Jind and Delhi but to no avail. Rather, Jaipal absconded from these centers and did not return home for a long time. It was further alleged that after administering some stupefying substance to Jaipal, respondent no.1 had got executed from him a sale deed of the land in question in favour of his wife. No consideration was paid by respondent no.1 for such transaction. Apart from respondent no.1, Nirmala, Maman and Ram Chander – Numberdar were also alleged to have been involved with respondent no.1 in the afore-referred act.

On the basis of above complaint, FIR was lodged and on completion of the investigation, report under Section 173 Cr.P.C. was filed before the competent court. On the basis of material available on record, respondent no.1 was charged for commission of offences under Sections 328/420/467/120-B IPC, to which he pleaded not guilty resulting him to be put on trial.

The trial court, after sifting the evidence which had come on record, came to the conclusion that the prosecution had failed to establish its case and therefore, ordered the acquittal of respondent no.1. It is such acquittal of respondent no.1 which is the subject matter of challenge in the present proceedings.

Learned counsel for the applicant submitted that the trial court erred in acquitting respondent no.1 as there was overwhelming evidence on

the record to prove his guilt for the offences he was charged for. It was further submitted that Jaipal was a drug-addict and respondent no.1, by taking advantage of him, had got transferred the land in question in the name of his wife without paying any consideration to Jaipal. It was further submitted that the investigating agency had colluded with respondent no.1 by producing two of the accused persons namely PW-4 Maman and PW-5 Ram Chander as prosecution witnesses, who had predictably turned hostile resulting in the wrongful acquittal of respondent no.1.

The above submissions made by learned counsel for the applicant have been considered but the same do not warrant a favourable consideration.

It is not disputed that before the trial court, the applicant was represented through counsel. It is further admitted that to the production of PW-4 – Maman and PW-5 – Ram Chander as prosecution witnesses, no objection was ever raised before the trial court on behalf of the applicant. It is only after the afore-referred two witnesses deposed against the interests of the applicant that she has now chosen to object to them being produced before the trial court as prosecution witnesses. Such objection on her part can only be termed as opportunism.

PW-4 – Maman and PW-5 – Ram Chander, who were the residents of the same village to which Jaipal belonged to, were the attesting witnesses of the sale deed. PW-4 deposed that on the asking of PW-5, who was Numberdar of the village, he had attested the sale deed Ex.P-6 as a

witness to the same. He had known Jaipal earlier and at the time of execution of the sale deed he had not noticed Jaipal or respondent no. 1 to be in a drunken state. On being declared hostile, PW-4 Maman was permitted to be cross-examined by the prosecution but he stood his ground. To the same effect was the version of other eye-witness PW-5 Ram Chander, who was the Numberdar of the village, to which Jaipal belonged. Since PW-5 Ram Chander also did not support the case of the prosecution, he was also permitted to be cross-examined by the Prosecutor but through such cross-examination as well, nothing could be extracted from him which would help the prosecution's case. Not only did PW-4 and PW-5 not support the case of the prosecution, they specifically went on to depose that at the time of the execution of the sale deed, Jaipal was not under the influence of liquor. The only other evidence in this regard which was produced by the prosecution was through the production of PW-12 – Dr. Rakesh Kumar, who had medico-legally examined Jaipal but such medico-legal examination, having taken place after a gap of five weeks from the date of execution of the sale deed, would not be worthy of any reliance.

The confessional statement of respondent no.1 is also of no help to the prosecution's case as the same was admittedly made during the time he was in police custody. So far as the alleged disclosure statement suffered by respondent no.1 is concerned, it also did not lead to any recovery and even otherwise, whatever was disclosed through such statement, was already in the knowledge of the investigating agency.

The testimony of the applicant, who appeared before the trial court as PW-13, would also be worthless as admittedly, she was not present at the time when the sale deed was executed by Jaipal. Rather, it is her case that Jaipal was absconding from home and that she came into contact with him only after he had executed the sale deed in question. PW-10 Jaipal further contradicts the stand of his mother, the present applicant, as he deposed that he had been staying with his mother and that he was not a vagabond. He further goes on to state that before putting his thumb impressions, he inquired from PW-4 Maman and PW-5 Ram Chander whether the documents on which he was appending his thumb impressions, were for making of a credit card or not. If that is so, then it clearly shows that he was well within his senses at the time of execution of the sale deed and not under the influence of any stupefying substance.

So far as the allegations that no consideration was paid by respondent no.1 are concerned, Ex.P-3 which was the statement of account of respondent no.1 was produced by the prosecution which revealed that six days prior and five days after the execution of sale deed, a sum of Rs. 33 lacs was withdrawn from the account of respondent no.1. Further, as per the statement of account Ex.D-4 produced by respondent no.1, a sum of about Rs.8 lacs was withdrawn by respondent no.1 between 01.05.2014 and 12.05.2014. Though there is no direct evidence to show that this amount was paid by respondent no.1 to Jaipal, it is certainly indicative that respondent no.1 had withdrawn about Rs. 41 lacs which is just before or

after the execution of the sale deed in question.

In view of the above, the present application is devoid of any merit and, therefore, dismissed. Special leave to appeal is declined.

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

January 18, 2018
monika

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>