

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2681-MA-2017
Date of Decision: 18.11.2019

Satinder Mahajan

.....Applicant

Versus

Jaswant Rai Sharma and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. B.D. Sharma, Advocate, for the applicant.

Harnaresh Singh Gill, J.

The complainant (applicant herein) has filed the present application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated 18.07.2017 passed by the learned Additional Chief Judicial Magistrate. Amritsa, whereby the complaint filed by the applicant-complainant against the accused-respondents was dismissed.

The applicant-complainant had filed a criminal complaint for the offences under Sections 406, 420, 506 IPC read with Section 120-B IPC filed by the complainant, inter-alia, with the allegations that he was one of the partners in the partnership firm M/s Vivek Prints; that accused-respondent Jaswant Rai Sharma was also one of the partners therein; Jaswant Rai Sharma being an educated person was given a General Power of Attorney, so as to look after the property affairs i.e. sale and purchases, in the office of the Deputy

Commissioner, Amritsar; that Jaswant Rai Sharma informed the complainant that he had sold part of the land of the firm leaving the balance land of the firm approximately 1468 sq. yards; that despite repeated requests, the complainant did not produce the revenue record regarding the said balance land and kept the matter lingering on one pretext or the other; that he ultimately retired on 26.04.2006; that in the month of October, 2007, the complainant was called by the Income Tax Department and asked about the land measuring 1469 square yards sold to accused Nos. 2 and 3; that the complainant showed his inability and knowledge, but the department kept on asking him regarding the sale of the land; that after obtaining certified copies of the sale deeds, it was disclosed that respondent-Jaswant Rai Sharma in connivance with accused-respondent Nos. 2 to 4 had transferred the land measuring 1469 sq. yards (approx.) in the name of accused-respondent Nos. 2 and 3 without the consent and knowledge of the complainant; that the said sale was effected without passing of any consideration or if any, that was also a throwaway price and that in this manner, accused No.1 had cheated the complainant and other partners of the firm.

In his preliminary evidence, the complainant had stepped into witness box as CW1 besides tendering documentary evidence as Exs.C4 to C.7.

The learned trial Court while passing the impugned order has found that as a matter of fact, as observed by the Income Tax Authorities, the complainant was well aware of the sale of

the land in question and still further the amount of the sale deed i.e. Rs.2,94,000/- had duly been accounted for and that it could not be shown or established that the complainant had dishonestly misappropriate or converted the property to his own name. It was held as under:-

“12. It comes out that during that period, the present complainant Satinder Mahajan never bothered to cancel the power of attorney. There is no record on the file that the sale proceeds of the land measuring 1469 square yards amounting to Rs.2,94,000/- never accounted for. It comes out that no such sale deed is on the record showing that Jaswant Rai Sharma sold the property to various persons by deceiving the complainant and others and also not accounted for the consideration in the account of M/s Vivek Prints. It also comes out on the record that as per Income Tax proceedings, Satinder Mahajan was well within the knowledge regarding sale of 1469 sq. yards of land by Jaswant Rai Sharma in the year 2008 but he never bothered to file any complaint against Jaswant Rai Sharma and others till 2012. Nothing is on the record to show that Satinder Mahajan ever moved an application to SSP, Amritsar on 3.6.2008 and fate of which is not known to the complainant till date. It comes out that none of the sale deed mentioned in para No. 5 of the complaint is challenged except the sale deed dated 24.8.2004 for land measuring 1469 sq. yards by Jaswant Rai in favour of accused Nos. 2 and 3. One attested copy of amended plaint is placed by Satinder Mahajann regarding institution of suit in the year 2008 titled M/s Vivek Prints through Satinder Mahajan against Rajiv Sharma and others for declaration to the effect that sale deed dated 28.8.2004 registered with the office of Sub Registrar, Amritsar measuring 2 kanal 8.1/2 marla is null and void

document being registered by playing fraud upon the plaintiff. Till date, complainant failed to produce on record the fate of said litigation.

13. This Court comes to the conclusion that the civil suit titled M/s Vivek Prints Vs. Rajiv Sharma and others' is the outcome of the orders passed by Income Tax Department. Nothing is on the record to show that Mr. Jaswant Rai dishonestly misappropriated or converted the property to his own use. It is also not proved that the complainant was dishonestly induced by Jaswant Rai Sharma to deliver the property to him. Where the property in question was sold under a valid undisputed power of attorney which is not cancelled even till date, the ingredient of Sections 406 and 420 IPC are not made out. The only remedy with the complainant lies with the civil court which he has already availed by filing the suit for declaration challenging the sale deed executed by Jaswant Rai Sharma in favour of Rajiv Sharma and others."

Indisputably, civil suit on the same cause of action filed by the complainant against the beneficiary of the sale deed i.e. Rajiv Sharma, is pending adjudication before the Civil Court. It could not be shown that accused-respondent Jaswant Rai Sharma was not having any authority as regards the sale of the land. Merely because the sale consideration was on the lower side is no ground to infer that there was any dishonest intention on the part of the accused or there was any misappropriation. Still further, the sale consideration was duly accounted for. Thus, the learned trial Court has rightly found that no offence was made out against the respondents.

It could not be pointed out that the learned trial Court has misread or misinterpreted the evidence while passing

the impugned judgment. Still further, I do not find any perversity or illegality in the impugned judgment, which may warrant interference by this Court in the present application.

In view of the above, the present application is dismissed. Special Leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

18.11.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No