

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 754 of 2010 (O&M)

Date of decision : 3.12.2018

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D.R. Arora

.....Petitioner

vs.

State of Haryana and another.

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Mani Ram Verma, Advocate
for the petitioner.

Mr. Sulinder Kumar, Assistant Advocate General,
Haryana for respondent No.1.

Mr. Sudhir Paruthi, Advocate for respondent No.2.

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H. S. Madaan, J.

This revision petition filed by complainant D.R. Arora, is directed against judgment dated 12.8.2009, passed by Additional Sessions Judge, Panchkula, vide which he had dismissed the appeal filed by the State of Haryana, against judgment dated 5.7.2008, passed by Judicial Magistrate Ist Class, Panchkula, acquitting accused Dalip Singh and Parminder Singh, of the charge framed against them, in case FIR No. 143 dated 4.6.1998, for offences under Sections 420, 465, 466, 467, 468, 471 IPC, registered at Police Station Pinjore.

Briefly stated, facts of the case are that complainant D.R. Arora, had submitted a written complaint, addressed to the Superintendent of Police, Panchkula, on 4.6.1998, alleging therein that accused Dalip Singh Suri and his nephew Parminder Singh Suri, had cheated him by executing an agreement to sell dated 30.3.1997, which was executed by Dalip Singh Suri, for himself and claiming himself to be General Power of Attorney holder of his two brothers, namely, Jaswant Ram Suri and Mohan Singh Suri, qua the entire land measuring 17 bighas 6 biswas, situated at village Islam Nagar, Kalka, District Panchkula. At that time complainant had satisfied himself with regard to genuineness of the claim and paid a sum of Rs.1,50,000/- as earnest money to Dalip Singh Suri. The agreement to sell had been attested by Parminder Singh Suri s/o Mohan Singh Suri. As a matter of fact, Dalip Singh Suri had only 1/3rd share in that land. It transpired that Jaswant Ram Suri and Mohan Singh Suri had expired before the execution of that agreement. Dalip Singh Suri had induced the complainant to part with a sum of Rs.6.25 lacs to one Mastan Singh, who was in possession of the land in question; that on 19.3.1998, Dalip Singh came to the spot with some persons and threatened the complainant with dire consequences in case he did not vacate the land. According to the complainant, he has flouted a trust for the purpose of looking after and caring for senior citizens and for setting up an old age people's hostel. On receipt of the complaint, formal FIR was registered.

Investigation in the case started. The accused had got pre-arrest bail from the Court. They were formally arrested in this case.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Panchkula.

On presentation of challan, copies of documents relied upon therein, were supplied to the accused free of cost, as provided under Section 207 Cr.P.C. Then finding a prima facie case, charge for offences under Sections 420, 467, 468, 471 IPC read with Section 34 IPC, was framed against the accused, to which they pleaded not guilty and claimed trial.

The case was fixed for evidence of the prosecution, during the course of which the prosecution examined Sh. D.R. Arora, complainant as PW-1, Mr. K.K. Saini, Advocate, who had drafted agreement to sell dated 30.3.1997, as PW-2. PW- Mastan Singh had expired during the pendency of the trial, as such his evidence could not be recorded. Since, the prosecution failed to examine any other witness and conclude its evidence, despite affording of several opportunities, it was closed by Court order.

Accused Dalip Singh had also expired during pendency of the trial and proceedings against him stood abated.

Statement of accused Parminder Singh Suri was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused, were put to him but he denied the same and pleaded innocence. During his defence evidence accused submitted a copy of judgment dated 7.12.2007, passed in a civil suit filed by the complainant against Dalip Singh and his brothers as Exhibit D-1, a copy of decree sheet Exhibit D-2, a copy of

order dated 21.11.2003, passed by this Court as Exhibit D-3.

After hearing the arguments, the trial Court acquitted the accused Parminder Singh Suri of the charge framed against him. The reasons mentioned for giving verdict of acquittal happen to be as follows:-

- 1) The complainant has claimed in his complaint Exhibit PW 1/A that after satisfying himself about genuineness of the claim made by Dalip Singh Suri, with regard to being General Power of Attorney of his brothers, he had entered into an agreement to sell dated 30.3.1997 with him. It appears strange that complainant having satisfied himself with regard to General Power of Attorney, could claim to be cheated and subject to fraud.
- 2) Complainant had filed a civil suit for specific performance against Dalip Singh. He had come to know about death of Mohan Singh Suri and Jaswant Ram Suri, prior to 13.5.1998, when he had lodged the police complaint and when written statement was filed by Dalip Singh Suri in the civil suit. But despite having knowledge about the death of Mohan Singh Suri and Jaswant Ram Suri, complainant did not make any effort to implead legal heirs of the deceased, thereby showing that complainant had prior knowledge about death of Mohan Singh Suri and Jaswant Ram Suri.

- 3) The defence plea appearing plausible to the effect that Dalip Singh Suri had only agreed to sell his share in the land in question and that the complainant in collusion with deed writer, manipulated execution of General Power of Attorney in favour of Dalip Singh Suri by his two brothers for the reason that in the agreement to sell there is vague mention of power of attorney, without giving its date, or stating whether it was a registered document or not.
- 4) According to the police complaint lodged by the complainant, agreement to sell dated 30.3.1997, allegedly executed by Dalip Singh in favour of complainant qua 17 bighas 6 biswas, had been signed by Amarjeet Singh s/o Mastan Singh and S.P.S. Suri (Parminder Singh) s/o Mohan Singh Suri as witnesses. However, a perusal of the judgment dated 7.12.2007 Exhibit D-1, goes to show that agreement to sell dated 30.3.1997 placed on record in that civil suit Exhibit PW-1/A, had been signed by Mastan Singh as a witness. This contradiction has not been explained satisfactorily and raises doubts about authenticity of agreement to sell.
- 5) That Amarjeet Singh examined by accused Dalip Singh as DW-3, has expressed his ignorance about signatures of his father on the agreement to sell, as well as the other alleged agreement between Mastan

Singh and the complainant. The complainant had failed to establish the genuineness of the agreement to sell, as well as power of attorney, allegedly executed by the deceased brothers of accused Dalip Singh in his favour and resultantly, the civil suit filed by the complainant for specific performance of agreement to sell dated 30.3.1997, was dismissed.

- 6) The complainant had prepared two separate agreements to sell, one had been produced in the Civil Suit and the other in the trial Court.
- 7) The complainant had not examined Amarjit singh s/o Mastan Singh to prove the genuineness of the said agreement to sell, placed on record as Exhibit PW 1/B.
- 8) The complainant has not established that he was legally handed over possession of the land in question by Mohan Singh and Amarjit Singh. Non-examination of Amarjit Singh s/o Mastan Singh is fatal to the case of the prosecution.
- 9) The original agreement to sell dated 30.3.1997 had not been produced by the prosecution. Signatures of Parminder Singh Suri, as attesting witness, have also not been proved. There appears to be no logic for Parminder Singh Suri, to sign the agreement to sell as an attesting witness, as after the death of his father Mohan Singh Suri, he would have obviously

inherited the share of his father and therefore, would have received the sale consideration for the land in question.

10) That it does not appeal to the prudent mind that instead of receiving the sale consideration, Parminder Singh Suri would merely sign the agreement to sell as attesting witness. That also raised a doubt about the authenticity of the agreement to sell Exhibit PW 1/B.

11) That accused Dalip Singh Suri having already expired and from the facts of the case, it is not established that co-accused Parminder Singh Suri had any mala fide intention to cheat the accused, as alleged and allegations levelled against him are not proved beyond a reasonable doubt.

The State felt aggrieved by such judgment of acquittal and challenged it by way of filing the appeal. The appeal was filed belatedly. An application for condonation of delay was filed. The Court of Additional Sessions Judge, Panchkula, vide a detailed order did not find any merit in the application and dismissed the same, using very strong language, observing that the Court had least hesitation to hold that application has been preferred by applicant State of Haryana just as an abuse of process of law, by way of willfully and intentionally taking up the false and frivolous pleas, without any basis, just to seek an unwarranted relief, through the backdoor that too out of their own wrong. The detailed reasons for arriving at such conclusion have been given. The case law on the

subject had been discussed. In the end, refusing to condone the delay, the appeal has been dismissed.

Feeling aggrieved the complainant has approached this Court by way of filing the present revision petition, impleading Parminder Singh Suri accused, as respondent, as well as State of Haryana. Both of them put in appearance on getting notice.

I have heard learned counsel for the petitioner, learned State counsel appearing for the State of Haryana, learned counsel for respondent No.2, besides going through the record.

It is well settled that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge. This is not the case here. In the instant case, I do not find any illegality or infirmity with the impugned judgment/order apparent on the face of the same, which might have called for interference by this Court, while exercising revisional jurisdiction. There is nothing on the record to show that learned Additional Sessions Judge, Panchkula, has exceeded his jurisdiction or refused to exercise jurisdiction, while passing the impugned judgment/order. The impugned judgment/order is certainly not perverse or having been passed in violation of settled principles of criminal jurisprudence. There is no defect apparent on the face of such judgment. Rather is it well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Learned counsel for respondent No.2 had referred to authority by the Apex Court i.e. **Bindeshwari Prasad Singh @ B.P.**

Singh and others vs. State of Bihar (Now Jharkhand) and another
2002 (4) RCR (Criminal) 61, wherein while dealing with a murder case, where order of acquittal passed by trial Court and appeal filed by the State, had been dismissed on the ground of limitation, revision had been filed by a private party, the High Court by re-appreciating the evidence and setting aside acquittal had ordered retrial, that order was not found to be valid, observing that High Court should not re-appreciate the evidence to reach a finding different from the trial Court except to prevent miscarriage of justice. It was further observed that dismissal of appeal, even on the ground of limitation, is a dismissal for all purposes. It was held that dismissal of an appeal preferred by the State against the order of acquittal, puts a seal of finality on the judgment of the trial Court and in such a case it may not be proper exercise of discretion to exercise revisional jurisdiction, under Section 401 of the Code of Criminal Procedure against the order of acquittal, at the instance of a private party.

I find that the authority in question has application to the facts of the present case and there is no ground to upset the impugned order while exercising the revisional jurisdiction by this Court.

As regards, the authority pressed into service on behalf of the revisionist, i.e. **Nadir Khan vs. The State (Delhi Administration)**
1975 The Criminal Law Times (II) 382, that mainly deals with the power of the High Court, while exercising the revisional jurisdiction and as per facts of the case that relates to exercise of such power by the High Court suo moto for enhancement of sentence in appropriate cases. Here I do not find it a fit case to exercise the revisional

jurisdiction.

Even otherwise, if we see merits of the case, the main accused Dalip Singh, having expired and allegations against Parminder Singh Suri, being of attesting agreement to sell, the offence of cheating, forgery and fabrication of documents etc., as per case of the prosecution, are not established against him. The reasons for the same have been given in detail by the trial Court, with which I find myself in agreement.

Therefore, there is no merit in the present criminal revision petition and the same stands dismissed accordingly.

3.12.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No