

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-264-MA of 2014

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Date of decision:10.9.2018

Balbir Singh

...Applicant

v.

Madan Pal

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Abhilaksh Grover, Advocate for the applicant.

Mr. R.S. Mamli, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Madan Pal-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 10.12.2013 passed by learned Chief Judicial Magistrate, Kurukshetra, whereby the criminal complaint filed under Sections 406, 420, 467, 468, 471, 506 and 120-B IPC has been dismissed and the accused-respondent has been acquitted of the charge as framed against him.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 10.12.2013 passed by learned Chief Judicial Magistrate, Kurukshetra, which is likely to succeed on the grounds mentioned therein. It has been stated that the learned Chief Judicial Magistrate has passed the judgment without appreciating the facts and evidence of the case available on record. The

learned trial Court has not considered the statements of witnesses. The learned Chief Judicial Magistrate has dismissed the complaint filed by the applicant, merely on the ground that it is a civil dispute which is sought to be given a criminal colour. It has been stated that the impugned judgment is obviously erroneous and, therefore, is liable to be set aside. 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 Balbir Singh-complainant filed complaint against Madan Pal for the offences under Sections 406, 420, 467, 468, 471, 506 and 120-B IPC. The brief facts of the case as noted down by learned Chief Judicial Magistrate, Kurukshetra, in his judgment dated 10.12.2013 are as under:-

“The facts are that complainant is a permanent resident of Village Ram Nagar, Tehsil Thanesar, District Kurukshetra and is a very peace loving and law abiding citizen. The accused persons conspired among themselves and by entering into a criminal conspiracy hatched a plan and the accused No.1 Madan Pal entered into an agreement to sell dated 7.3.2005 with the complainant to sell his 53 Kanal 9 marle of land situated in Village Bakali at the rate of Rs.6,90,000/- per acre and hence the total sale consideration comes to Rs.46,10,063/- and received a sum of Rs.7,00,000/- as earnest money from the complainant on the same date i.e. 7.3.2005. It was further agreed at the time of execution for the agreement to sell that the

complainant will pay Rs.3,00,000/- more to the accused No.1 on 15.4.2005 and the date for execution and registration of sale deed and for payment of balance sale consideration was fixed as 15.11.2005 with the stipulation that if 15.11.2005 happens to be holiday then the next working day shall be treated as date fixed. In pursuance to agreement to sell dated 7.3.2005 the complainant paid Rs.3,00,000/- more to the accused No.1 on 7.4.2005 and for which another agreement in the continuation to earlier agreement was also written and hence the total earnest money advanced by the complainant comes to Rs.10,00,000/-. The intention of accused No.1 was not fair from the very beginning and his only intention was to grab the money of the complainant by deceitful means. On 15.11.2005 it happened to be holiday due to Guru Nanak Dev's Birthday, and hence the complainant after intimating the accused No.1 through registered notice in advance remained present in the Tehsil premises at Ladwa on 11.11.2005 and 18.11.2005 along with balance sale consideration. The accused No.1 did not turn up to execute and register the sale deed. It is further averred that many a times the complainant along with his relatives visited the house of the accused No.1 and asked him to get the sale deed executed and registered. It is further averred that when the summons of the said suit was served on the accused No.1 the accused No.1 in criminal conspiracy with the accused No.2

to 4 prepared a forged and fabricated agreement to sell in favour of accused No.2 by purchasing the stamp on the back date and on the said stamp paper forged an agreement to sell qua the 53 Kanal 9 marle of land on a previous date which the accused No.1 had already agreed to sell the complainant. The accused No.3 and 4 have put their signature on the said forged agreement to sell as attesting witness. This document on the back date to the agreement to sell in favour of the complainant was got prepared just to deprive the complainant of his legal rights. The complainant moved an application before the SHO P.S. Ladwa but the police refused to take the action. Hence, the complaint.”

In pre-charge evidence, the complainant himself appeared as CW-1 and also examined Ishwar Chand as CW-2, Amit Kumar as CW-3 and Kashmira Singh as CW-4.

The accused was charge-sheeted for the offence under 420 IPC, to which he pleaded not guilty and claimed trial.

In after charge evidence, CW-1 Balbir Singh and CW-2 Ishwar Chand were recalled and further cross-examined.

At the close of evidence of the complainant, the statement of the accused was recorded under Section 313 Cr.P.C., in which he denied all the allegations levelled against him and pleaded innocence.

The learned Chief Judicial Magistrate, Kurukshetra, after appreciating the evidence acquitted the accused. Aggrieved from the

impugned judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the complainant.

Notice of motion has been issued in this case.

Mr. R.S. Mamli, learned Advocate has appeared for the respondent and contested this application.

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

A perusal of the findings given by the learned trial Court shows that the same cannot be held as perverse. Nothing has been pointed out at the time of arguments as to how the findings given by the learned trial Court are perverse or against the evidence or law. 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 only allegation against the accused in the complaint regarding cheating is that the accused had forged another agreement after the execution of the agreement with the present complainant to sell his land with other persons. In the present case, only the present respondent Madan Pal has been summoned and the remaining accused were not summoned by the trial Court.

A perusal of the record shows that firstly, this case is of civil nature and even as per evidence, a civil suit was already filed by the complainant which has been decreed in his favour. Secondly, the case is based on another agreement executed by the present accused in favour of another person, but that agreement, as admitted at the time of arguments,

was neither produced before the trial Court nor proved as per law. Tendering of mere judgment of the civil Court in civil proceedings will not prove the fact that the present accused had forged the agreement. In the criminal case, the complainant has to prove his case beyond a reasonable doubt. Otherwise also, the finding given by the learned Chief Judicial Magistrate, Kurukshetra, that the dispute is of civil nature is also correct as per evidence and law. The judgment passed by the learned trial Court has been passed correctly after appreciating the evidence properly in right perspective. The findings are as per evidence and law which 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.

September 10, 2018.

(Inderjit Singh)
Judge

hsp

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