IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A No.1764-MA of 2014 (O&M)
DATE OF DECISION : 27TH JULY, 2018

Rajiv Mehta

…. Appellant

Versus

Rita Datta and another

…. Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE B. S. WALIA

* * * *

Present : Mr. S. S. Dinarpur, Advocate
for the applicant-appellant.

Mr. Ashwani Talwar, Advocate
for respondent No.1.

Mr. Sidharth Sanwaria, DAG, Haryana.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the judgment and order dated 11.08.2014 passed by learned Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhri in criminal complaint No.550/1 of 2008 by which the trial Court held the respondent-Smt. Rita Datta not guilty of the offence charged against her and thus acquitted her, the present appeal has been filed against her acquittal.

Facts:

2. The appellant-Rajiv Mehta, the original complainant, and accused Smt. Rita Datta daughter of late Major Tilak Raj Mehta, are blood relatives. The appellant/complainant-Rajiv Mehta is the elder brother of accused Smt. Rita Datta, the only children of late Major Tilak Raj Mehta. The appellant/complainant Rajiv Mehta filed a private criminal complaint No.550/1 of 2008 in the Court of learned Additional

Chief Judicial Magistrate, Yamuna Nagar at Jagadhri for the alleged offences under Sections 420, 467, 468 and 193 IPC and Section 82 of the Indian Registration Act, against his real younger sister i.e. the respondent accused-Rita Datta. He stated in the complaint that the property measuring 134 kanals 15 marlas is situated in village Mandoli, Tehsil Jagadhri and District Yamuna Nagar. Respondent Smt.Rita Dutta has filed Civil Suit No.375 of 2007 for declaration that she was owner of the said property after the death of her mother Smt. Prem Mehta to the exclusion of appellant-Rajiv Mehta on the basis of alleged Will from her mother in her favour. She had also filed an application for stay in the suit in relation to restrain the complainant from cutting and removing the *safeda* and poplar trees from standing in the land and also from changing the existing nature of the suit land by way of alienation etc. against the appellant. On 23.10.2007 the civil Court passed an order in the presence of both the parties, directing the parties to maintain status quo in respect of the suit property till the next date and that the said order was extended from time to time. On 26.09.2008 the respondent had withdrawn the application for ad-interim injunction. Thus according to the complainant the status quo order remained in operation from 23.10.2007 till 26.09.2008.

3. The complainant then alleged that on 06.08.2008 the respondent Smt. Rita Datta executed mortgage deed No.2306 in relation to the land measuring 32 kanals out of the total land in favour of State Bank of Patiala, Yamuna Nagar for obtaining a loan of ₹9,00,000/- (Rupees Nine Lac) and also executed another mortgage No.2307 dated

06.08.2008 in respect of 16 kanal land out of the total land in favour of State Bank of Patiala, Yamuna Nagar for obtaining loan of ₹3,00,000/- (Rupees Three Lacs). According to the complainant she had made a statement that the land was free from all encumbrances and was not involved in any litigation. It was then stated by the complainant that the respondent accused had made false representation before Registering Officer, Jagadhri for registration of two mortgage deeds in the same manner named above i.e. the land was free from all encumbrances and not involved in any litigation and thus she has committed offence under Section 82 of Indian Registration Act, for obtaining loan. She also committed a fraud with the bank by creating mortgage of property though involved in the litigation. Therefore, she committed offences under Sections 420, 467 & 468 IPC. She had also filed false affidavit to the same effect with the bank. The pre-charge evidence was recorded and the appellant examined himself and his witnesses i.e. CW-1 to CW-7 and he proved as many as 37 documents i.e. Exhibits C-1 to C-37. The trial appears to have commenced in the year 2008 and ended in 2014 with the impugned judgment and order of acquittal. Hence, this appeal against acquittal.

Arguments:

4. In support of the appeal against acquittal, the learned counsel for the appellant-Rajiv Mehta, vehemently argued that the trial Court clearly fell in error in acquitting the respondent when the appellant had proved the offences against her by proving his case by documentary evidence under the signatures of the respondent, namely two mortgage

deeds as well as the affidavit and the declarations given to the bank, containing false statement that the mortgaged land was not involved in litigation and did have any encumbrance. According to him the offence under Sections 420, 467, 468 and 193 IPC and Section 82 of the Indian Registration Act, were clearly proved by the appellant as fraud was played by her on the bank in the matter of land by mortgaging the property which was encumbered and was involved in litigation. The learned counsel for the appellant then contended that ultimately in the civil suit the trial Court has found the Will relied upon by respondent No.1, was not a genuine Will and was rejected. According to him it is true that the appeal against the same is pending before the appellate Court. The counsel for the appellant then submitted that false statements were made before the Registrar while registering the documents of mortgage deeds to the same effect that the land was not encumbered nor was involved in any litigation and, therefore the offence under Section 82 Registration Act was proved by the prosecution/complainant. The respondent-Rita Datta thus clearly played fraud by forging the documents and the offences for which she was charged, the trial Court could not have acquitted her for the offences as stated above. He, therefore, prayed for allowing the appeal preferred by the appellant-elder brother of respondent-Rita Datta, the younger sister.

5. *Per contra*, learned counsel for the respondent vehemently opposed the appeal and submitted that the view taken by the trial Court is based on the evidence and the trial Court has made assessment of the alleged documentary evidence filed by the appellant in legal and correct

prospective. The trial Court has not made any error in considering the documents filed by the appellant so also his oral evidence. According to learned counsel for the respondent, the real reason for feeling aggrieved for the appellant is that the respondent-sister succeeded in getting half share of the suit property left by her mother Prem Mehta and this became eyesore for the elder brother, the appellant. As a matter of fact, according to the counsel for the respondent, the only legal heirs left were the appellant and the respondent and none else and therefore, the property according to law was liable to be divided in half each. The contention is without prejudice to her exclusive right to claim the property under the Will as the issue is pending before appellate Court. Thus according to the counsel for the respondent, except for the ill-will and unwarranted ego on the part of the elder brother the appellant does not have any legal grievance. But, as a patriarch, the appellant wants to pin down and humiliate his real younger sister. His actions in involving her in criminal as well as civil litigation right from the year 2008, has resulted into severe torture to the sister. In law, she was even otherwise entitled to her half share in the property left by her mother. The learned counsel for the respondent, therefore, submitted that the respondent sister may be suitably compensated. He submitted that the perusal of the judgment and the appreciation of the evidence is legal correct and proper. The judgment of the trial Court has not been shown to be perverse in any manner by the appellant. The scope in the matter of appeal against acquittal is limited and, therefore, the present appeal against acquittal is required to be dismissed with exemplary cost.

6. We have heard learned counsel for the rival parties at length. At the outset, in the preliminary hearing we thought that the dispute being between the elder brother and younger sister, it was essential to make attempts for mediation. Accordingly this Court made order on 07.05.2018, which reads thus:

> "Heard learned counsel for the rival parties for quite some time in this appeal against acquittal.
>
> Undoubtedly, the dispute is between elder brother and younger sister regarding the property left by their mother. Learned counsel for the parties stated before us that in the civil litigation, the decree has been passed for distribution of property in half share each amongst the brother and sister. However, learned counsel for the applicant submitted that sister Rita Datta had projected her claim on the basis of a bogus will which was found to be forged by the learned Civil Court and that there is an appeal pending against the said order.
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> We think dispute being between real brother and sister and, inter se, number of cases against each other; mediation in the Court is expedient.
>
> For consideration, adjourned to 14.05.2018."

7. On May 14, 2018 this Court then asked the parties to remain present, with the following order and the matter was finally heard on 24.05.2018:

> "Counsel for the parties are directed to keep their clients present before this Court as this Court wants to mediate.
>
> Put up on 24.08.2018 at 10.00 a.m."

8. The appellant Rajiv Mehta present in person along with his advocate stoutly declined to have any mediation in the matter, though respondent Rita Datta, present with her Advocate, agreed that whatever pending litigations were filed by her would be withdrawn if her elder brother-the appellant, is ready to withdraw all the litigation, criminal of civil, so that the parties could live in peace and harmony. The appellant, however, reiterated his stand that he was not interested in any mediation and wanted that his younger sister should be convicted. This Court having failed in making mediation, then heard the appeal on merits.

Consideration:

9. It is not in dispute that Prem Mehta mother of the parties has left only two legal heirs i.e. appellant-Rajiv Mehta and respondent-Rita Datta, to succeed to her entire estate. The respondent-sister filed Civil Suit No.375 of 2007 and it would be appropriate to quote the nature of relief claimed in the civil suit which is as under :

> "Suit for Declaration to the effect that the plaintiff is owner in possession of land nearing khewat / khatauni no. 118/ 173, khasra nos. 23//1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 18, 19, 20/1, 22, 23, 24//2/1, 3/1, 4/1, 216/2 and ½ share in khewat / khatauni no.120/175 khasra no.23//20/2, 216/1, alongwith all rights appurtenant thereto in Shamlat Deh, tubewell, construction and trees standing therein, situated at village Mandoli, HB No.138, Tehsil Jagadhri, Distt. Yamuna Nagar, as per Jamabandi 2003-04, and also

> owner in possession of House No.212-DL, situated at Model Town, Yamunanagar, along with all assets movable and immovable properties, cash, bank accounts deposit in Post Office etc., if any standing in the name of Smt. Tilak Raj, & for PERMANENT INJUNCTION restraining the defendant from cutting and removing the safeda trees standing in the suit land and also from changing the existing nature of the suit land by way of alienating the same in any manner whatsoever, and also from interfering in possession of plaintiff over the property detailed above."

10. Perusal of the above prayer shows that respondent-Rita Datta wanted a declaration that she was the owner of the suit properties and the trees in the land, cash, bank accounts, deposit in post office etc. standing in the name of her mother and for permanent injunction against the appellant-Rajiv Mehta restraining him from cutting and removing safeda trees in the land and changing the existing nature of the suit land by way of alienation. On 23.10.2007 the Court passed the following order:

> "Vakalatnama on behalf of defendant filed. To come upon 26.11.2007 for filling written statement/reply. Till then, parties are directed to maintain status quo in all respects over the suit property.

11. According to the complainant, despite aforesaid status quo order the respondent had mortgaged the pieces of land for obtaining loans from the State Bank of Patiala by executing two mortgage deeds and also by filing declaration and affidavit that there was no encumbrance on the property and that the property was not involved in any litigation and thus she cheated the bank in obtaining the loan. It appears that the bank did not have any grievance and as appears to be not in dispute that the entire loan amount was paid back to the bank by her. The bank never came forward to make any claim that fraud was played on the bank or any forgery was played in relation to the documents submitted to them. In other words, the bank did not have any grievance about the alleged fraud in question. It is not the case of the appellant that any fraud was played on him or that any forgery affecting him was made in relation to the mortgaged documents etc. It is undisputed and manifestly clear that there was no partition of land between the parties at any point of time, though respondent-Rita Datta was entitled to her half share. Both brother and sister were therefore tenants-in-common. Consequently, it could not be said which property would be allotted to which shareholder. Hence, both the parties were entitled to exercise their right over the joint property. The appellant-Rajiv Mehta could not have made any grievance as to whether a particular piece of land should be mortgaged or dealt with or not by her, there being no partition by metes and bounds.

12. The second aspect is that the forgery, fraud etc. alleged is said to have been committed on the bank and not on the appellant and it cannot be so because the appellant never gave any loan or money to his

younger sister i.e. respondent. But it was the bank which gave loans to her by creating mortgage over the joint property. Therefore, the ingredients of offence under Section 420 and consequently Section 467, 468 and 193 IPC, is not at all attracted as rightly held by the trial Court. At the most it may be said that the bank would be the aggrieved party to say that fraud was played on the bank and that they were induced to make payment of loan on the said alleged mortgage deeds but the bank does not have any grievance, obviously because it recovered its loan with interest from respondent-Rita Datta. *Mens-rea* is the *sine qua non* for any criminal offence. The trial Court has recorded findings in this connection in paragraphs 15 and 16, which reads as under:

> "15. To constitute an offence under Section 420 IPC, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, (ii) to make, alter or destroy wholly or in part a valuable security (or anything sign or sealed and which is capable of being converted into a valuable security).
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> 16. However, in the opinion of this court, no offence of cheating is made out against the accused. First of all, the complainant has not averred even a single word in his complaint that how he was cheated by the accused by execution of mortgage deeds Nos. 2306 and 2307 dated 06.08.2008 or any other document as alleged. The complainant while appearing in witness box as CW1 in pre-charge

evidence has stated that he was cheated only to the extent that accused had mortgaged the land on filing a false affidavit. He further stated that the accused had only committed the offence that she had obtained the loan despite the order of status quo and no other offence had been committed. Learned counsel for the complainant has argued that the accused had cheated the bank as she had filed an affidavit with the bank stating therein that the land was free from any litigation. It is an admitted fact of this case that the accused had filed or affidavit before the bank alleging that the land to be mortgaged was free from litigation and there is no restrain order in respect of said property for creating any charge on it, but the question is as to whether the bank was cheated by the accused on filing her affidavit to that effect. However, herein in this case, the intention to cheat is not established. Guilty intention is an essential ingredient of the offence of cheating and “mensrea” on the part of accused must be established. Undisputedly, the accused had stated that the land was free from any kind of encumbrances and charges etc. and it was true to that extent but she had stated falsely before the bank that the land was free from litigation. Admitted facts of the case are that Smt. Prem Mehta, mother of accused and complainant, was owner of land measuring 134 Kanal 15 Marla as depicted in jamabandi for the year 2003-2004. Thereafter, accused Rita Dutta made her claim over the said land through a Will executed by Smt. Prem Mehta in her favour and mutation on the basis of Will was entered and sanctioned in her favour by the order dated 12.06.2008 passed by Assistant Collector Ist Grade, Jagadhri. A perusal of jamabandi for the year 2008-09 reveals that accused Rita Dutta was recorded as owner in possession over the land on the basis of Will executed by Smt. Prem Mehta in her favour. So, on the date of execution of mortgage deeds, she was owner of the land measuring 134 Kanal 15 Marla as per revenue record. She had mortgaged land measuring 32 Kanal 0 Marla for a sum of Rs. 9,00,000/- vide mortgage deed No.2306 and further mortgaged land measuring 16 Kanal 0 Marla for a sum of Rs. 3,00,000/- vide mortgage deed No. 2307 out of total land measuring 134 Kanal 15 Marla. Moreover, it has come on the file that complainant and accused are only the legal heirs of Smt. Prem Mehta and, therefore, even if, it is accepted that they are owner in the said land to the extent of ½ share each, even then, accused had mortgaged the land with the bank not more than her share.

We fully agree with the aforesaid finding of fact given by the trial Court and we do not find any error on the part of the trial Court.

13. Regarding evidence under Sections 467 and 468 IPC, the trial Court has recorded the finding in para 18, which reads thus:

> "18. Now the next question is whether offence punishable under Sections 467 & 468 of Indian Penal Code has been committed or not. The term forgery used in these two sections is defined in Section 463 of IPC. Whoever makes any false document with intent to cause damage or injury to the public or to any other person, or to support any claim of title or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 of IPC defining "making a false document". The condition precedent for forgery is making a false document dishonestly or fraudulently. In short a person is said to have made a false document, if (i) he made or executed a document claiming to be some one else or authorized by some one else, or (ii) he altered or tampered a document, or (iii) he obtained a document by practicing deception from a person not in control of senses. If what is executed is not a false document dishonestly or fraudulently, there is no forgery. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. The term "fraudulently" is mostly used with the term dishonestly which is defined in Section 24 of IPC as follows:-

> "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly." The complainant has failed to show that accused had dishonest or fraudulent intention while executing the mortgage deeds and affidavit dated 02.08.2008. Thus, the mortgage deeds and affidavit executed by accused do not fall under the categories of false documents.

14. We agree with the aforesaid finding of the trial Court.

15. It is true that Exhibit C-11 is an affidavit of Smt. Rita Datta in which the statement has been made that there was no impediment in creating the mortgage and there was no restraint in respect of the said property for creating any charge on it. The said affidavit was addressed to the bank and not to the appellant in the first place. Secondly, and strictly speaking, it cannot be said that by creating mortgage, the property was being alienated. Every false statement does not necessary partake the character of a criminal offence. At any rate, assuming that the status quo order passed by the trial Court was violated as alleged by the appellant, the clear remedy available to him was under Order 39 Rule 2A CPC and not by resorting to a criminal case when even according to him fraud was played on bank not on him. In our opinion, the appellant has clearly mis-utilized, abused the process of criminal law in order to torture and harass his younger sister when in law he was not entitled to do so as he could not have even filed the criminal case. However, his egocentric attitude that he did not want to part with an inch of land to his sister, she

being a woman or perhaps that the woman does not have any right to claim the property, the criminal case was filed. That is the only inference which can be drawn. The appellant/complainant had no plausible reason to set the criminal law in motion. But he prosecuted his sister right from 2008 till her acquittal in the year 2014, and thereafter before this Court by way of present appeal. We do not think there was any justification for the appellant to file such a frivolous and mischievous criminal complaint in order to torture/harass and take revenge on his younger sister.

16. Insofar as alleged offence under Section 82 of the Registration Act, 1908, is concerned, the trial Court has given following reasons in paragraph 21, which reads thus:

> "21. A perusal of mortgage deeds executed by accused in favour of State Bank of Patiala reveals that she had got mentioned that she is absolute and exclusive owner of the land together with all trees and building thereon and the same is free from encumbrances, attachments, charges and liens whatsoever. The case of the complainant is that the accused had represented before Registering Officer while executing mortgage deeds that property is free from encumbrances and is not involved in any litigation. The allegation of the complainant is true to the extent that the accused had represented before Registering Officer that the land is free from encumbrances and in the opinion of this court, there was nothing wrong in this representation made by accused before the Registering Officer because there is nothing on the file to assume that there was any encumbrance, charge or lien etc. over the suit property. However, as per contents mentioned in

> mortgage deeds executed by accused in favour of bank, she never represented before the Registering Officer that the property mentioned in mortgage deeds, was not involved in any litigation. There is nothing on the file to prove that the accused had filed any affidavit or made any statement in writing or orally before the Registering Officer regarding non involvement of property in any litigation."

17. We agree with the aforesaid reason given with the trial Court with regard to the offence under Section 82 of the Registration Act.

18. In the result we find that the appeal is bereft of any merit. The appellant has abused the process of criminal law for troubling his younger sister. We would have imposed exemplary costs on the petitioner, but then we do not want any further litigation against her. We, therefore, refrain from imposing any cost. In the result, we make the following order:

ORDER

(i) CRM-A No.1764-MA of 2014 is dismissed.

(ii) The impugned judgment and order of acquittal of respondent Rita Datta and others dated 11.08.2014 passed by learned Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhri in criminal complaint No.550/1 of 2008, is confirmed.

(A. B. CHAUDHARI)
JUDGE

27th JULY, 2018
'raj'

(B. S. WALIA)
JUDGE

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*