

CRM-A-708-MA-2017

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

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Date of Decision:30.11.2018

Harbhajan Kaur @ Bhajo

... Applicant

Versus

Swinder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Vikas Gupta, Advocate,
for the applicant.

INDERJIT SINGH, J.

Applicant-Harbhajan Kaur @ Bhajo has filed this application under Section 378(4) of Cr.P.C. seeking leave to file an appeal against the judgment dated 09.12.2016 passed by learned Judicial Magistrate Ist Class, Patti, vide which respondent-accused Swinder Singh was acquitted of the charges framed against him.

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 further stated that the trial Court has committed an error in acquitting the respondent-accused. It is, therefore, prayed that leave to appeal be granted.

Applicant-complainant filed a complaint against respondent-accused Swinder Singh, Gurcharan Singh, Kuldeep Singh and Hardeep Singh under Sections 406, 418, 420, 467, 468, 471 and 120-B of the Indian

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Penal Code. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Patti, in the impugned judgment dated 09.12.2016, are as under:

“In brief the complainant contends that she is resident of village Rasulpur and they are five sisters and one brother. It is stated that the father of the complainant was owner in possession of land measuring 61 kanals and 19 marlas situated in village Daliri, Tehsil Patti, District Tarn Taran and after his death, the land was equally divided among all the legal heirs and mutation no.1164 regarding the inheritance of Tara Singh was sanctioned in favour of complainant and other brother and sisters. It is submitted that the complainant and her sisters gave their agriculture land on Hissa-Theka to the accused No.1 Sawinder Singh being their real brother and after about 4/5 years the mother of the complainant namely Kartar Kaur had also died and her estate has been devolved upon to her son and daughters vide mutation No.1400 which has duly been sanctioned in favour of son and daughters respectively of Kartar Kaur (deceased). On dated 12.8.1992 the accused no.1 Sawinder Singh with the connivance and conspiracy of another accused nos.2 to 4 have committed forgery by way of preparing the alleged story of alleged oral exchange of land of the complainant and qua the land of her sisters with the

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connivance and conspiracy of Revenue Patwari halqa concerned vide alleged mutation no.1403 alleged to have been sanctioned on the basis of alleged oral exchange and the said mutation has also been entered in the revenue record i.e. in column no.12 of the jamabandi and on the basis of alleged oral exchange the accused no.1 Sawinder Singh has transferred the land of complainant and her sisters in favour of his sons i.e. accused nos.2 to 4 fraudulently with *malafide* intention with intent to grab the valuable property of the complainant and her sisters. The complainant has come to know about the alleged oral exchange/fraud committed by all the accused with their common and criminal conspiracy in the year 2012 when the accused flatly refused to give the Hissa-Theka to the complainant regarding her agricultural land and therefore she filed a civil suit in the court of Shri. Gagandeep Singh, Learned Civil Judge (Junior Division), Patti, District Tarn Taran wherein next date of hearing has been fixed for 28.02.2014. The complainant had been making request to the accused to return back her agriculture as well as the land of her sisters, but the accused did not pay any heed to it and flatly and finally refused to accept the genuine request of the complainant. It is important to mention here that since the year, 2012, the respectable persons of village Daliri had been trying to settle the matter

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compromised amicably with the intervention of relatives and friends, but the same could not be successful as the accused had been lingering on the matter under one pretext or the other. All the accused by hatching conspiracy have committed a fraud with the complainant in order to cause wrongful loss and to gain wrongfully to grab the land of the complainant and her sisters. Hence, the present complaint was filed.”

On the basis of preliminary evidence, the trial Court summoned the respondent-accused Swinder Singh only and complaint qua remaining accused was dismissed.

On finding a prima facie case, the accused was charge-sheeted under Section 420 of the Indian Penal Code, to which he pleaded not guilty and claimed trial.

At the close of after-charge evidence, the accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence. He denied the correctness of evidence and pleaded himself as innocent.

Learned Judicial Magistrate Ist Class, Patti, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 09.12.2016.

Aggrieved from the abovesaid judgment, the present appeal alongwith application for grant of leave to appeal has been filed.

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

Perusal of the findings given by learned Magistrate 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 the court below.

Further from the record, I find that there is only statement of complainant-Harbhajan Kaur @ Bhajo. There is no other evidence on record to prove the offence under Section 420 of the Indian Penal Code. As per the evidence on record, respondent-accused Swinder Singh is the real brother of Harbhajan Kaur @ Bhajo and dispute is regarding inheritance of property. As per the evidence, the accused was cultivating the land even during the life-time of his father and even now after death also. The mutation on the basis of oral exchange etc. was sanctioned in the year 1992. The complainant stated that he came to know regarding mutation in the year 2012, but the present complaint was filed on 17.02.2014 i.e. after a delay of about two years. The said delay has not been explained by the complainant. Furthermore, there is nothing on record to corroborate the statement of complainant. No other witness has been examined by the complainant. Furthermore, civil suit is already pending between parties and the trial Court

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has held that the case is of civil nature; it is a dispute regarding inheritance of property and the complainant has tried to give criminal shape to the civil litigation. The trial Court has correctly held that mutation has been sanctioned in favour of accused Nos.2 to 4, but they have not been summoned in this case. Accused Swinder Singh is not a beneficiary. Furthermore, the trial Court has held that the complainant has not placed on record even a single document from which the factum of cheating can be held. From the evidence, it is also clear that other sisters are not contesting or alleging any cheating etc. Only the complainant is aggrieved from the mutation.

From the perusal of the impugned judgment passed by the court below, I find that the findings have been given by appreciating the evidence in a proper perspective and accused-respondent has been rightly acquitted. In no way, the impugned judgment can be held as perverse or against the evidence and the same does not require any interference from this Court.

In view of the above discussion, I find that the impugned judgment dated 09.12.2016 passed by learned Judicial Magistrate Ist Class, Patti is correct. No ground is made out for granting leave to file appeal and, therefore, the present application stands dismissed.

30.11.2018

parveen kumar

**(INDERJIT SINGH)
JUDGE**

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