

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-682-MA of 2014

.....

Date of decision:29.8.2018

Krishan Kumar Bhatia

...Applicant

v.

Dalip Chand Bhatia

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vishwajeet, Advocate for Mr. Vikram Singh, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. read with Section 482 Cr.P.C. against Dalip Chand Bhatia-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 6.2.2014 passed by learned Additional Sessions Judge, Karnal, whereby the appeal filed against the judgment of conviction dated 24.2.2012 and order of sentence dated 25.2.2012 passed by learned Judicial Magistrate Ist Class, Karnal, convicting the appellant-accused and sentencing him for the offence under Sections 420 and 406 IPC, has been accepted and the above judgment of conviction and order of sentence were set aside and the accused-respondent has been acquitted of the charges framed against him, by giving him benefit of doubt.

It has been mainly stated in the application that the

accompanying appeal is being filed against the judgment dated 6.2.2014 passed by learned Additional Sessions Judge, Karnal, which is likely to succeed on the grounds mentioned therein. It has been stated that the aforesaid judgment has been passed without considering the facts mentioned in the complaint, which is further illegal, null and void. Therefore, it has been prayed that this application be allowed and leave to appeal be granted to the applicant.

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

The brief facts of the complaint as noted down in the judgment passed by the learned Judicial Magistrate Ist Class, Karnal, are as under:-

“Through the present complaint, complainant has averred that he is employed in UHBVNL, posted at Karnal and working as Cashier in the Sub Division. His father late Kewal Krishan Bhatia, elder brother of accused No.1 was owner in possession of 10K land as detailed in para No.2 of the complaint by dint of decree dated 6.1.86 obtained from the Court of Shri Anil Panwar, the then Id. SJIIC Karnal in case No.79/86. Mutation to this effect was entered against No.1359 and this fact was also incorporated in the jamabandi for the year 1993/94. However accused No.1 with the connivance with accused No.2 filed a case against complainant father showing themselves as President of the Mandir Shri Goverdhan Nath Ji, Shish Mehal Karnal asserting that Radha Bai who suffered decree in favour

of complainant father had actually suffered a registered Will in favour of accused Sabha regarding her property in favour of accused No.1 but accused No.1 also admitted ownership of the father of the complainant though due to undue influence. It is the allegations of the complainant that the case that was filed against father of the complainant was filed in connivance of both the accused by misrepresentation and undue influence upon his father and without knowledge of the complainant or any legal heir of the deceased. It is asserted by the complainant that his father was suffered from cancer and he was not in position to stand on his legs and his father never appeared in the Court. Accused made some other person stand on his behalf and got decreed of ½ share suffered in their favour. It is also the allegations of the complainant that though they got decree of ½ share but they connived with the revenue officials and got the mutation and whole of the property i.e. 80 K in their favour and thereafter accused No.1 entered into agreement to sell that one Mukim to sell whole of the land and received advance money in the sum of Rs.150000/- vide agreement dated 7.2.06 that was witness by the accused No.2 that later on with the interference of the complainant same was cancelled. It is also alleged that again accused No.1 entered into agreement with Dharam Singh and Ram Paul to sell the whole land for a consideration of Rs.13 lacs and has received total sale

consideration while agreement dated 9.3.06 so it is alleged that accused No.1 and 2 in furtherance of common intetion have committed various offences under IPC. So action be taken against them.”

The accused were summoned by the Court under Sections 420, 406 and 120-B IPC and accused No.1 was also summoned for the offence under Section 506 IPC.

On the basis of pre-charge evidence, the accused were charged under the above stated offences.

The complainant produced his evidence CW-1 Prem Chand Kadyan, Advocate, Notary Public, Shri Anil Rana, Advocate, Notary Public as CW-2, Krishan Kumar-complainant examined himself as CW-3 and Sunil Kumar as CW-4.

At the close of complainant's evidence, the accused were examined under Section 313 Cr.P.C.and confronted with the evidence of the complainant but they pleaded themselves as innocent and denied the correctness of the evidence produced against them. The accused had not led oral evidence and in documentary evidence the accused have placed on record the copy of judgment dated 24.2.2011 passed by the learned Additional Sessions Judge in appeal which is Ex.D.1 and decree sheet Ex.D.2.

The learned Judicial Magistrate Ist Class, Karnal, after appreciating the evidence convicted accused No.1-Dalip Chand Bhatia for the offences under Sections 420 and 406 IPC. Accused Dalip Chand Bhatia

was sentenced to undergo simple imprisonment for three years and to pay a fine of ₹2,500/- and in default thereof to further undergo simple imprisonment for one month for the offence under Sections 420 IPC. He was also sentenced to undergo simple imprisonment for two years and to pay a fine of ₹2,500/- and in default thereof to further undergo simple imprisonment for one month for the offence under Sections 406 IPC. Both the sentenced were ordered to run concurrently. Accused No.2-Ganga Dhar Bhatia was acquitted of the charges as framed against him.

Aggrieved against this judgment and order accused-Dalip Chand Bhatia filed appeal before the learned Additional Sessions Judge, Karnal, which was allowed and the judgment of conviction and the order of sentence were set aside and the accused has been acquitted of the charges as framed against him. Aggrieved against the impugned judgment passed by the learned Additional Sessions Judge, Karnal, the present appeal along with application seeking leave to file appeal has been filed by the complainant.

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

A perusal of the impugned judgment shows that the findings given by the learned Additional Sessions Judge, Karnal, are correct as per evidence and law and, in no way, these findings qua Dalip Chand Bhatia can be held as perverse or against the evidence or law. There is nothing also as to how the acquittal of accused No.2 by the learned Judicial Magistrate Ist Class, Karnal, is against evidence or law. Nothing has been argued at the time of arguments as to how the findings are 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.

In the present case, Krishan Kumar Bhatia-complainant mainly stated that accused No.1-Dalip Chand Bhatia was the uncle of the complainant and he obtained a decree from the Court by misrepresenting, undue influence and by committing fraud upon the father of the complainant. The allegation against accused No.2-Ganga Dhar Bhatia was only that he was witness to one agreement. A perusal of the record shows that there is no allegation of impersonation etc. in the complaint. Therefore, a witness to the agreement to sell etc. cannot be held liable for commission of any offence unless he identifies some impersonator instead of party to the document etc. It is admitted at the time of arguments that a civil suit was filed for setting aside the decree passed by the civil Court on the ground of fraud, misrepresentation and undue influence. The appellate Court has already dismissed the appeal of the complainant which means that the decree passed by the civil Court in favour of Dalip Chand Bhatia was not found to be result of fraud, undue influence or misrepresentation. Furthermore, the decree is for half share and if the revenue authorities executed any mutation for the full share, it also does not amount to commission of offence specially when there are no allegations regarding conspiracy of the revenue officials with accused Dalip Chand Bhatia and further more when no revenue official has been impleaded as accused in the complaint. The findings given by the Court below are correct as per evidence and law and

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no ground is made out for interference in the judgment passed by the learned Additional Sessions Judge, Karnal.

Therefore, from the above discussion, I do not find any ground to grant leave to file appeal. Hence, 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.

August 29, 2018.

(Inderjit Singh)
Judge

hsp

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