(233) IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2788-2018(O&M)
Date of Decision:16.09.2022

Smt. Kamaljit Kaur

... Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. B.S. Bairagi, Advocate
for the petitioner.

Mr. Jaiteshwara Singh, Asst. A.G., Punjab.

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JASJIT SINGH BEDI, J.

CRM-29486-2018

The present application has been filed by the learned counsel for the applicant-petitioner for placing on record additional documents.

Allowed as prayed for subject to all just exceptions.

CRR-2788-2018

The present revision petition has been preferred against the order dated 21.02.2018 passed by the learned Additional Sessions Judge, Moga, whereby the Lower Appellate Court has upheld the order of acquittal passed by the Trial Court dated 10.10.2016, in FIR No.05 of 2013 registered under Sections 420, 120-B IPC at Police Station Dharamkot, Moga.

2. The factual matrix of the case projected by the prosecution in its final report submitted to the Court under Section 173 Cr.P.C is that on 02.11.2012, the complainant-Kamaljit Kaur moved an application bearing No.1988-PC-4/12 to the effect that she was married with Harpinder Singh

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son of Major Singh resident of Indergarh, District Moga in the year 2005 and she has one daughter and one son and her husband is habitual of consuming liquor since her marriage. On 19.08.2010, under the influence of liquor, her husband sold 2 acres of land to Mukand Singh and Narinder Singh both sons of Partap Singh residents of Indergarh, District Moga at a very low price and wasted all the sale price money in consuming liquor, due to which a dispute arose between them and she left for her parents house at village Talwandi Malian, District Moga but thereafter, on the the asking of the Panchayat members and relatives, she again started living at village Indergarh, District Moga. For few days, Harpinder Singh stopped consuming liquor but after some time, he again started consuming liquor and due to excessive consumption of liquor, Harpinder Singh got mentally upset, taking benefit of which, accused Baldev Singh made Harpinder Singh drink continuously, due to which a dispute again arose between her and Harpinder Singh i.e. her husband and she again left for her parental house. Thereafter, for the period from 01.08.2012 to 05.08.2012, the accused Baldev Singh with the help of his friend Kuldeep Singh took Harpinder Singh somewhere from his house and on 05.08.2012, when her husband returned home, he was in a drunken condition. Thereafter, on 07.08.2012, Harpinder Singh got transferred his land in her favour as well as in favour of his sons but later on, it came to their knowledge that accused Baldev Singh in connivance with the co-accused got scribed an agreement to sell of the land of Harpinder Singh in their favour for a sale consideration of Rs.8.50 Lacs per killa and also obtained the signatures of her husband on the said agreement when her husband was in drunken

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condition and got mentioned in the said agreement that Harpinder Singh has received Rs.19 Lacs as earnest money. However, no money was ever given by the accused persons to Harpinder Singh. The SSP , Moga marked the application to DSP (HQ), Moga, who conducted an enquiry and submitted his enquiry report before the SSP, Moga. Thereafter, the SSP, Moga, after obtaining the opinion of the District Attorney Legal, Moga, directed the SHO of Police Station Dharamkot, District Moga to register the FIR. The accused were arrested. During the course of investigation, statements of concerned witnesses under Section 161 Cr.P.C was recorded by the investigating agency. After completion of investigation and other necessary formalities, challan against the accused was prepared and presented in the Court .

3. On finding a prima facie case, charge punishable under Sections 420 and Section 120-B of Indian Penal Code was framed against the accused, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined PWI Surinder Kumar, Vasika Nawis, Tehsil Court, Dharamkot, PW2 Rajinder Saini, Manager, OBC, G.T Road, Gurdaspur, PW3 Kamaljit Kaur i.e. complainant, PW4 ASI Paramjit Singh, PWS ASI Jaswinder Singh and PW6 Satwinder Kaur Patwari, village Indergarh, District Moga.

Thereafter, the prosecution failed to examine any other witness despite availing several number of opportunities and as such, the prosecution evidence was closed by order on 27.09.2016.

5. After closure of the prosecution evidence, statements of the accused under Section 313 Cr. P.C. were recorded in which all the

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incriminating materials appearing in prosecution evidence was put to them. The accused denied all such allegations and claimed their false implication in this case. The accused opted to lead evidence in defence.

The accused tendered into evidence a certified copy of judgment & decree dated 05.04.2015 passed by the learned Court of Mrs. Pooja Andotra, Civil Judge (Senior Division), Moga which are Ex. DI & Ex..D2 but did not examine any witness in their defence and as such the defence evidence was closed by order on 10.10.2016.

6. In order to substantiate its allegations, the prosecution examined PW1 Surinder Kumar, Vasika Nawis, Tehsil Court, Dharamkot who deposed to the effect that he has seen the agreement to sell dated 02.08.2012 Ex.P1 executed by Harpinder Singh son of Major resident of Indergarh, District Moga in favour of Baldev Singh son of Mohinder Singh resident of village Indergarh, District Moga for sale a consideration of Rs.8,50,000/- per acre, on the judicial file, which was scribed by him on the directions of the parties. He further deposed that earnest money of Rs.19 Lacs was received by the vendor Harpinder Singh from the vendee Baldev Singh at his house due to the reason that the amount was heavy and he asked from the parties regarding the earnest money and both the parties disclosed the abovesaid fact to him, on which he scribed the agreement. He further proved on record entry regarding the agreement to sell entered at Sr. No.514 in his register which is Ex.P2 and further deposed that no transaction of money between the parties took place either in his presence or in his shop and his statement in this regard was recorded by the police.

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7. PW2-Rajinder Saini, Manager, OBC, G.T Road, Gurdaspur brought the summoned record i.e. original record relating to the account No.06552151004832 in the name of Baldev Singh son of Mohinder Singh resident of village Indergarh, District Moga, statement of account running from 09.04.2011 to 05.01.2015, copy of cheque bearing No.960157 for an amount of Rs.6,85,000/- withdrawn on 02.08.2012 by Baldev Singh, copy of CDR No.06553031011216 of Rs.8,67,683/- of 29.11.2011 and CDR No.06553031010936 of Rs.4,00,000/- dated 22.11.2011 alongwith credit and debit vouchers and has proved on record same as Ex.PW2/A to Ex.PW2/D.

8. PW3-Kamaljit Kaur who is the complainant of the present case reiterated the prosecution version that it is the accused persons who had committed the alleged offences. She identified the accused to be the persons who have committed the alleged offences. While doing so, PW3-Kamaljit Kaur also proved her application which is Ex. PW3/A.

9. PW4-ASI Paramjit Singh deposed to the effect that on 27.01.2013, he was posted at Police Station Dharamkot, District Moga and on that day, ASI Sukhmander Singh joined into investigation accused Baldev Singh, Kuldeep Singh and Dewa Singh in compliance of the anticipatory bail order and thereafter, investigating officer prepared arrest memo Ex.PW4/A which was duly attested by him . He further deposed that his statement was recorded by the investigating officer and he further identified the accused persons present in the Court.

10. PW5-ASI Jaswinder Singh deposed to the effect that on dated 01.11.2012, he was posted as Incharge at PC Branch, SSP Office, Moga and

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on that day, one application Ex.PA was received at the office of SSP, Moga, which was further marked to DSP, Dharamkot vide direction Ex.PWS/A by the SSP, Moga for conducting an enquiry and thereafter, on dated 22.12.2012, the then DSP Dharamkot namely Gurpreet Singh submitted his enquiry report which is Ex.PW5/A before SSP, Moga, who after obtaining the opinion of District Attorney Legal, Moga gave directions Ex.PW5/C to SHO of Police Station Dharamkot, District Moga to register an FIR against the accused persons. He identified the signatures of Sh. Surjit Singh, the then SSP, Moga on the abovesaid documents.

11 PW6 Satwinder Singh Patwari, village Indergarh, District Moga brought the summoned record i.e. record of Jamabandi for the year 2007-08 of village Indegarh and deposed that as per their record, on 22.08.2012, mutation No.11642 was sanctioned regarding the inheritance of Harpinder Singh son of Major Singh in favour of his wife Kamaljit Kaur and in favour of his son Upkaranvir Singh regarding khewat No.181/173, khatoni No.221 and thus, Kamaljit Kaur and Upkaranvir Singh were the owners in possession of the said land. He further proved on record the computerized copy of record brought by him which is Ex.PW6/A.

12. The accused had been charged for the commission of the offences punishable under Section 420 read with Section 120-B of Indian Penal Code. The case of the prosecution was that on or before 02.08.2012, in the area of Dharamkot, all the accused entered into a criminal conspiracy for committing cheating with Harpinder Singh and his family members by preparing a false agreement to sell of his land and got his signatures on the

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said false agreement in an intoxicating condition and after administering intoxicants to Harpinder Singh dishonestly induced him to put his signatures on the falsely prepared agreement to sell of his land measuring 24 Kanals situated in village Indergarh by mentioning that he had received Rs.19,00,000/- as earnest money but without giving any amount out of total sale consideration Rs.25,50,000/- which was not the market rate of the said land at that time.

13. Based on the evidence led, the Trial Court came to the conclusion that PW1-Surinder Kumar, Vasika Nawis had clearly stated in his evidence that he had ascribed the alleged agreement to sell dated 02.08.2012 (Annexure P-1) on the directions of the parties and also stated that earnest money of Rs.19,00,000/- was received by the Vendor Harpinder Singh (husband of the complainant) from the vendee (respondent No.2-Baldev Singh acquitted accused) at his house as the amount was heavy. He stated that on his asking both the parties told him that the payment of the earnest money had already been made on the basis of which, he ascribed the agreement. He further admitted in his cross-examination that the stamp papers on which he ascribed the agreement in question was purchased by Harpinder Singh, Vendor, Desa Singh, Numberdar (respondent No.4) and Kuldeep Singh (respondent No.3) witnessed the said agreement to sell. He further stated that at the time of execution of the agreement in question Harpinder Singh was in sound mind.

As per the deposition of PW2-Rajinder Saini, Manager OBC, Gurdaspur, it was apparent that a sum of Rs.6,85,000/- had been withdrawn

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on 02.08.2012 i.e. the date of the execution of the alleged agreement to sell thus, showing that respondent No.2-Baldev Singh had done transactions on the date of execution of the agreement and had withdrawn money from his account.

The statement of PW3-Kamaljit Kaur was not sufficient to prove that the agreement to sell executed by her husband Harpinder Singh in favour of the accused Baldev Singh was after he had been intoxicated as no evidence of the same was brought forth by her. And her bald statements to this effect were insufficient to substantiate her allegations.

On the other hand, the accused had taken a plea that a false case had been registered against them as the said Harpinder Singh after executing the alleged agreement to sell dated 02.08.2012 had transferred his entire land in favour of his wife, complainant-Kamaljit Kaur and his son Upkaranvir Singh and had thus, cheated them. Respondent No.2-Baldev Singh had filed a suit for specific performance which had been decreed in his favour by the Court of Civil Judge (Senior Division), Moga on 05.04.2016 whose certified copy was Ex.D1 and Decree-sheet DW-2. This fact had been admitted by PW3-complainant-Kamaljit Kaur.

14. Based on the aforementioned discussion, the Trial Court acquitted the accused vide judgment dated 10.10.2016.

15. The complainant preferred an appeal before the Court of learned Additional Sessions Judge, Moga and vide judgment dated 21.02.2018, the said appeal came to be dismissed by the Court of the Additional Sessions Judge, Moga.

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16. The learned counsel for the petitioner-complainant contends that the entire proceedings had been conducted by the Public Prosecutor and the petitioner being a lady having minor children with an alcoholic husband could not engage a private counsel due to which the trial could not be conducted properly. Therefore, a number of documents could not exhibited before the Trial Court and a number of witnesses sought to be examined were not examined.

It is contended that the statement of Harpinder Singh was not recorded and the prosecution evidence was closed. The said order was challenged before the Court of learned Sessions Judge by filing a revision petition. The Trial Court without considering the pendency of the revision-petition proceeded to acquit the accused.

It is also contended that while Deed Writer PW1-Surinder Kumar had stated that Harpinder Singh had received earnest money of Rs.19,00,000/- at his home, respondent No.2-Baldev Singh had admitted during inquiry that in fact, he had given the money at the shop of the Deed Writer.

It is contended that PW2-Bank Manager, Rajinder Saini while admitting that respondent No.2-Baldev Singh had withdrawn money from the bank account for giving as earnest money to Harpinder Singh admitted that he had deposited money in his account as well and had withdrawn the same on the same day.

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It is still further contended that respondent No.2-Baldev Singh could very well have transferred the amount into the bank account of Harpinder Singh as the bank accounts of both were in the same bank.

It is thus, contended that the judgments of acquittal of the Trial Court, which has been upheld by the Lower Appellate Court ought to be set aside.

17. I have heard the learned counsel for the petitioner at length.

18. In the present case, firstly, the statement of PW1-Surinder Kumar, Vasika Nawis is categoric that he ascribed the agreement on the directions of the parties and the stamp papers had been purchased by Harpinder Singh himself. The signatures of the witnesses of the agreement to sell were affixed in his presence and Harpinder Singh, Vendor put his signatures upon the same after admitting its contents. There was absolutely no undue pressure upon Harpinder Singh at the time of the execution of the agreement and he was in sound mind. He has also clearly mentioned in his deposition that the money changed hands at the house of Harpinder Singh. Therefore, the version purportedly given by respondent No.2-Baldev Singh to the Investigating Agency during inquiry that the money was paid at the shop of this witness would have little evidentiary value.

PW2-Rajinder Saini, the Manager OBC, Gurdaspur has also stated that respondent No.2-Baldev Singh accused had withdrawn a sum of Rs.6,85,000/- which fact is clearly borne out from the bank statement attached with the present petition as Annexure P-4. Merely because on the same day certain amounts were deposited by respondent No.2-Baldev Singh

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in his account would not be sufficient to infer that the transaction actually did not take place.

PW3-Kamaljit Kaur's entire case is based on the fact that the Vendor Harpinder Singh, her husband, was an alcoholic and a drunkard and the agreement in question had been got executed by the accused in the favour of respondent No.2 by intoxicating Harpinder Singh. It may be relevant to mention here that there is absolutely no evidence of the fact that Harpinder Singh had been intoxicated on or about the time when the said agreement to sell dated 02.08.2012 was executed. In fact, except her bald statements, there is absolutely no evidence of the factum of intoxication.

On the contrary, it is the categoric averments of the accused respondent Nos.2 to 4 that after Harpinder Singh had executed the agreement dated 02.08.2012 in their favour, he transferred is entire land in favour of the present complainant and their son and in fact, they (accused persons) had been cheated. They had filed a civil suit for specific performance of the agreement dated 02.08.2012 and the said suit was decreed vide judgment Ex.D1 and decree Ex.D2. The said suit had been filed on 07.09.2012 much prior to the registration of the present FIR on 06.01.2013. Therefore, the legality and validity of the agreement in question had already been adjudicated upon by the Civil Court vide its judgment Ex.D1, whereby the suit of respondent No.2-Baldev Singh was ordered to be decreed for the relief of possession by way of specific performance of the agreement.

Thus, once the contention of the complainant and even that of her husband Harpinder Singh had been adjudicated upon by the competent

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Civil Court and the validity and legality of the agreement to sell in question had been upheld in favour of the accused, the judgments of acquittal passed by the Trial Court as also the Lower Appellate Court cannot be faulted or said to be perverse or illegal so as to warrant any interference by this Court.

19. In view of the aforementioned discussion, I find no merit in the present revision petition and therefore, the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

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Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No

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