

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.A-657-MA of 2015 (O&M)

Date of decision: December 07, 2018

Jagroop Singh

...Applicant

Versus

Kaka Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kashish Garg, Advocate
for the applicant.

Mr.Naveen Sharma, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-Jagroop Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Kaka Singh and Baljinder Singh, challenging the judgment dated 31.01.2015 passed by learned Addl. Chief Judicial Magistrate, Bathinda, whereby accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Jagroop Singh filed a complaint against accused Kaka Singh, Hakam Singh and Baljinder Singh under Sections 420, 465, 468, 471, 34 and 447 IPC. The brief averments of the

complaint as noted down in the impugned judgment passed by learned ACJM, Bathinda, are as under:-

“2. Brief facts of the complaint are that complainant is a retired Subedar from MES and he is settled at Chandsar Basti, Gali No.13, Bibi Wala Road, Bathinda. Accused Kaka Singh son of Gurdial Singh sold agricultural land measuring 2 kanals comprising in khasra No.48//25 (1-14), 16 (0-6) adjoining to Mal Singh and Ranjit Singh for Rs.35,000/- vide agreement to sell dated 11.11.1993 to Jagrup Singh complainant. Accused executed this writing dated 11.11.1993 in the presence of witnesses and it was scribed by Ram Sarup petitioner writer and he entered the same in his register at Sr. No.1406. Complainant further stated that Kaka Singh executed writing on receipt of sale consideration after understanding and admitting the contents of the agreement to sell and further agreed to execute the sale deed and to transfer the possession of the land at the spot in furtherance of agreement to sell to the complainant. Complainant further stated that accused Kaka Singh further sold 10 marlas of land comprised in khasra No.48//25 (1-14), 16 min (0-10) situated at Talab Nehar. Complainant further stated that first 20 karam is now 25 karam which adjoins to 18 karams situated at village Beer Talab in consideration of Rs.12,500/- to complainant Jagrup Singh and possession was transferred on the spot after taking the sale consideration, whereas both the sale deeds were deferred for their execution so that accused Kaka Singh may get the revenue record corrected in his favour, then he undertook to execute the sale deed. Accused executed the writing dated 19.3.1997 in the presence of witnesses which was scribed by Ram Sarup petitioner writer and same was entered in the register at Sr. No.860, which was executed by Kaka Singh after understanding and admitting the contents of the agreement to sell and he further agreed to execute the sale deed as undertaken by the accused after getting the revenue record corrected in his favour. Since then the complainant is owner in possession of the land whereas accused Kaka Singh was left with no right, title or interest, but the complainant since he was related to the accused in good faith did not get the revenue record corrected in his name at the assurance of the accused. Accused formed a group to cheat the complainant with dishonest and fraudulent intention in connivance with each other with malafide ulterior motive to cause wrongful loss to the complainant, accused created a false, forged and fabricated writing in the name of Baljinder Singh son of Baljit Singh resident of Gobindpura got executed from Kaka Singh regarding the land of the complainant shown in the agreement to sell, although the said land has already been sold to the complainant and accused has no right, title or interest in the

same. Complainant requested the accused not to do so, but the accused forcibly installed barbed wire illegally around the land of complainant restricting the entry of the complainant to the said land. Complainant filed an application before the Senior Superintendent of Police, Bathinda and to the Police post Incharge, Thandi Sadak, Bathinda but they did not take any action against the accused. The accused also filed an application dated 20.1.2007 to the Senior Superintendent of Police, Bathinda, SHO, P.S.Sadar, Bathinda, Human Right Commission, Punjab and IG Police, Punjab but no action was taken against the accused. Hence, the present complaint.”

The accused were summoned under Section 420 IPC. In pre-charge evidence, complainant examined CW-1 Bal Krishan, CW-2 Partap Singh, CW-3 Charanjit Singh, CW-5 Gurmail Singh Patwari, CW-6 Head Constable Paramjit Singh, CW-7 Harbaksh Singh Mander and examined himself as CW-4.

Finding prima facie case, the accused were charge-sheeted under Section 420 IPC, to which they pleaded not guilty and claimed trial. In after-charge evidence, accused cross-examined witnesses of the complainant except CW-7 Harbaksh Singh Mander. During the pendency of the trial, Hakam Singh absented and was declared proclaimed offender.

At the close of complainant evidence, accused Kaka Singh and Baljinder Singh were examined under Section 313 Cr.P.C. They were confronted with the evidence of the complainant and they denied all the incriminating evidence against them and pleaded their innocence and false implication.

Learned ACJM, Bathinda, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 31.01.2015

Aggrieved from the above-said judgment, present appeal along

with application for grant of leave to appeal has been filed.

Notice of the application was issued. Learned counsel for the respondents appeared and contested the application.

Lower Court record was also requisitioned.

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

From the record, first of all, I find that in the present case, agreement was executed in 1993 and then in 1997 whereas present complaint was filed in the year 2007, after a long delay and there is no cogent explanation regarding the same. Furthermore, perusal of the record shows that dispute between the parties, is at the most, breach of the contract in the writing/agreement and it is purely of civil nature. There is nothing in the complaint that accused had intention to cheat the complainant from the very beginning. There is no such evidence on record to prove this fact. There is no document on record of any type to show that complainant is in possession over the suit property. CW-5 Gurmail Singh, Patwari, brought the jamabandi, in which Punjab government is shown as owner of land and khasra girdawari stands in name of cultivator. Even in the agreement/writing, accused has nowhere stated specifically that he is exclusive owner of the suit property.

As per case of the complainant, Kaka Singh sold the property to Baljinder Singh but there is no evidence on record to show as to when Baljinder Singh has taken the possession of the land from accused Kaka Singh. There is also no evidence on record to show that complainant ever came into possession of the suit property. Moreover, CW-4 admitted in the

cross-examination that he cannot tell the date on which accused took

possession of suit property. Learned trial Court also held that complainant had not filed any case for specific performance.

Keeping in view the above discussion, I find that reasonable doubt exists in the present case. The perusal of the findings given by learned Court below shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 31.01.2015 passed by learned ACJM, Bathinda, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

December 07, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No