

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-400-MA-2014

Date of decision: 04.03.2020

Rattan Bir Singh @ Toni

..... Applicant

Versus

Ilam Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. SS Dinarpur, Advocate for the applicant.

None for respondents No. 1 to 4.

Mr. Amrik Narwal, DAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

Through this application under Section 378(4) Cr.P.C., prayer has been made for grant of leave to appeal against judgment dated 09.01.2014, whereby, the trial Court dismissing complaint of applicant filed under Sections 380, 457, 149 and 506 IPC, acquitted respondents No. 1 to 4.

Briefly, the parties are *inter se* related. Dispute between them is qua ownership and possession of tractor bearing registration No. HR-02-C-6758, in the name of deceased-Janki Dvei, who according to applicant executed a Will dated 28.08.2000 registered on 29.08.2000, by virtue of which aforesaid tractor and other immovable properties left by

deceased-Janki Devi, came into his share, whereas according to private respondents No. 1 to 4, her entire properties including the tractor fall to their share by virtue of natural succession. The applicant got entered his name in the record and registration certificate of tractor, on the basis of alleged Will dated 28.08.2000 of deceased-Janki Devi. However, respondents No. 1 to 4 allegedly stole the same trespassing the house of applicant on 24.07.2006. Thus, having grouse against the alleged stealing of tractor by respondents No. 1 to 4, applicant filed aforesaid complaint against the respondents. Trial Court after holding trial, acquitted respondents No. 1 to 4, vide impugned judgment dated 09.01.2014, while dismissing complaint of applicant.

Learned counsel for the applicant *inter alia* contends that after filing of complaint (Annexure P-1), respondent No. 4-Sudha, filed a civil suit for permanent injunction, restraining the applicant, his brother-Chaman Lal and one Prem Singh to take forcible possession of aforesaid tractor from her, along with an application under Order 39 Rules 1 and 2 CPC, which was dismissed vide order dated 13.09.2006 (Annexure P-2), holding the possession of applicant. While acquitting respondents No. 1 to 4, trial Court failed to appreciate the above finding of the civil Court as well as evidence in favour of the applicant. Trial Court also did not appreciate evidence led by the applicant in its right perspective.

Having given thoughtful consideration to the submission of learned counsel for the applicant, this Court finds the instant criminal miscellaneous application merits dismissal, for the reasons to follow:

Deceased-Janki Devi, was common ancestor of parties to the lis. According to the applicant, in her life time, Janki Devi, executed a registered Will dated 28.08.2000. The applicant claimed his ownership and possession over the aforesaid tractor on the basis of aforesaid Will of Janki Devi. Contrary to it, respondent No. 4 also claimed her ownership and possession over the same by way of natural succession. The trial Court after holding trial, acquitted private respondents making following observations in para Nos. 11 and 13, which reads as under:

“11. In the present case, complainant has relied upon document of ownership i.e. Registration Certificate of tractor bearing No. HR02-6758 by virtue of which complainant became owner of the vehicle and ownership is not the essential ingredients of offence of theft. The complainant was liable to prove the possession at point of time of theft of the vehicle, but the complainant has not examined any witness nor placed on record any document of possession of the case property. Therefore, complainant has failed to satisfy the ingredients of offence punishable under Sections 380, 457 of Indian Penal Code. On perusal of statement of witnesses as well complaint, it proved that there are previous litigation between the complainant and accused in regard to the property of Janki Devi and the present complaint appears to be counter blast of civil cases against the complainant. Reliance can be made on **M/s Indian Oil**

Corporation Vs. M/s NEPC India Ltd. and Others, AIR

2006 SC 3780 wherein Hon'ble supreme Court held that tenancy to convert purely civil disputes into criminal cases deprecated. In the present case, the complainant could have filed the suit for possession of the tractor instead of giving it a colour of criminal case.

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13. Thus, judging from all the angles and after hearing arguments advanced by learned counsel for complainant and learned defence counsel and perusal of the case file, this court is of the considered view that it cannot be presumed that complainant has successfully proved its case against the accused and complainant has failed to prove the guilt of the accused beyond reasonable doubt. They are accordingly acquitted of the charge framed against them. Their bail and surety bonds stand discharged. The case property be dealt with as per rules, after awaiting the result of appeal/revision, if any. File be consigned to the record-room, after due compliance.”

In order Annexure P-2 of the Civil Court, observed that respondent No. 4 had taken the possession of aforesaid tractor forcibly from the applicant to legalize her un-lawful act. The above observation of civil Court which is heavily relied upon by learned counsel for the applicant does not prove the offence under Section 380 IPC which speaks

of a theft in dwelling house.

In view of discussion made above, this Court is not inclined to differ with the findings returned by the trial Court. Prayer for grant of leave to appeal is declined.

March 04, 2020
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No