

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-998-MA-2016

Date of Decision: 08.10.2018

Sunder Singh

.... Applicant

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Raman Chawla, Advocate for the applicant.

RAMENDRA JAIN, J. (ORAL)

Through this application under Section 378(4) Cr.P.C., the applicant-complainant has prayed for grant of special leave to file accompanying appeal against the judgment of acquittal dated 29.03.2016 of the Judicial Magistrate Ist Class, Hisar.

Briefly, one Parkasho Devi, entered into an agreement to sell dated 21.05.2007 with the applicant, to sell her house measuring 181.5 Sq. Yards, situated at Azad Nagar, Hisar. However, before registration and execution of the sale deed, she transferred her aforesaid house in favour of Verma Co-operative Housing Society Limited, Hisar, of whom respondent No. 2-Suresh Kumar was President, vide Award dated 27.04.2009, passed in Lok Adalat. In this way, Parkasho Devi, in connivance with private respondents cheated the applicant.

Consequently, the applicant filed Complaint No. 560-I dated

21.12.2010/09.05.2012 under Section 420, 464, 466, 467, 468, 471, 474, 465, 406, 120-B and 506 IPC against the private respondents. After holding trial, learned trial Court vide impugned judgment dated 29.03.2016, acquitted them, while dismissing the complaint of the applicant.

Learned counsel for the applicant *inter alia* contends that private respondents in connivance with Parkasho Devi, cheated and committed fraud with the applicant qua the house in question which was agreed to be sold by her to him by way of a false and fictitious exchange decree. The trial Court has failed to appreciate that the above assertion of the applicant was proved by him beyond any shadow of doubt by examining his vendor-Parkasho Devi as PW-2, who categorically testified that the above Award regarding exchange of her house, which she had agreed to sold to the applicant was fraudulently obtained by the private respondents in connivance with each other.

Having given thoughtful consideration to the submissions of learned counsel for the applicant, this Court finds the instant Criminal Miscellaneous Application, is completely devoid of any merit for the reasons to follow:-

No question of law much less substantial, has been raised in the instant application.

It is only Parkasho Devi, who had allegedly entered into agreement to sell with the applicant and had cheated him. However, the applicant did not implead her as one of the accused in his complaint for

the reasons best know to him. Therefore, without seeking any remedy against Parkasho Devi, complaint of the applicant was definitely not maintainable.

There is no iota of evidence on the record to show that private respondents were ever known to the alleged transaction in between the applicant and Parkasho Devi. Therefore, their complicity and connivance with Parkasho Devi, in commission of crime is not proved.

The matter in dispute is purely of civil in nature between the applicant and his vendor-Parkasho Devi and by falsely giving it a colour of criminal action, the applicant illegally and erroneously approached the Court on criminal side. The applicant ought to have filed a Civil Suit for Specific Performance of Agreement to Sell dated 21.05.2007, in his favour instead of filing instant complaint against the private respondents which is definitely bad in law.

Parkasho Devi, as PW-2 in her cross-examination specifically admitted her signatures on her written statement and Vakalatnama admitting the claim of Verma Co-operative Housing Society Limited, Hisar. Her aforesaid admission had demolished the entire case of the applicant, inasmuch, as statement of a witness has to be read as a whole and not in isolation. When Parkasho Devi, was subjected to cross-examination, she clarified and deposed in favour of private respondents. Therefore, nothing could be proved against them by the applicant qua alleged cheating and fraud.

I have carefully gone through the impugned judgment and find no illegality or perversity in the same. The instant applicant being meritless is dismissed. Leave to appeal is declined. Consequently, the accompanying appeal is also dismissed.

October 08, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No