

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1967-MA of 2018
Date of Decision: 08.7.2019

Gurnam Singh

.....Applicant

Vs.

Ronaki and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Mr. Ankur Lal, Advocate
for the applicant.

HARNARESH SINGH GILL, J.

The applicant-complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 7.3.2018 passed by the learned Judicial Magistrate, Ist Class, Kaithal.

Vide impugned judgment, the trial Court has acquitted the respondents of the charges under Sections 420, 467, 468, 471 of the Indian Penal Code, 1860 ('IPC' for short).

According to the complaint, Tarsem Lal-respondent No. 2 entered an agreement to sell with one Bhupinder Singh son of Chanchal Singh and Sukhwinder Singh son of Gurnam Singh (applicant/complainant) in respect of a shop vide agreement to sell dated 5.6.2013 for a consideration of Rs. 12.00 lacs. It was stated in the complaint that the applicant-complainant had issued six cheques to the respondents-accused in

the presence of above said Bhupinder Singh and Sukhwinder Singh and the

cheques were to be encashed for Rs. 2,00,000/- each against the sale consideration of the shop after the gap of 15 days from the date of encashment of the first cheque, and after the encashment of all the six cheques, the respondents-accused were required to get the sale deed executed and registered in favour of Bhupinder Singh and complainant's son Sukhwinder Singh. It was further alleged that the respondents-accused had forged the cheques bearing Nos. 007041 and 007042 in the name of Ronaki-respondent No.1 by adding Rs. 10.00 lacs each with a malafide intention to extort money from the applicant-complainant illegally and unlawfully. Regarding this, the applicant-complainant moved an application against the respondents to the police at Police Station Cheeka and a case under Section 107/151 Cr.P.C. was registered against respondent No. 2-Tarsem Lal. It was further alleged that respondent No. 2-Tarsem Lal had also forged cheque No. 007044 in his favour mentioning the amount of Rs. 10.00 lacs whereas the applicant-complainant had no dealings with the said respondent and was not bound to pay the said huge amount to him as the sale consideration in the agreement was only Rs. 12.00 lacs.

In preliminary evidence, the complainant examined four witnesses besides placing on record the relevant documents. Vide order dated 9.6.2015, the respondents were summoned under Sections 419, 420, 467, 468, 471, 120-B IPC.

In pre-charge evidence, the complainant examined Om Parkash, Criminal Ahlmad as CW-1, Sunny Goel, Deputy Record Keeper as CW-2. Complainant Gurnam Singh himself stepped into the witness box as CW-3 and had also examined Balwinder Kumar, Clerk to Mr. G.C. Gupta, Advocate as CW-4.

Charges were framed against the respondents under Sections 420, 467, 468, 471 IPC.

Statements of the respondents-accused under Section 313 Cr.P.C. were recorded in which they pleaded innocence and alleged false implication. In defence, they examined DW-1 Ram Chander Sharma, Advocate, Notary Public and DW-2 Rameshar Dutt, who identified his signatures on the agreement dated 5.6.2013 Ex. DD, executed between Tarsem Lal- respondent No. 2 and Bhupinder Singh and Sukhwinder Singh for a sale consideration of Rs. 12.00 lacs, and stated regarding the sale consideration having been paid in cash and not through cheque.

As noticed above, vide judgment dated 7.3.2018, the learned trial Court acquitted the respondents of the charges framed against them.

Having heard learned counsel for the applicant and on going through the impugned judgment of acquittal, this Court finds that despite having examined as many as four witnesses and tendering other documents on record, the applicant/complainant has failed to bring home the guilt of the accused.

Learned counsel for the applicant has laid stress on the point that the respondents had filed two bogus complaints against the applicant under Section 138 of the Negotiable Instruments Act, 1881 claiming that the cheques issued by the applicant-complainant for Rs. 10.00 lacs were dishonoured but the learned trial Court after adjudicating both the complaints, found the complainant-applicant innocent and acquitted him of the charges while holding that the applicant had never issued such cheques, meaning thereby, the cheques were forged. It is further argued that it was mentioned in the agreement dated 5.6.2013 Ex. DD that payment of

Rs. 12.00 lacs had been made but in fact, no such payment was made and it was agreed that the complainant would give six cheques to Tarsem Lal-respondent No. 2 which would be encashed for a sum of Rs. 2.00 lacs each after the gap of 15 days and, thus, the payment of Rs. 12.00 lacs would be made to the complainant within a period of three months and only then the sale deed was to be executed. It is further argued that the respondents had forged the cheques bearing No. 007042 and 007044 by mentioning the amount of Rs. 10.00 lacs each and presented the said cheques for encashment which later on got dishonoured. Learned counsel has further argued that on the complaint of the applicant-complainant, proceedings under Section 107/151 Cr.P.C. were initiated against the respondents. On this premise, it is prayed that the impugned judgment of acquittal dated 7.3.2018 may be set aside and the respondents may be convicted of the charges framed against them and sentenced accordingly.

We have heard the learned counsel for the applicant.

The present complaint is based on the agreement to sell dated 5.6.2013 (Ex. DD) which was executed between respondent No. 2-Tarsem Lal on one side with one Bhupinder Singh and Sukhwinder Singh (son of the applicant-complainant) on the other side. The execution of the agreement to sell stipulating the payment of Rs. 12.00 lacs as a sale consideration, is not disputed. Thus, the oral version of the applicant that he had issued six cheques to the respondents in lieu of the sale consideration, cannot be accepted, especially when the agreement to sell was reduced into writing. This version of the applicant-complainant is against the provisions of Section 92 of the Indian Evidence Act, 1872 ('Act' for short).

Section 92 of the Act reads as under:-

*“92. **Exclusion of evidence of oral agreement.**—When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:*

Proviso (1). —Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law:

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved:

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents:

Proviso (5).—Any usage or custom by which incidents

not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract:

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.”

Thus, after considering the agreement dated 5.6.2013 (Ex. DD), no oral evidence is admissible for the purpose of contradicting, varying, adding or subtracting from its terms.

Moreover, the agreement in question was executed between Tarsem Lal-respondent No. 2 and Bhupinder Singh and Sukhwinder Singh (son of the applicant). The applicant is not a party to the said agreement. In our view, the applicant had no role in the said agreement. Thus, there was no occasion for him to issue six blank cheques for the payment of the sale consideration amount. The applicant-complainant was also a witness to the said agreement.

Thus, in our considered opinion, the oral evidence brought on record by the applicant-complainant before the trial Court against the written agreement dated 5.6.2013 (Ex. DD) has rightly been rejected by the Court below by acquitting the respondents of the charges framed against them by giving them benefit of doubt. We further find that the testimony of the complainant and the other witnesses did not advance the case of the complainant to prove the guilt on the part of the respondents.

Resultantly, we do not find any patent illegality or infirmity in the impugned judgment of acquittal, so as to warrant interference by this Court.

Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

July 08, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes