

CRM-A-1018-MA-2016

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-A-1018-MA-2016

Date of decision : 4th December, 2019

HARPAL SINGH

.....Appellant

Versus

GURPREET SINGH @ VICKY & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.B.S. Mann, Advocate
for the appellant.

ANIL KSHETARPAL , J (ORAL)

Special leave to appeal has been sought against the judgment of acquittal passed by the learned Judicial Magistrate Ist Class, Fazilka, acquitting the accused-respondent. Learned Judicial Magistrate has recorded following reasons while acquitting the accused, which are extracted herein below:-

“13. Heard. Record perused. Charges for the offence punishable under section 120-B and 420 IPC have been framed against the accused persons on the basis of the allegations that complainant borrowed amount of Rs.2,50,000/- from accused Bhaipreet Singh through accused Gurpreet Singh and against said borrowing, accused Bhaipreet Singh obtained two blank cheques, R.C. Of the tractor along with tractor from the

complainant as security and despite return of Rs.2,05,000/- (Rs.1,05,000/- to accused Gurpeet Singh on 03.12.2010 + Rs.50,000/- to Paramjit Singh on 10.02.2011 + further Rs.50,000/- to Paramjit Singh on 11.02.1011) accused persons did not return the tractor of the complainant and thus, in criminal conspiracy with each other have cheated the complainant. Here, it is worthwhile to point out that for attracting the offence of cheating punishable u/s 420 IPC, there has to be an inducement on the part of the accused persons, whereby, they would have dishonestly and fraudulently induced the complainant to do or omit to do some act which he would otherwise not have done or have done and said guilty intention should be existing at the time of said inducement, but in the present case, as per the story of the complainant himself, there was no inducement from the side of accused persons, rather it was the complainant who was in need of money i.e. Rs.2,50,000/- and who approached accused Gurpreet Singh for said money and accused Gurpreet Singh got paid said money to the complainant from accused Bhaipreet Singh. Which means that there was no inducement at all from the side of the accused persons, so section 420 IPC or section 120-B IPC for committing alleged cheating cannot be attracted in this case. Even otherwise, had there been any such mala fide intention on the part of the accused persons, then they would not have paid such a hefty amount of Rs.2,50,000/- to the complainant. Moreover, said guilty intention at the time of payment of Rs.2,50,000/- to the complainant is also ruled out by the further averments of complainant made in the last lines of para no.4 of his complaint, as per which, Paramjit Singh asked him to take back his tractor. Here it is

worthwhile to point out that if accused persons were having bad intention, then Paramjit Singh, who has not been arrayed as an accused in person case, would not have asked the complainant to take back his tractor. Even CW1 Harpal Singh and his son Lakhwinder Pal Singh CW2 in their examination-in-chief also stated that Paramjit Singh asked them that he has an amount of Rs.1,00,000/- as a surety amount, which he i.e. Paramjit Singh can pay to him i.e. complainant and he i.e. complainant received back the same. These statements of these Cws also rules out any malafide/guilty intention on the part of the accused persons, otherwise, Paramjit Singh would not have paid Rs.1,00,000/- to the complainant. So, section 420 IPC and 120-B IPC cannot be attracted against the accused persons.

14. The remaining charge which has been framed against the accused persons is for the offence punishable u/s 406 IPC i.e. for alleged criminal breach of trust as accused persons did not return back the tractor of the complainant and have misappropriated the same. The story of the complainant qua this alleged misappropriation seems to be quite doubtful because in his complaint, the complainant has averred that besides the tractor, Bhaipreet Singh also took R.C. Of the tractor and two blank cheques from the complainant and in para no.6 on page no.3 of the complaint, complainant also averred that those cheques were also not returned to him, but during his cross-examination dated 21.11.2015 as CW1 on page no.1 thereof, he voluntarily stated that he has received back the cheques, which means that the story put forth by him cannot be blindly believed. Furthermore, on that very page of his cross-examination, he further stated that Jagtar Singh Sarpanch and his son

Preet are also involved in taking away the tractor. Both these persons are residents of their village and are still residing in the village. If it is so, then both these persons i.e. Jagtar Singh Sarpanch and his son Preet are also involved in the alleged offences and why they have not been arrayed as accused by the complainant is a mystery and this omission of the complainant goes to show that he has not put forth the true and complete facts before the Court, the benefit of which certainly goes in favour of the accused persons.

15. Furthermore, in the last line of his said cross-examination dated 21.11.2015 on page no.1 and opening line on page no.2 thereof, he i.e. PW1 stated that tractor was in custody of Paramjit Singh son of Ujagar Singh in his house. Which means that Paramjit Singh son of Ujagar Singh was in possession of the tractor and tractor was not in possession of any other accused persons and thus, Paramjit Singh son of Ujagar Singh was also involved in the alleged offences, but this Paramjit Singh son of Ujagar Singh has also not been impleaded as accused by the complainant for the reasons best known to the complainant himself. This fact that tractor was in possession of Paramjit Singh also becomes clear from the averments made by the complainant in the last line of para no.4 of his complaint, wherein, complainant averred that Paramjit Singh asked him to take back his i.e. complainant's tractor. So, Paramjit Singh should either have been impleaded as accused by the complainant or said Paramjit Singh should have been examined as his own witness by the complainant, but none of these things have been done by the complainant, the benefit of which certainly goes in favour of the accused persons. Even the

complainant has not got proved the R.C. Of the disputed tractor by calling the concerned official from concerned DTO office, whereas, he has only produced its photo copy as mark 'A'. Examination of concerned clerk of DTO was necessary to prove that said alleged tractor was actually registered in the name of complainant. This fact was quite significant for proving the case of the complainant because from this evidence, it could have been proved by the complainant that actually the tractor was owned by him, which was allegedly misappropriated by the accused persons. Since the complainant has not proved the ownership of said disputed tractor as per law, so also the accused persons cannot be held guilty for its alleged misappropriation.

16. Furthermore, from the evidence led on the file, it appears that the main dispute of the complainant is with accused Bhaipreet Singh, who has been declared 'Proclaimed Person' in this case because complainant as CW1 during his cross-examination dated 02.05.2014 and CW2 Lakhwinder Singh during his cross-examination dated 02.05.2014 on its bottom lines have admitted that they have money dispute with Bhaipreet Singh and even complainant as CW1 in his cross-examination dated 21.11.2015 in the bottom lines of page no.2 thereof has stated that he had taken money from Bhaipreet Singh on interest and he was to return that money along with interest and present case has been filed by him due to said money dispute. So from these statement of both the Cws, it becomes clear that main dispute of complainant is with accused Bhaipreet Singh only and that dispute is regarding money."

Learned counsel for the appellant although made sincere attempt, however, failed to convince the court as to how the judgment

passed by the Judicial Magistrate Ist Class suffers from substantive error or perversity. In view thereof, no ground is made out to grant special leave to appeal.

The appeal stands disposed of in the above-said terms.

(ANIL KSHETARPAL)
JUDGE

04.12.2019
tarun/himanshu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No