

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1416-MA of 2015

.....

Date of decision:20.03.2019

Lakhi Ram

...Applicant

v.

Jugal Kishore Sharma

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Shiv Kumar, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Jugal Kishore Sharma-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 20.3.2015 passed by learned Judicial Magistrate Ist Class, Palwal, whereby the complaint filed under Sections 418, 420, 467, 468, 471 and 120-B IPC has been dismissed and the accused-respondent has been acquitted of the charges as framed against him. Accused No.2 to 6 were already discharged vide order dated 10.2.2015 and accused No.1 Jugal Kishore Sharma only faced the trial.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 20.3.2015 passed by learned Judicial Magistrate Ist Class, Palwal, which is likely to

succeed on the grounds mentioned therein. It has been stated that the learned trial Court vide impugned judgment has wrongly and erroneously acquitted the accused-respondent. It has been mentioned that the appellant will suffer an irreparable loss and injury in case leave to appeal is not granted. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

The brief facts of the case as noted down by the learned Judicial Magistrate Ist Class, Palwal, in her judgment dated 20.3.2015 are as under:-

“The complainant has filed the present complaint under Sections 418, 420, 467, 471, 120-B Indian Penal Code, 1860 (hereinafter to be referred as “IPC”) with the allegations that the accused No.1 Jugal Kishor entered into an agreement to sell dated 05.12.2001 in favour of the complainant for Rs.1,25,000/- per acre stating that he is the co-owner in respect of land measuring 56 Kanals (7 acre) and received Rs.2,00,000/- cash as the earnest money. Second agreement was inked on 18.06.2002 in the presence of witnesses and the accused No.1 received Rs.50,000/- from the complainant. The accused further got executed another agreement dated 10.08.2004 for extending the time of agreement and received Rs.1,70,000/- from the complainant. The accused did not get executed the sale deed in favour of the complainant despite many requests. So, he filed civil suit RBT 374/2007 titled as Lakhi Ram Vs. Jugal Kishor which was decided in favour of

the complainant on 30.03.2009 by the Court of Smt. Rachna Gupta, Additional Civil Judge, Senior Division vide which it was ordered that the sale deed be registered. On 03.06.2009, registered sale deed was executed through Local Commission qua the property in dispute. The agreement executed between the complainant and the accused No.1 was in respect of land measuring 56 Kanals but the sale deed was got executed through the Court for 28 Kanals only. The accused No.1 and other accused had knowledge about the above said facts and despite that, accused No.1 executed registered agreement to sell dated 05.06.2008 qua the same property of 40 Kanal in favour of accused Daulat Ram Solankhi in collusion and after conspiring with accused No.3 to 6. The accused Jugal Kishor is a cunning person and has given two addresses of his residence one of Bhagpur and another of Nonehera Tehsil Jewar, District Gotam Budh Nagar, U.P. and has shown two names, one as Jugal Kishor and other as Nanak. It was further alleged that when the complainant received the allotment list of land then he got to know that the accused along with his brother Ram Kumar and sister Sheela are co-owners in respect of land measuring 128 Kanals 7 Marlas and share of Jugal Kishor is only 42 Kanals 16 Marlas. But the registration in favour of the complainant has been to the extent of 28 Kanal when he was further entitled for 14 Kanal 16 Marla land also. The complainant entered into agreement to sell for total land

measuring 56 Kanal. Thus, all the accused committed fraud upon him after conspiring with each other. Hence, this complaint.”

In pre-charge evidence, the complainant examined CW-1 Zile Singh, CW-2 Ram Kishor, CW-3 Shyamvir, CW-4 Praveen Kumar, CW-4 Maharaj (wrongly numbered), CW-5 Dr. Satdev Aggarwal, complainant himself as CW-6, CW-7 Inderjeet and CW-8 Rajneet Sharma.

On the basis of pre-charge evidence, accused No.1 was charged for the offences under Sections 418 and 420 IPC, to which he pleaded not guilty and claimed trial and accused No.2 to 6 were discharged. The accused further cross-examined CW-1 Zile Singh, CW-4 Maharaj Singh, CW-6 Lakhi Ram and CW-7 Inderjeet.

After appreciating the evidence, the accused was acquitted by the learned Judicial Magistrate Ist Class, Palwal, vide judgment dated 20.3.2015. Aggrieved from this judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the complainant.

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

From the record, I find that the complaint has been filed in the year 2009 whereas the agreement to sell was of 5.12.2001. Even as per the facts of the case, a civil suit was filed which was decided in favour of the complainant on 30.3.2009. The learned trial Court after hearing learned counsel for the parties and going through the record found that the statement of complainant CW-6 clearly shows that he has nowhere deposed

throughout his testimony if he was induced by the accused to enter into the alleged agreement to sell and and if there was any dishonest intention to cheat the complainant at the time of entering into the alleged agreement to sell. During his examination-in-chief, he deposed that the agreement was for 7 acres of land when, in fact, accused was owner in respect of land measuring 28 Kanals. No cogent evidence has been produced to show fraudulent and dishonest intention at the time of making promise. CW-7 Inderjeet, who is one of the attesting witnesses to the three agreements executed between the accused and the complainant, had identified his signatures thereupon. During his cross-examination, he showed his ignorance regarding the fact if Jugal Kishore borrowed ₹1,50,000/- from Lakhi Ram. He admitted that the agreement which took place in the beginning was for ₹1,50,000/- and interest was added and then an agreement or ₹2 Lakhs was prepared and thereafter, other agreement qua ₹2,50,000/- was entered after adding interest on ₹2 Lakhs. He could not recall if the interest per month was at the rate of 2% or 3%. The learned trial Court held that a reasonable doubt has been created in the version of the complainant from the statement of CW-7. If it is a loan transaction and the interest has been added and then a fresh agreement was to execute, then no question of fraudulent intention etc. is made out. Then it will mean that this agreement was only a security document to the loan taken by the accused. The learned trial Court also held that even if the agreement for extension of time is taken into account then accused along with his brother is still the owner of land measuring 128 kanals.

Keeping in view the above facts, I find that the reasoning given

by the learned Judicial Magistrate Ist Class, Palwal, are as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below. The findings have been given by the Court below after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

From the above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

March 20, 2019.

(Inderjit Singh)
Judge

hsp

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