

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-A No. 810-MA of 2016 (O&M)
Date of Decision: 11.09.2019**

Lt. Col. Kanwaljit Singh Retd.

..... Appellant/Complainant

Versus

Ramesh Kumar and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Ms. Sukhpreet Kaur, Advocate
for the applicant-appellant/complainant.

JASWANT SINGH, J.

1. Present application has been filed under section 378 (4) read with Section 482 of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Special Leave to Appeal against the judgment of acquittal dated 30.11.2015 passed by learned Judicial Magistrate 1st Class Jalandhar, whereby respondents/accused have been acquitted for the offences under **Sections 465, 467, 468, 471 and 120-B of Indian Penal Code (IPC).**

2. Tersely put the facts of the prosecution case are that the ***applicant/complainant-(Lt. Col. Kanwaljit Singh (Retd.))***, sought the prosecution of the respondents/accused with the allegations that he was working as Army Officer in the Indian Army and thereby, he retired from his service on 17.06.1997. His father (late S. Pritam Singh Sangha) purchased the land measuring 28 Kanals 7 ½ Marlas from S. Jagjit Singh, who was the grand-father of the applicant and the land was purchased in the name of applicant. The execution of the sale-deed was not in the knowledge

of the applicant, because at that time, he was serving in the Army. His father heavenly abode on 11.11.2006, thereafter, he obtained the copy of Jamabandi of the entire property of S. Pritam Singh Sangha (father of complainant) and thereby came to know that the property measuring 28 Kanals 7½ Marlas was purchased in his name. However, respondents/accused were claiming their rights in the suit land on the basis of sale-deed alleged to be executed by his father on the basis of a forged and fabricated Power of Attorney (POA) purported to be executed by him. In fact, at that time applicant was on duty at Ahmednagar. As such, the alleged Power of Attorney dated 01.12.1982 is a forged and fabricated document and the same was never signed nor was executed by appearing before the Sub-Registrar, Jalandhar. The relationship between him and his father (late S. Pritam Singh Sangha) were not cordial and he was not on visiting terms with his father. The accused/respondents were hand in gloves with each other prepared the false Power of Attorney dated 01.12.1982 by forging the signatures of the applicant to grab his property and thereby got executed a sale-deed from his father in their name.

On the basis of these allegations, the respondents/accused were summoned by the trial Court to face the trial. The complainant party led the pre-charge evidence. In the pre-charge evidence, the applicant/complainant examined **Sukhjinder Singh**, Handwriting expert as CW-1, **Nitin Khosla**, Manager of HDFC Bank as CW-2, **Kuldeep Singh**, Deed Writer as CW-3, **B.S. Virk** Captain as CW-4. Then he (complainant) appeared, on his own, witness as CW-5 and also produced the various documents like Ex.PW1/1 (report of the Handwriting expert), Ex.PW1/2 and Ex.PW1/3 (photographs

charts), Ex. PW2/1 and Ex.PW2/2 (record of bank), Ex.PW4/A (certificate of his attendance at Ahmed Nagar on 01.11.1982), Ex.PW4/B (Insurance policy), Ex. PW4/C (letter written by complainant to Senior Branch Manger, LIC) and Ex.PW4/D (copy of ID card of Indian Army).

Finding a *prime facie* case, the respondents/accused were charge-sheeted for the commission of offences under **Sections 465, 467, 468, 471 along with Section 120-B of IPC**. In the post-charge evidence, no witnesses were further cross-examined as it was not opted by the defence to further cross-examine any of the prosecution witness.

On completion of prosecution evidence, the statements under Section 313 Cr.P.C. were recorded by the trial Court in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondents/accused were put to them and they pleaded their innocence and false implication.

In defence, respondent/accused-Gagandeep Singh appeared in the witness box as DW-1 and also produced the documentary evidence like Matriculation Certificate and PAN card of himself as Ex.DW1/A and Ex.DW2/A. Further, respondent/accused-Gurmeet Singh appeared as DW-2 and also produced his Matriculation Certificate and Secondary Certificate vide Ex.DW3/A and Ex.DW4/A. Accused-Ramesh Kumar also appeared in the witness box as DW-3 and also produced his PAN Card as Ex.DW5/A.

On the basis of weak evidence produced by the prosecution against the present respondents, they have been acquitted of the charges for the commission of offences under **Sections 465, 467, 468, 471 alongwith Section 120-B of IPC**.

3. We have heard learned counsel for the applicant-appellant and have also gone through the paper-book very carefully with her assistance.

The moot question in the instant matter revolves around the Power of Attorney dated 01.12.1982 alleged to be executed by applicant-complainant in favour of his father, who further on the basis of this Power of Attorney executed the sale-deed in favour of respondents/accused in the time span of year 2000 to 2005, which has been disputed by the applicant-complainant by initiating the prosecution through this private complaint filed on 20.12.2011.

It is crystal clear that the original Power of Attorney was not produced by the applicant-complainant before the trial Court. We are of the view that offence of forgery can only be committed in relation to the original documents and not with respect to the copies thereof. The original document was not produced by the applicant-complainant before the trial Court. Therefore, in the absence of the production of original document, it is too remote to say that offence of forgery has been proved. The applicant-complainant also did not bother to summon the record of Office of Sub Registrar, Jalandhar, where it is alleged that Power of Attorney under question was registered. It transpires that he intentionally did not produce the best piece of evidence before the trial Court, for which, the adverse inference has to be drawn against him. Moreso, no cogent and convincing evidence was produced by the applicant-complainant to establish his exclusive ownership over the disputed land. The trial Court has rightly observed in the impugned judgment that applicant-complainant has totally failed to prove any of the ingredient of the offences, for which, the

respondents/accused have been charge-sheeted.

4. That apart, the scope of the Appellate Court, while dealing with the appeals against acquittal, is settled. Though there is no embargo on the Appellate Court to reverse the decision based on the evidence upon which the acquittal is based, generally the order of acquittal based on presumption of innocence of the accused, is further strengthened by acquittal. The Appellate Court, while considering an appeal against acquittal, has to consider whether there are compelling and substantial reasons for reversing the order of acquittal. The Appellate Court can reverse the order of acquittal if the view taken by the Court is palpably erroneous and it could not have been taken by the Court of competent jurisdiction and is taken against well settled canon of criminal jurisprudence. Merely because the Appellate Court, on re-appreciation and re-evaluation of the evidence, is inclined to take a different view, interference with the judgment of acquittal is not justified. If the view taken by the trial Court is a possible view, even if two views are equally balanced, it need not result in interference by the Appellate Court in the judgment of the trial Court of acquittal. The Appellate Court will have to see whether there is perversity in the decision, if the conclusions are contrary to the evidence on record, or the Court's entire approach is patently illegal or it is based on erroneous understanding. If the order of acquittal is to be reversed, the Appellate Court must examine and discuss the grounds given by the trial Court to acquit the accused and must give cogent reasons to overturn the findings. Thus, while considering the order against acquittal, generally the Appellate Court should not interfere where view taken by the trial Court is not unreasonable or

perverse. With this legal position in mind, we have considered the view taken by the trial Court is a possible view and it does not require any interference by this Court.

5. In view of the above discussion, this Court is of the opinion that the trial Court, while appreciating the entire evidence in its proper perspective, has rightly held that the prosecution has failed to prove its case against the accused-respondents beyond any reasonable doubt. Thus, no case is made out for any kind of interference in the impugned judgment. The view of the trial Court is hereby affirmed and is maintained.

The instant **application** is without any merit and, therefore, **dismissed**. Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

September 11, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>