

CRM-A-409-MA of 2015 (O&M)

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

CRM-A-409-MA of 2015 (O&M)
Date of Decision: 25.02.2019

Smt. Bala

....Applicant

Versus

Sunder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Surinder Dagar, Advocate,
for the applicant.

Mr. Johan Kumar, Advocate,
for the respondents.

RAMENDRA JAIN, J. (ORAL)

Through instant application under Section 378(4) Cr.P.C. applicant has sought special leave to file appeal against judgment of acquittal dated 10.09.2014 of the trial Court.

In nutshell, applicant filed a complaint under Sections 419, 420, 467, 468, 471, 120-B and 506 IPC against the respondents on the allegations that they fraudulently forged agreement to sell and receipt thereof dated 07.04.2008 allegedly executed by the applicant by impersonating her and producing some fake lady in her place, agreeing to sell 8 kanals of agricultural land situated at Village Jatola, Tehsil and District Palwal. Said complaint, after due contest, was dismissed by the trial Court vide impugned judgment dated 10.09.2014.

Initially, the applicant approached learned Sessions Judge by way of appeal, but withdrew same on 19.01.2015 and now has approached this

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Court by way of present application.

Learned counsel for the applicant *inter alia* contends that trial Court has wrongly held that a joint photograph of three executants, including the applicant was affixed on the impugned agreement. Though, no such joint photograph was affixed on the same. On 07.04.2008 two stamp papers were purchased from the stamp vendor vide his register entry Nos.97-98, but serial numbers of both the stamp papers on which the alleged impugned agreement to sell was forged by the respondents, were quite different, which create suspicion. Receipt in support of the impugned agreement to sell was not produced by the respondents in their civil suit for specific performance.

On the other hand, learned counsel for the respondents, refuting the above submissions, pleading the legality and validity of the impugned judgment, contends that suit for specific performance of impugned agreement to sell was decreed by the civil Court vide judgment and decree dated 11.05.2012, which has attained finality as First Appeal of the applicant was also dismissed on 21.11.2017. Therefore, as on date, the impugned agreement to sell which the applicant claims that it was forged by the respondents has been declared as genuine by the two courts on civil side.

Having given thoughtful consideration to the rival submissions, this Court finds that instant application completely devoid of any merit.

Relevant findings of the impugned judgment is reproduced hereunder for ready reference: -

“11. It is the specific pleading in para no.3 of complaint that the accused no.1 after hatching conspiracy with the accuse no 2 and 3 and accuse no.4

stamp vendor forged and fabricated a fake agreement to sell and receipt by getting affixed the fake thumb impression of some fake lady or person pretending her to be the complainant. However, in support of these pleadings there is no evidence. No hand writing expert has been examined by the complainant to prove the fact that the thumb impression on the sale deed Ex.PW6/C are not of her rather of any other lady and this was the best evidence available with the complainant to get her admitted thumb impression compared with thumb impression available on Ex.pw6/c. There is no question of fake lady also because the photograph on the same is of complainant. The complainant has also deposed as pw6 in her examination in chief and stated that she sold the land in question to Ballabgarh Wale in which they were three partners. Their thumb impression and signatures were put on document separately and the paper was blank on which she put her thumb impression. However, this story also does not meet with the averments of complaint. If we see document mark PW6/A that will show that the complainant along with two more ladies namely Saroj and Simmi sold the land to one Sh.Deepak Mangla and photo of all these three ladies are on it and all these three ladies put their signature and thumb impression collectively. There is one joint photograph of three all. So it can not be accepted that she put her thumb impression on a blank paper. A story led in the complaint that a fake thumb impression of some fake lady was taken is not part of evidence of PW6 and the story led by PW6 while appearing in evidence is not part of the complainant.

12. The complainant has not been filed with immediate effect. The complainant came to know about the knowledge of sale deed ExPW6/C on 11.7.2008 but she filed the complainant only on 16.10.2008 after three

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months. No doubt she has placed Mark A on the record but this complaint addressed to the police authority is not proved as per Indian Evidence Act.

13. Moreover, the accused on the other hand placed Ex,D1 copy of judgment of the civil court on the same dispute and as per this judgment the suit of the plaintiff Sunder Singh who is now accused before this court has been decreed for recovery of Rs.20,00,000/- along with interest at the rate of 6 percent per annum and the trial court has also observed that the defendant (who is now complainant) has failed to bring on record any cogent, satisfactory and convincing positive evidence which could prove her plea of fraud. The trial court also observed that in agreement Ex.P1 (disputing document) there is a clear recital regarding the payment of entire sale consideration of the suit land by plaintiff to the defendant. The due execution of impugned agreement of sale deed has been duly proved on record. Even if document Ex.P2 (receipt) is ignored, in that case also the due payment of entire sale consideration of Rs.20,00,000/- by the plaintiff to defendant stands proved on the record from the oral as well as documentary evidence.”

14. So the complainant has also lost her case and she has not been believed by the civil court. Moreover, the complainant and her husband who appeared as PW6 and PW7 have given a very brief examination-in-chief. They have not described the complete details of fraud if any committed upon them and the crux of PW6 and PW7 that the thumb impression of complainant has been misused by Sunder is not the story at all in the complaint.”

The above findings show that the trial Court has discussed every

aspect of the matter in detail for dismissal of the complaint of the applicant.

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I have gone through the impugned judgment and find no illegality or perversity in the same.

Leave to appeal declined.

February 25, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No