

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.493 of 2016
and
Criminal Misc. No.A-27-MA of 2016 (O&M)

.....

Date of decision:16.10.2018

Naresh

...Applicant

v.

Savitri Devi

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ashit Malik, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.493 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 15 days in filing the appeal and application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-27-MA of 2016:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Savitri Devi-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 7.10.2015 passed by learned Judicial Magistrate Ist Class, Gohana, whereby the complaint filed under Sections 420, 120-B, 467, 468, 166 and 167 IPC has been dismissed and the accused-respondent has been acquitted of the charges as framed against her.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 7.10.2015 passed by learned Judicial Magistrate Ist Class, Gohana, which is likely to succeed on the grounds mentioned therein. It has been stated that the learned trial Court has misread the evidence produced by the applicant and also ignored the settled propositions of law. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

From the record, I find that Naresh-complainant filed complaint against Savitri Devi, Sukhbir Singh Lamberdar, Shri Niwas Patwari Halqa and Jagdish Girdwawar for the offences under Sections 420, 120-B, 467, 468, 166 and 167 IPC. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Gohana, in her judgment dated 7.10.2015 are as under:-

“Sans unessentials, the brief facts of this lis are that Subedar Sh. Rattan Singh son of Amrit Singh, caste Jat, was biswedat of Village Puthi, Tehsil Gohana as well as Rohtak. He was a freedom fighter. Hence, he was allotted land due to his services which he rendered to the Nation as freedom fighter at Village Puthi, Tehsil Gohana, District Sonapat. He was blessed with five sons namely, Dhup Singh, Man Singh, Amir Singh, Raghbir Singh and Shamsher Singh and one daughter namely Mahli. He executed a Will on 16.12.76 qua his property situated at Village Puthi and Rohtak. The said Will was duly

registered. Thereafter, he died on 16.08.1979 and consequently, a mutation no.8970 dated 02.11.1979 on the basis of the said Will, was entered and sanctioned with the consent of all the legal heirs of late Rattan Singh including Smt. Savitri (hereinafter referred to as “accused”). The said mutation has been admitted to be correct by all the beneficiaries of the Will. It has been further stated that Dhup Singh son of Rattan Singh was married to Mam Kaur and out of the said wedlock, two children, namely Ishwar Singh and Ishwari were born. In the meantime, Mam Kaur died and Dhup Singh solemnized second marriage with Smt. Sama Kaur. It is pertinent to mention here that late Dhup Singh had died prior to late Rattan Singh and vide present Will no.123/3 and 16.12.1976, he had declared Smt. Sama Kaur Wd/o Dhup Singh as limited owner of the land comprised in Killa No.32//23, 18, 21, 65/22, measuring 30K-0M, situated in the revenue estate of village Puthi, Tehsil Gohana, District Sonipat. It has been mentioned in the said Will that she will use the said land for cultivation and enjoy the fruits of the same, but she will not alienate/sell the same to some third person and after her death the said land will be succeeded by the sons of Dhup Singh. Late Sh. Dhup Singh had died in 1954. His sons Ishwar Singh died in 1994. He has been succeeded by Suresh, Naresh and Subhash, hence, they are entitled to the said land of which Sama Kaur is shown to be

exclusive owner.”

The accused Savitri Devi and Sama Kaur were summoned for the commission of offences punishable under Sections 420 and 468 IPC. On the basis of pre-charge evidence, accused Savitri Devi was charged for the offence under Section 420 IPC, to which she pleaded not guilty and claimed trial. Proceedings against Sama Kaur were dropped.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and confronted with the evidence against her but she denied the correctness of the same and pleaded herself as innocent.

The learned Judicial Magistrate Ist Class, Gohana, vide judgment dated 7.10.2015 after appreciating the evidence acquitted the accused-respondent. Aggrieved from this judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the complainant.

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

At the time of arguments, learned counsel mainly argued regarding the false evidence that is affidavit given by the accused before the Court of AC Ist Grade. A perusal of the record shows that the learned trial Court has given the findings as per evidence and law. Firstly, the dispute between the parties looks as of civil nature. Secondly, even if it is taken that a false affidavit had been given by the accused in the Court of AC Ist Grade, then at the most it will amount to giving false evidence before the Court and

the offence is punishable under Section 193 IPC. Section 195 Cr.P.C. provides as under:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.- (1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860) or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code, (45 of 1860) namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been

committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to

commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

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In the present case, no complaint has been filed by the Court and Court cannot take cognizance except on the filing of the complaint by the Court. Otherwise also, for filing false evidence accused cannot be charged under Section 420 IPC. As the complaint was not filed by the Court on which cognizance can be taken and for other facts and the case between the parties is of civil nature, the findings given by the learned trial Court are correct as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below. The findings have been given by the Court below after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

From the above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

October 16, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No