

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

CRM-A-620-MA-2014(O&M)

Date of decision:-4.2.2020

Kanwar Singh

...Applicant

Versus

Bagdawat Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Aman Dhir, Advocate
for the applicant.

H.S. MADAAN, J.

Applicant – Kanwar Singh has filed this application under Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant – Kanwar Singh had filed a criminal complaint for the offences under Sections 406, 419, 420, 467, 468, 471, 506 and 120-B IPC against accused Bagdawat Singh, Bahadur Singh, Mahadev Singh sons of Gahad Singh, Rajender Singh, Bhuraram, Mahender Singh, Chhatar Singh and Jalbir Singh. As per the version of the complainant, Bagdawat Singh, accused had entered into an agreement to sell his agricultural land situated at village Nimbheda, Tehsil and District Mohindergarh

with him at the rate of Rs.3 lakhs per acre receiving Rs.7 lakhs as earnest money; the stipulated date for execution of sale deed was fixed as 30.9.2006; despite the fact that the complainant always remained ready and willing to perform his part of contract, the transaction could not be completed since Bagdawat Singh accused backed out of it; later on the complainant came to know that accused Bagdawat Singh in connivance with his real brothers Bahadur Singh and Mahadev Singh, impleaded as accused No.2 and 3 and stamp vendor Jalbir Singh, impleaded as accused No.8 had prepared a false agreement to sell dated 4.4.2006 showing Rs.11,50,000/- paid by Bahadur Singh accused to Bagdawat Singh accused, whereas third accused Mahadev Singh had become attesting witness and sale deed No.3358 dated 19.12.2006 was executed by accused Bagdawat Singh in favour of accused Bahadur Singh, in that way, the complainant was cheated by the accused; when the complainant confronted accused Nos.1 to 4 in that respect, they caught hold of him from neck and gave slap and fist blows; they had been threatening the complainant of dire consequences.

After recording of preliminary evidence only accused Bagdawat Singh and Bahadur Singh were summoned to face trial for the offences under Sections 406, 420 IPC read with Section 120-B IPC. Accused had appeared. The complainant led pre-charge evidence. Then finding a prima facie case charge for the offences under Sections 120-B, 420/120-B, 406/120-B IPC was framed against the accused. Post charge evidence was recorded. Accused were examined under Section 313 Cr.P.C. in which they denied all the incriminating material appearing against them in the evidence led by complainant and pleaded their

innocence. The accused did not lead any evidence in defence.

After hearing arguments, learned Sub Divisional Judicial Magistrate, Mohindergarh came to the conclusion that it was not established on record that accused had induced the complainant to enter into an agreement to sell or that the complainant was deceived to do or omit to do anything, which he would not have done or omitted, if he was not so deceived. Therefore, the offence of cheating was not made out and mere failure to keep promise subsequently by accused could not be held to be an act of cheating. Similarly, since there was no entrustment of property either alleged or proved the essential ingredients of offence under Section 406 IPC were also not established. Furthermore, mere agreement to sell does not create any title in favour of the vendee and the dispute between the parties was of civil nature. Consequently, both the accused were acquitted of the charge framed against them vide judgment dated 24.12.2013.

The judgment of acquittal left the complainant aggrieved and he has knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal. Since the complainant has not come to this Court within period of limitation, he had moved an application under Section 5 of the Limitation Act for condonation of delay in filing of the appeal. Notice of the application for condonation of delay was issued to respondents/accused, who put in appearance through counsel. However, application for condonation of delay was accepted and delay of 41 days in filing of the accompanying appeal was condoned. The case was listed for arguments. However, today, there is no representation on behalf of

respondents/accused.

I have heard learned counsel for the applicant besides going through the record.

Section 378 Cr.P.C. deals with appeal in case of acquittal. Sub-Section 4 provides that if such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

In the present case, I find that the impugned judgment passed by the trial Magistrate is quite detailed, well reasoned, based on proper appraisal of evidence and correct interpretation of law. Basically it was a civil dispute between the parties and essential ingredients of any criminal offence were not established on the record. As per the copy of judgment available on the judicial file, the complainant Kanwar Singh had filed a civil suit for possession by way of specific performance of contract against Bagdawat Singh, Bahadur Singh and Tehsildar-cum-Sub-Registrar, Mohindergarh on the basis of those very allegations. After contest by defendants No.1 and 2, the suit was decreed and necessary direction was issued to defendant No.1 to execute and register the sale deed in respect of the suit land in terms of agreement to sell dated 20.7.2006 on receipt of balance sale consideration and other expenses for execution and registration of sale deed. It was further directed that defendant No.2 shall be liable to hand over the vacant possession of the suit land. Vide the said judgment dated 16.12.2013, Bahadur Singh defendant No.2 was not held to be bona fide purchaser

entitled to protect his possession.

Under the circumstances, the grievances of the applicant/complainant have been properly addressed. Learned counsel for the complainant has referred to judgment *Sau Kamal Shivaji Pokarnekar Versus State of Maharashtra & Ors., 2019(2) RCR(Criminal)38* by the Apex Court, wherein it was observed that criminal complaints cannot be quashed only on the ground that allegations made appear to be of a civil nature and if ingredients of offence prima facie made out in complaint, criminal proceedings shall not be interdicted.

However, I find that the judgment referred to by learned counsel for the complainant is clearly distinguishable due to different facts and circumstances and the context in which such observations had been made and it does not help the complainant in any manner. Here we are dealing with a case where special leave to appeal is being sought against a judgment of acquittal, which does not appear to be suffering from any illegality or infirmity. Whereas judgment referred (supra) had dealt with the aspect of quashing of complaint under Section 482 Cr.P.C.

Thus no ground is made out to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

4.2.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No