

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1720-MA-2014

Date of Decision: 19.12.2022

Date of Reserved: 05.12.2022

Shri Ram

.....Appellant

Vs.

Sukhjinderjit Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Vikas Gupta, Advocate, for the appellant.

Mr. Bikramjit Singh Baath, Advocate,
for respondents no. 1, 3 and 4.

HARPREET KAUR JEEWAN, J.

Challenge by the appellant (complainant) in the present application filed under Section 378 (4) Cr.P.C. is for grant of leave against the judgment of acquittal dated 27.11.2013 passed by the Learned Judicial Magistrate Ist Class, Tarn Taran.

Vide the impugned judgment, the trial Court acquitted the respondents-accused of the charge, which had been framed against them under Sections 420/34 of the Indian Penal Code (for short 'IPC') in a private complaint case, bearing RBT Complaint No. 253 of 04.06.2008, filed by the appellant before the learned Ilaqua Magistrate.

2. The appellant-complainant filed the private complaint before the Ilaqua Magistrate with the allegations that he along with Charan Singh had purchased 11 kanals and 2 marla of land, bearing khasra No. 24/22/3 (1-2), 23/1 (0-1), 24/18/2 (0-17) 19 min (3/11) and 22/2 (5-11), situated in the

area of Village Chaudhri Wala, Tehsil & District Tarn Taran, from Surjit Singh, son of Kundal Singh for valuable consideration vide registered sale deed dated, 22.03.1995. Vendor Surjit Singh had inherited the said property from his father Kundan Singh. However, Jagtar Singh and Mukhtiar Singh, sons of Sakattar Singh were getting the possession of land measuring 2 kanal and 18 marla, out of khasra No. 24//22/2 (5 kanal and 11 marlas) situated in the said village from the appellant and Charan Singh on the basis of a Civil Court decree dated 20.08.2001, passed by the Civil Court, Tarn Taran, as per the order dated 23.06.1976, passed by Consolidation Officer, Jalandhar. The said land measuring 2 kanal and 18 marla was originally belonging to Kundan Singh, son of Ganda Singh and was allotted to Samma Singh, son of Bali Singh and Sakattar Singh, father of Jagtar Singh and Mukhtiar Singh vide serial No. 25 of order dated 23.06.1976 passed by Consolidation Officer, Jalandhar. In lieu of the said land of 2 kanal and 18 marla, Kundan Singh, son of Ganda Singh was allotted the land measuring 05 kanal and 06 marla, comprised of khasra No. 24//18/1/2 (1-15) 23/2 (1-17) 24//18/1/1 (1-14), by the Consolidation Officer, Jalandhar, as per serial No. 93 of the order, dated 23.06.1976.

The appellant and Charanjit Singh are the *bona fide* purchaser of the aforesaid land measuring 11 kanal and 02 marla but they are deprived of the land measuring 2 kanal and 18 marla, out of khasra No. 24/22/2 (5-11), on the basis of the order dated 20.08.2001, passed by the Civil Court. In order to take the possession of land measuring 5 kanals and 06 marla from respondent Sukhjinderjit Singh and others, the complainant and Charanjit Singh had filed an application, dated 14.08.2002 before Consolidation

Officer, Jalandhar. Consequently, warrant of possession dated 09.09.2002 were issued by the Consolidation Officer, Jalandhar, in favour of the appellant and Charanjit Singh. After that the Consolidation Department was abolished and the powers of Consolidation Officer were vested in the District Revenue Officer. As such, an application under Section 23 (2) of the Consolidation of the Land Holding Act was moved before DRO-cum-Consolidation Officer, Amritsar, for delivery of the possession of the land measuring 5 kanal and 6 marla. The accused Sukhjinderjit Singh and Onkar Singh created obstacles in the execution of warrant of possession. Even police help was ordered but in the meantime, accused Sukhjinderjit Singh and others filed an application for staying the execution of warrant of possession in the Court of DRO. The said Court granted interim stay on the execution of warrant of possession vide order dated 05.06.2003 but after hearing the counsel for the parties, the said interim order was vacated as per order dated 20.10.2003. In order to defeat the execution of warrant of possession and to harass the appellant and Charanjit Singh, the accused filed a civil suit against the complainant and Charanjit Singh seeking a declaration of ownership in favour of Dalbag Singh. The plaintiffs in the said suit had also sought permanent injunction, restraining the defendants from dispossessing the plaintiffs from the land, comprised of Khasra No. 22//18/1/2 (1-15) and 23/2 (4-10) and further sought a relief that plaintiffs are entitled to seek partition of the joint khata. The application of grant of interim stay was dismissed by the Court of Sh. Rajinder Aggarwal, Additional Civil Judge (Senior Division), Tarn Taran, vide order dated 20.02.2004.

It was further pleaded that all the accused had the knowledge that accused Sukhjinderjit Singh, Sukhwinder Kaur @ Lakhwinder Kaur and Onkar Singh are neither the owner nor the co-sharer of the aforesaid land measuring 05 kanal and 06 marla on the basis of the order dated 23.06.1976, passed by Consolidation Officer, Jalandhar and all the accused hatched a conspiracy and sold the land measuring 03 kanal and 12 marls, out of khasra No. 24//18/1/2 (1-15) 23/25 (1-17), vide sale deed dated 09.03.2004, to which they were not the owner, showing Gurshimardeep Singh as beneficiary and accused Sukhbir Singh, son of Surjit Singh having signed the said sale deed on behalf of vendee Gurshimardeep Singh. Accused Lambardar Amarjit Singh and accused (respondent No. 4) Narinder Singh, were the attesting witness and all the accused signed the said fictitious sale deed dated 09.03.2004 and got it registered with the office of Sub-Registrar, Tarn Taran. The said sale deed had been executed with dishonest intention and to defraud the appellant and Charanjit Singh and to defeat the execution of warrant of possession, issued by the DRO-cum-Consolidation Officer, Amritsar, on the basis of the order dated 23.06.1976.

3. After recording the preliminary evidence, the respondents-accused were ordered to be summoned to face trial under Sections 420/423/465/467/120-B of the IPC. After appearance of the respondents, pre-charge evidence was recorded and charge under Section 420 read with Section 34 of the IPC was framed against the accused on 20.08.2013. In the post-charge evidence, further cross-examination of the appellant Shri Ram and Jagtar Singh was conducted by the respondents (accused). After recording the statement of the accused under Section 313 of the Cr.P.C., the

respondents examined three witnesses and tendered into evidence various documents.

4. After hearing the learned counsel for the parties and pursuing the evidence on record, the Area Magistrate, dismissed the complaint on the ground that the allotment made in favour of the appellant (complainant) by the Consolidation Officer, vide order dated 23.06.1976 was never implemented. This has been admitted by the appellant that the respondents were in possession of the land in question which he was claiming to have fallen to his share on the basis of the order of Consolidation Officer. It was further observed that subsequently, Director Lands Record-Settlement Officer, Punjab, Jalandhar, vide its order dated 16.12.2004, specifically held that the said order by the Consolidation Officer, dated 23.06.1976 has become unimplementable due to various deficiencies, i.e. certain portion of the land having been sold by some of the right holders to different persons; on some portion of the land hospital has been constructed; and whereas on another portion '*Mandi*' and office of Block *Samiti* has been constructed. Apart from this, on some portion of the land, there is a passage. On account of these reasons, the Ilaqua Magistrate held that the appellant had failed to prove cheating had been committed by the respondents and they were accordingly, acquitted.

5. The learned counsel for the appellant has submitted that the trial Court has failed to appreciate the fact that the land in question was allotted to the appellant by the DRO-cum-Consolidation Officer but it has been fraudulently sold by the respondents. The learned trial Court has wrongly acquitted the accused holding that the order of Consolidation Officer was

never implemented. However, it was ignored that the ownership of the land measuring 5 kanal and 06 marla came to the appellant and Charanjit Singh, as per the said order and the action of the accused in making an attempt to prevent the execution of warrant of possession by executing the sale deed clearly proves *mens rea* on the part of the accused persons who have executed the sale deeds despite the fact that they were not the owner of the land. The execution of the sale deed was solely for the purpose of preventing the execution of warrant of possession in favour of the appellant. Raising the aforesaid submission, it was contended that the leave may be granted to file the present appeal against the order passed by the trial Court.

6. On the other hand, learned counsel appearing for respondents no. 1, 3 and 4 has submitted that the trial Court has rightly acquitted the accused as the appellant had failed to prove any cheating on the part of the respondents.

7. We have considered the aforesaid submissions and perused the record.

8. The respondents were facing a trial on the basis of a charge framed against them under Section 420 read with Section 34 of the IPC.

9. Coming to the facts of the present case, the appellant has alleged that he was allotted the land in question on the basis of the order dated 23.06.1976, passed by Consolidation Officer and the respondents had no right to execute the sale deed, dated 09.03.2004 regarding a part of the said land measuring 3 kanal and 12 marla. The act of the accused while executing the said sale deed is with dishonest intention and hence, amounts to cheating. We are of the view that the appellant had failed to prove that the

order dated 23.06.1976 became final and was implemented at the time when the sale deed, dated 09.03.2004 was executed by the respondents which is alleged to be an act of fraud on the part of the respondents. Ex. D-3 is copy of the order dated 16.12.2004, passed by Director Land Records, Jalandhar (Punjab), whereby the order dated 23.06.1976 passed by the Consolidation Officer and the order dated 14.09.2004, passed by the Settlement Officer, Punjab, Jalandhar, were challenged successfully being contrary to the record and against the law. It was contended before the said authority that the order dated 23.06.1976, passed by the Consolidation Officer cannot be executed on account of various reasons recorded in the said order. It is also evident from record that after the order dated 23.06.1976 was passed by the Consolidation Officer, the parties were in litigation, challenging the said order. Ultimately, by order dated 16.12.2004 (Ex. D-3) it was held that the order passed by Consolidation Officer, dated 23.06.1974, is not executable. The matter was remanded for deciding afresh after considering the various facts mentioned in the said order. The said order clearly indicate that the order dated 23.06.1976 upon which appellant-complainant is replying was not held final and was found to be unimplementable.

10. Ex. D-4 is the order dated 17.01.2006, passed by Deputy Director Lands-cum-Settlement Officer, Punjab, Jalandhar. The said order indicate that the order dated 23.06.1976, passed by the Consolidation Officer was set aside by the order dated 16.12.2004 by Director Land Records and the matter was remanded to the District Revenue Officer-cum-Consolidation Officer, who passed the fresh order dated 30.09.2005. The said appeal was filed against the order dated 30.09.2005 passed by Consolidation Officer.

The said appeal was disposed of by observing that directions in the order dated 16.12.2004 were very clear that shortage, if any is to be made good from '*Bachat*' land and it cannot be made good without touching the area of any land holder and before passing any order, the said directions made by Director Land Records are to be kept in mind.

11. The said orders clearly reveal that the order dated 23.06.1976 passed by the Consolidation Officer was under challenge and having various rounds of litigation and ultimately it was not final on the day when the sale deed dated 09.03.2004 was alleged to have been executed by the respondents. The appellant is claiming ownership rights on the basis of the order dated 23.06.1976. The same was not final on the day of execution of the sale deed dated 09.03.2004. The title claimed by both the appellant and the respondent at the time of execution of sale deed was not clear and it was under challenge.

12. Another allegation has been levelled against the appellant that he along with Charanjit Singh were the *bona fide* purchase of the land measuring 11 kanal and 2 marls but out of the said land they were deprived of the land measuring 02 kanal and 18 marla out of Khasra No. 24//22/2 (5-11) on the basis of the order dated 20.08.2021, passed by the Court of Sh. Rajinder Aggarwal, Additional Civil Judge. Another contention has been raised that the appellant/complainant could not get the delivery of possession of the land measuring 05 kanal and 06 marla as the accused Sukhjinder Singh and Kartar Singh created obstacles in the execution of the warrant of possession and it has been averred that the Consolidation Officer, Amritsar, granted interim stay on the execution of the warrant of

possession dated 06.06.2003, though it was later on vacated on 20.10.2003. The third contention has been raised that accused Sukhjinder Singh, Lakhwinder Kaur @ Sukhwinder Kaur and accused Onkar Singh and others have filed a civil suit against the appellant and Charanjit Singh in order to defeat the execution of warrant of possession issued against accused Sukhjinder Singh and others. The said civil suit was filed for grant of declaratory decree and for permanent injunction. Along with the said civil suit an application for interim stay was also filed. Therefore, the respondents have cheated the appellant. 9

13. We have considered the aforesaid contentions and observe that if the respondents have challenged the order passed by the Consolidation Officer dated 23.06.1974 or they have availed their legal remedy in the Civil Court and on account of that reason the appellant could not get his claim finalized from the Consolidation Department or from the office of Land Records. This would not amount to cheating as it means the appellant has civil remedies available to him. Moving to the Court of Law or before any Authority cannot be termed as acting with the criminal intention of cheating unless it is so proved. Merely, on the ground that the respondents had filed the appeals and approached the Civil Court, no findings can be given that the act of the respondents was with an intention of cheating.

14. The Hon'ble Supreme Court of India in **Prof. R.K. Vijayasarathy and another** vs. **Sudha Seetharam and another** 2019 (5) RCR (Criminal) 537, has discussed the essential ingredients to prove the offence of cheating under Section 420 of the IPC. It was held that

fraudulently or dishonest inducement induces another person to deliver any property is liable for the offence of cheating and a dispute of civil nature should not be given the cloak of criminal flavor. The relevant portion reads as follows:-

“18 The condition necessary for an act to constitute an offence under [Section 415](#) of the Penal Code is that there was dishonest inducement by the accused. The first respondent admitted that the disputed sum was transferred by the son of the appellants to her bank account on 17 February 2010. She alleges that she transferred the money belonging to the son of the appellants at his behest. No act on part of the appellants has been alleged that discloses an intention to induce the delivery of any property to the appellants by the first respondent. There is thus nothing on the face of the complaint to indicate that the appellants dishonestly induced the first respondent to deliver any property to them. Cheating is an essential ingredient to an offence under [Section 420](#) of the Penal Code. The ingredient necessary to constitute the offence of cheating is not made out from the face of the complaint and consequently, no offence under [Section 420](#) is made out.

xxxx xxxx xxxx xxxx

24 In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute

offences under [the Penal Code](#). An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed.”

15. Since, there is always a presumption of innocence and in case of acquittal, there is double presumption.

16. In the present case, there are no allegations that the respondents herein induced the complainant to buy the property. Hence, essential ingredient of cheating are not to be proved.

17. In this regard, reliance can be placed upon the judgment of the Hon'ble Supreme Court in **para 41 in Dhanapal v. State By Public Prosecutor, Madras, (2009) 10 SCC 401** while dealing with scope of interference at appellate stage has held:

“41.The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the

demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court acquittal if it has “very substantial and compelling reasons” for doing so.

5. If two reasonable or possible views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.”

18. The burden lies upon prosecution to prove the guilt beyond reasonable doubt. The learned trial Court has passed a detailed, reasoned speaking judgment and we find no infirmity in it. There is no manifest error, illegality or non-application of mind or non-appreciation of evidence which could compel us to form an opinion different from the opinion formed by the learned Trial Court.

19. In view of the above, we are of the considered opinion that dismissal of the criminal complaint by the trial Court is in resonance with the facts of the case and does not warrant any interference.

20. Consequently, we are of the considered opinion that the view which has been taken is a probable view and in the absence of any perversity since all evidence has necessarily been scanned and discussed, no case is made out for interference in the well reasoned order passed by the trial Court. Accordingly, the application for grant of leave to appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

December 19, 2022

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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking

Yes

Whether Reportable

No