

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-7-MA-2016 (O&M)

Date of Decision: 05.12.2019

Sakattar Singh and another

.. Applicants

Vs.

Mohinder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. B.S. Jaswal, Advocate for the applicants.

...

Manoj Bajaj, J.

CRM-10-2016

The present application has been filed for the condonation of delay of 1725 days in filing the application seeking leave to appeal. As the applicants pursued their remedy before the Court of Additional Sessions Judge, Amritsar by filing an appeal against the impugned judgment dated 17.11.2010, which was finally dismissed as not maintainable vide judgment dated 19.01.2015, the present application has been filed, therefore, the delay in filing the same is condoned.

CRM is allowed.

CRM-A-7-MA-2016

Leave to appeal has been sought for by the applicants against the judgment dated 17.11.2010 passed by the ld. SDJM, Baba Bakala, wherein the respondents have been acquitted of the charges in a complaint case titled as *Sakattar Singh and another Vs. Mohinder Singh and others*, under Sections 420, 468, 471, 447 and 120-B IPC.

The applicants filed a complaint in the trial Court alleging the commission of offences under Sections 420, 447, 468 and 471 read with Section 120-B IPC against nine accused persons on the broad allegations that on 17.10.2002 accused/respondent Nos.1 and 2 cheated them by executing a sale deed in respect of 4 kanals of land, which was more than their share in the suit land. It was alleged that Numberdar Hardev Singh and Gurmeet Singh attested the sale deed as witnesses and further mutation on the basis of the sale deed was entered by Rasal Singh Halqa Patwari, which was compared by Hirdepal Singh Girdawar and it was finally sanctioned by Gursewak Chand Tehsildar.

In preliminary evidence, both the applicants/complainants stepped into the witness box as CW1 and CW2 and on appraisal thereof, all the accused persons were summoned under Section 420 IPC read with Section 120-B IPC. On the basis of evidence adduced on record by way of pre-charge evidence, a charge under Section 420 IPC read with Section 120-B IPC was framed against all the accused persons. The prosecution witnesses were again put to cross-examination in after charge evidence. Thereafter, statements of the accused persons under Section 313 Cr.P.C. were recorded and in defence evidence, they tendered revenue record as Ex.D1 and D2.

The trial Court after examining the evidence put forth by the complainants as well as the accused persons held that the complainants failed to prove the guilt against the accused persons beyond reasonable doubt and proceeded to acquit the accused persons from the charges.

Learned counsel for the applicants contends that the trial Court has committed an error in acquitting the respondents as it has ignored the

evidence on record including the deposition of the applicants/complainants. He submits that the applicants/complainants had proved the charges in respect of the alleged crime and therefore, the judgment of acquittal is bad in law, which requires interference by this Court.

I have heard learned counsel for the applicants and perused the case file.

It is evident from record that there was no dispute about the valid execution of the sale deed, particularly the identity of vendee, vendor and the witnesses, who attested the instrument at the time of its execution. It is not a case, where any fabrication of the sale deed is pleaded by the complainant. The sole allegation levelled against the accused/respondent Nos.1 and 2 was regarding executing the sale deed in respect of a more share than actually owned by them and the consequent entries made in the revenue record. A perusal of the impugned judgment reveals that it has come on record that entire chunk of 36 kanals 5 marlas of land was joint and out of it, accused/respondent Nos.1 and 2 had sold 4 kanals of land. It has also come on record that partition proceedings in respect of the land were still pending between the co-sharers i.e. applicants, accused Nos.1 and 2 and others and it was held that accused Nos.1 and 2 were owners to the extent of 8 kanals 16 marlas of land out of 28 kanals and 11 marlas, and they were within their rights to alienate part of their share.

The plea that accused/respondent Nos.1 and 2 sold specific khasra number without their being any actual partition amounts to cheating, has been dealt with adequately by the trial Court by observing that this aspect of the matter was purely of civil nature, and subject to the final outcome of partition proceedings pending between the co-sharers.

The trial Court has elaborately discussed the facts, evidence on record and gave reasons to disbelieve the prosecution case. It is clear that the view adopted by the trial Court is a possible view based on correct appreciation of evidence, therefore, this Court does not find any reason to interfere with the well reasoned judgment passed by the trial Court.

Resultantly, leave to appeal is dismissed.

05.12.2019
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No