

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1819-SB-2013
Date of Decision: November 05, 2019

Amarjit Singh

.....Appellant

Versus

State of Punjab and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. J.S. Mehndiratta, Advocate, for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

Ms. Anu Sharma, Advocate, for
Mr. Rahul Rampal, Advocate, for respondent No.2.

Harnaresh Singh Gill, J.

The present appeal is directed against the judgment of dated 22.2.2013 passed by the Additional Sessions Judge, Ludhiana, vide which respondent No. 2 – Nagahia Singh has been acquitted by setting aside the judgment of conviction and order of sentence dated 25.11.2010 passed by the Judicial Magistrate, Ist Class, Ludhiana, in case FIR No. 199 dated 22.08.2007 under Section 420 IPC registered at Police Station Shimla Puri, Ludhiana.

Brief facts of the case are that on the application of complainant Amarjit Singh (petitioner herein), above noted FIR was registered. The complainant in his complaint stated that on 10.11.2006, respondent No.2- Nagahia Singh entered into a

written agreement for the sale of a plot and earnest money of Rs.1.00 lac was given to him and the sale deed was to be executed on 30.11.2006. Since the sale deed was not executed on 30.11.2006, the time was extended to 28.2.2007, but on the said date, respondent No.2 did not come present to execute the sale deed and the petitioner came to know that respondent No.2 had also entered into an agreement for the sale of the same plot with one Maha Singh on 7.11.2006 and sale deed in favour of Maha Singh was to be executed on 17.11.2006, but finally respondent No.2 executed sale deed in favour of Smt. Ranjit Kaur on 8.12.2006 and, thus, respondent No.2 had cheated and defrauded the appellant.

The trial Court framed charge against respondent No.2 under Section 420 IPC to which, he pleaded not guilty and claimed trial and ultimately after taking into consideration the evidence on record, respondent No.2 was sentenced to undergo rigorous imprisonment for one year and six month under Section 420 IPC and to pay a fine of Rs.1000/- and, in default of payment of fine, to further undergo imprisonment for one month.

Appeal preferred by respondent No.2 Nagahia Singh was allowed vide judgment dated 22.2.2013 passed by the learned Additional Sessions Judge, Ludhiana, thereby setting aside the judgment of conviction and order of sentence passed by the learned trial Court and respondent No.2 was acquitted of the charge framed against him. While passing the impugned judgment, the learned Additional Sessions Judge, observed in

para 23 of the judgment that the agreement to sell dated 7.11.2006 (Mark-A) allegedly executed in favour of Maha Singh, was not proved on record. The relevant extracts from the judgment of the learned Additional Sessions Judge, would read as under:-

“23. Thus, the evidence adduced by the prosecution when carefully scrutinized, it leaves no manner of doubt that the evidence so adduced by the prosecution speaks volumes that the essential ingredients of the offence under Section 420 of the IPC have not been established. The agreement to sell dated 7.11.2006 ‘Mark-A’ allegedly in favour of Maha Singh son of Banta Singh has not been proved on the file, which is a marked document. Thus, as per the law laid down by the Hon’ble Apex Court, referred by the learned counsel for the appellant, the Court is of the considered opinion that the lis is of a civil nature. Hence, there is considerable merit in the submissions put forth by the learned counsel for the appellant Sh. Davinder Gupta, Advocate. The learned trial Court has, thus, fallen in an error by convicting the accused under Section 420 of the IPC.”

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

It has been argued by the learned counsel for the appellant that respondent No.2 was rightly convicted and sentenced under Section 420 IPC by the trial Court as ingredients of Section 420 IPC were duly proved and respondent No.2 had dishonest intentions from the very beginning as he had knowingly entered into an agreement with the petitioner when there was an agreement with one Maha Singh and still further he had also executed another sale deed Ex. PB/1 in

favour of Smt. Ranjit Kaur. The earnest money of Rs.1.00 lac which was handed over to respondent No.2 by the appellant at the time of execution of the agreement with the appellant (Ex.PA), was retained by respondent No.2.

Learned counsel appearing for respondent No.2 has argued that the appellant has admitted in the cross-examination that the Civil Suit is pending and the original agreement dated 7.11.2006 in favour of Maha Singh, executed by respondent No.2 had not been produced. It is further argued that at the time of execution of the agreement to sell with the appellant, respondent No.2 was owner of the property. Thus, the ingredients of the offence under Section 420 IPC are not attracted.

I do not find any merit in the present appeal and the same is liable to be dismissed.

The learned lower appellate Court, while passing the impugned judgment, has relied upon the judgment in Madan Lal and another Vs. State of Haryana and another, 2012(3) RCR (Cr1.) 643, wherein it has been held as under:-

“15. An identical question came to be decided in case Indian Oil Corporation v. NEPC India Ltd. & Others (2006)6 SCC 736, wherein Hon'ble Apex Court cautioned about a growing tendency of the people to convert purely civil disputes into criminal cases, in which, it was noticed the prevalent impression that since the civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors, so, the people have started to settle civil disputes and claims, which do not involve any criminal offence, by applying the pressure through criminal prosecution. It was observed that "such effort should be deprecated and discouraged". The same

view was taken by the Hon'ble Supreme Court in case Inder Mohan Goswami & Another v. State of Uttaranchal & Others 2008(1) SCC(CrI.) 259, wherein it was observed that the veracity of the facts alleged by the complainant can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction and if the dispute in question is purely of a civil nature, in that eventuality, the initiation of criminal proceedings by the complainant against the accused is clearly an abuse of process of the Court.”

Admittedly, a civil suit between the parties is pending. Original of the agreement dated 7.11.2006 allegedly executed with Mahan Singh, was not placed on record and. Besides, the lis is of the civil nature. Thus, the learned lower Appellate Court, has rightly acquitted respondent No.2 of the charge framed against him.

It is well settled by now that if the view adopted by the Court while acquitting the accused is a reasonable one and the conclusion reached by it had its grounds well set out on the material on record, the acquittal may not be interfered with. A Division Bench of this Court in case State of Haryana v. Satbir, 2013(7) R.C.R. (Criminal) 1490, has held as under:-

“There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the

materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.”

Still further, Hon’ble Supreme Court in State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, Criminal Appeal No. 1502 decided on 1.12.2011 has held that if the two views are possible on the evidence adduced in the case, then one favourable to the accused, may be adopted by the Court. It was held as under:-

“12. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal, the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where inference is imperative and then ends of justice so require and it is essential to appease the judicial conscience.”

It could not be pointed out that the judgment of acquittal passed by the lower Appellate Court is based on misreading or misinterpretation of evidence on record.

No other point has been urged.

In view of the above, I do not find any merit in the present appeal and the same is hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

November 05, 2019
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No