IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-A-1033-MA of 2015

Date of Decision : January 10, 2018

Arvind Kumar .... Applicant

Vs.

Ms. Samta and others .... Respondents

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

HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Vishal Sharma, Advocate
for Mr. Harkesh Manuja, Advocate
for the applicant.

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DEEPAK SIBAL, J. :

Through the instant application filed under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short – the Cr.P.C), special leave to appeal is sought against the judgment dated 02.05.2015 passed by the Judicial Magistrate Ist Class, Panipat (for short – the trial court) dismissing the complaint filed by the applicant through which he sought the respondents to face trial for the commission of offences punishable under Sections 406, 409, 420 and 120-B of the Indian Penal Code (for short – the IPC).

The case of the applicant/complainant, in brief, was that the respondents were brokers engaged in the business of sale and purchase of shares/debentures. In March 1996, the applicant and his father entrusted the respondents with 500 shares of Hindalco and 300 shares of Telco, with specific instructions to dispose them of but only after seeking prior permission of the applicant and his father. As per the intimation given by the respondents, only 400 shares of Hindalco and 200 shares of Telco were sold by them. For the balance shares, no statement of account was given. Rather, the applicant and his father were informed by the respondents that they could not sell these shares as the same had been misplaced by them. The applicant and his father made inquiries which revealed that afore-referred balance shares had been sold by the respondents to their relatives without getting prior consent of the applicant or his father. The proceeds of such sale was also not passed on to the applicant or his father. It was thus alleged that the respondents had colluded with each other to cause wrongful loss to the father of the applicant till the time he was alive and after his death, to the applicant and other legal heirs of his father. Fraud and cheating by the respondents was also alleged. The applicant had also approached the police with the above allegations but as per the applicant, the police authorities colluded with the respondents, leaving the applicant with no other choice but to file a complaint before the trial court.

The trial court, after sifting the evidence which had come on record and hearing the counsel for the parties, concluded that the applicant had failed to prove his case against the respondents beyond reasonable doubt and resultantly, acquitted the respondents of all charges levelled against them. It is such order of acquittal which is the subject matter of challenge in the present proceedings.

Learned counsel for the applicant submitted that the trial court erred in acquitting the respondents as they had clearly acted in violation of the instructions given to them by selling 100 shares of Hindalco and Telco each without prior consent of either the applicant or his father and that the respondents had intimated the applicant and his father that they had misplaced the above shares whereas it was later found that these shares had been sold by the respondents to their relatives. The proceeds of such sale were also not accounted for by them. It was thus submitted that the respondents were clearly guilty of having committed offences under Sections 406, 409, 420 and 120-B IPC.

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

No document or evidence was produced by the applicant to show that the shares in question could only be sold only with prior consent of the applicant or his father. Rather, the applicant admitted in his cross-examination that he and his father had requested the respondents to sell the shares in question.

The record further reveals that a Civil Suit bearing No.223 of 1996 was filed by the applicant's father, in which he had stated that 800 shares had been sold by the respondents and balance consideration of 400 shares (300 shares of Telco and 100 shares of Hindalco) were still due from the respondents. Such suit was subsequently withdrawn. In another suit being Civil Suit No. 165 of 2013, which was filed at the instance of the applicant, it was his specific case therein that the shares in question had been sold by the respondents without consent. The stark contradiction in the stands taken in the above two suits remains unexplained, especially in the light of the admitted fact that the father of the applicant had written to Hindalco, in which he had stated that it was he who had misplaced 100 shares of Hindalco.

The alleged occurrence is of the year 1996. The applicant's father died in the year 2000. The FIR was sought to be lodged only in the year 2004 and the complaint was filed in the year 2005. In the FIR lodged by the applicant, the police, after investigation, filed a cancellation report after holding that no criminal offence was made out against the respondents. The afore-referred delay of 8/9 years in the initiation of criminal proceedings, which is fatal, also remains unexplained.

A perusal of the record further shows that the applicant and his father were having regular business dealings with the respondents. In view of the observations made above and in particular, the delay of 8/9 years in filing of the present complaint, it is apparent that through the present complaint, the applicant was attempting to settle a score with the respondents, which, even if made out, was civil in nature. The criminal law was apparently sought to be set in motion only to pressurize the respondents.

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 10, 2018
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