

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

CRM No.A-1788-MA of 2017 (O&M)

Date of decision: July 24, 2018

Gurjant Singh

...Applicant

Versus

Gurvinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vishal Munjal, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Gurjant Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Gurvinder Singh and Sukhjit Kaur, challenging the impugned judgment dated 05.06.2017 passed by learned Chief Judicial Magistrate, Barnala, vide which the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Gurjant Singh filed a complaint against State of Punjab and other accused under Sections 420, 406, 120-B IPC. Vide order dated 03.06.2013, complaint against State of Punjab through SSP, Barnala and Mr.Rupinder Bhardwaj, DSP, Barnala, was

dismissed and proceedings against accused No.3 were abated on

27.04.2017). The brief averments of the complaint as noted by down in the judgment passed by learned CJM, Barnala, are as under:-

“2. In brief complainant has averred that his father was induced by accused nos. 3 to 5 with a promise regarding sale of 44 kanals of land situated at Village Giaspura, District Ludhiana owned by accused no. 3 Gian Kaur and that accused no. 4 Gurwinder Singh who was the power of attorney holder of accused no. 3 Gian Kaur and accused no. 5 Sukhjit Kaur who is the wife of accused no. 4 Gurwinder Singh.

3. Complainant further averred that in lieu of purchase of the above mentioned land vide receipt dated 15.2.2006 accused no. 4 Gurwinder Singh received an amount of Rs. 5,00,000/- as advance of the agreement to sell and that thereafter an amount of Rs. 4,00,000/- was received by accused no. 3 to 5 on 25.2.2006 and that thereafter on 20.4.2006 an amount of Rs. 15 Lacs was received by accused no. 3 to 5 in lieu of selling their land in favour of father of the complainant. Complainant further averred that all the above amounts were taken by the complainant on behalf of his father in the presence of Darshan Singh, Advocate Barnala and Gurmail Singh and Yashpal Honda. Complainant further averred that an intention to cheat and commit fraud by accused no. 3 to 5 surfaced since it came to the notice of the complainant that accused no. 3 to 5 had already entered into an agreement regarding this land in favour of some other person and that Gian Kaur accused no. 3 had also handed over the possession of the land on 7.6.2001 to some other persons on receiving Rs. 20 Lacs from them. Complainant further averred that a civil suit is pending between the accused no. 3 to 5 with the holders of the previous agreement to sell but that the accused in order to commit cheating with the present complainant and his father received an amount of Rs. 24 Lacs. Complainant further averred that applications were moved by them to the police regarding which inquiry has been conducted but no FIR was registered. Complainant further averred that accused no. 3 to 5 received Rs. 24 Lacs from them and deposited some amount in account no. 203839 pertaining to accused no. 4 and 5 in Malwa Gramin Bank, PO Thulliwal. Hence, the instant complaint.”

After pre-charge evidence, finding prima facie case, accused were charge-sheeted under Sections 420 read with Section 120-B IPC, to which they pleaded not guilty and claimed trial.

After the close of complainant's evidence, the accused were examined under Section 313 Cr.P.C. and they were confronted with the evidence of the complainant. They denied the incriminating evidence against them and pleaded that they have been falsely implicated. They further pleaded that complainant habitually purchases disputed properties and has filed the complaint in connivance with land mafia of Ludhiana and all forged documents have been prepared by complainant in connivance with Darshan Singh Sidhu and the amount deposited in the bank account, belongs to them and pertains to sale proceeds of their own property.

Learned CJM, Barnala, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 05.06.2017.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

I have heard learned counsel for the applicant and have gone through the record.

The perusal of the findings given by learned Court below shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

From the perusal of the record, I find that learned Court below

has discussed regarding delay of six years till the filing of the complaint in

the Court and further, delay of four years till the filing of complaint before police and this delay remained unexplained. Further, the entire case of complainant is based on receipt Ex.P3 but receipt does not bear the signatures of accused. None of the accused can be held liable for cheating.

Further, by producing bank record showing the money will not make the accused liable for the offence under Section 420 IPC. The money is in their account. No agreement to sell has been proved on record nor any attesting witness or scribe has been produced/examined. The complainant in cross-examination has stated that his father had asked Gurmail Singh, Darshan Singh and Yashpal Handa to return the amount to him and the Court below held that had any money been paid to the accused, the complainant might have asked for the same from the accused and not from afore-mentioned persons.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 05.06.2017 passed by learned CJM, Barnala, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

July 24, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No