

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

CRM-4563-2019

in/and

CRM-A-439-2019

Date of Decision: 03.05.2023

SMT. JOGINDER KAUR

...Applicant

Versus

SMT. HARNAM KAUR AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rakesh Kumar Sharma, Advocate
for the applicant.

HARSH BUNGER, J.

CRM-4563-2019

This is an application seeking condonation of delay of 78 days in filing the accompanying application for grant of leave to file appeal.

For the reasons mentioned in the application, the same is allowed and delay of 78 days in filing the accompanying application for grant of leave to file appeal is condoned.

Criminal Misc. Application stands disposed of accordingly.

CRM-A-439-2019

The applicant/complainant has filed this application under Section 378(4) of the Code of Criminal Procedure, for grant of leave to file appeal against impugned judgment dated 04.08.2018 passed by learned Judicial Magistrate Ist Class, Faridabad, whereby, the criminal complaint filed by her under Sections 420, 406, 467, 468, 471, 506 and 120-B read with Section 34 of the Indian Penal Code (for short 'the IPC'), at Police Station Bhupani, Faridabad, has been dismissed and respondent

No.1/accused has been acquitted of the charges framed against her.

2. Briefly, the applicant/complainant filed a complaint under Sections 406, 420, 467, 468, 471, 506 and 120-B read with Section 34 of the IPC, by stating that accused/respondent No.1, had induced her to enter into an agreement to sell on 02.05.2013 for a total sale consideration of Rs.2,12,00,000/-, by representing herself to be the alleged owner in possession of land measuring 2 acres i.e. 9680 sq. yards, forming part of *Khewat/Khata No.69/87, Khasra No.1/6/2*, through a registered sale deed No.3499 dated 09.09.1994 and *Khewat No.70-61/64/88, Khasra No.1/2/1* situated at Village Kidawali, Tehsil and District Faridabad through a registered sale deed No.3584 dated 14.09.1994. It is alleged that out of the above-mentioned sale consideration, the complainant paid Rs.20,00,000/- to respondent No.1, for which, she issued a receipt in presence of two witnesses Balbir Singh son of Surender Singh and Gurmeet Singh son of Gopal Singh on 02.05.2013, and the balance sale consideration of Rs.1,92,00,000/- was to be paid by the applicant/complainant to respondent No.1 in 12 months in four equal quarterly installments of Rs.48,00,000/- each. In the alleged agreement to sell dated 02.05.2013, it has been stated by respondent No.1 that she had purchased 1 acre land vide registered Sale Deed No.3499 dated 09.09.1994 and remaining 1 acre land vide registered Sale Deed No.3584 dated 14.09.1994. It is further submitted that Conveyance Deed document No.3499 of the said land has already been executed and got registered from HUDA in favour of said Hakam Singh, while in the recital of agreement to Sell dated 02.05.2013; whereby, respondent No.1 demonstrated herself to be the exclusive owner in possession of the said land. Possession of the land was agreed to be handed over to the complainant after 10 days from the date of execution of said agreement to sell. It is submitted in the complaint that when respondent

No.1 failed to execute the sale deed in favour of the complainant, then an enquiry was conducted; whereupon, the complainant came to know that accused/respondent No.1 had already leased the said land for 99 years to respondents No.2 to 5 vide two registered pattanamas i.e. one pattanama bearing document No.3907 dated 04.10.1994 with respect to *Khewat No.70-61/64/68, Khasra No.1/2/1* and another *pattanama* bearing document No.3906 dated 04.10.1994 with respect to *Khewat/Khata No.69/87, Khasra No.1/6/2*.

Upon being defrauded, the complainant/applicant filed a complaint under Sections 420, 406, 467, 468, 471, 506 and 120-B read with Section 34 of the IPC.

3. After pre-summoning evidence, respondent No.1 was summoned under Sections 420 and 406 of the IPC; whereupon she appeared and was released on bail.

4. In pre-charge evidence, complainant examined Khem Chand as CW-1, Joginder Kaur as CW-2, Gurmeet Singh as CW-3 and HC Sunil Kumar as CW-4 and proved the following documents :-

<i>Exhibits</i>	<i>Documents</i>
<i>CW1/A</i>	<i>Agreement to Sell dated 02.05.2013</i>
<i>CW1/B</i>	<i>Receipt of Rs.20,00,000/-</i>
<i>CW3/A</i>	<i>Copy of Pattanama No.3907 dated 04.10.1994</i>
<i>CW3/B</i>	<i>Copy of Pattanama No.3906 dated 04.10.1994</i>
<i>CW3/C</i>	<i>Copy of Deed of Conveyance dated 04.07.1995</i>
<i>CW3/D</i>	<i>Copy of Sale Deed No.3499 dated 09.09.1994</i>
<i>CW3/E</i>	<i>Copy of Sale Deed No.3584 dated 14.09.1994</i>
<i>CW4/A</i>	<i>Copy of complaint</i>
<i>CW4/A</i>	<i>Copy of complaint 1742-CP dated 03.10.2013</i>
<i>CW4/B</i>	<i>Copy of complaint 1613-CP dated 13.09.2013</i>

Thereafter, the evidence of the complainant was closed by Court order.

5. On finding a *prima facie* case punishable under Section 420 and 406 of the IPC, respondent No.1-accused was charge-sheeted, to which, she pleaded not guilty and claimed trial.

6. In post charge evidence, complainant (Joginder Kaur) appeared as CW-1, Gurmeet Singh as CW-2 and Rajender as CW-3. Except that, no other witness was examined.

7. After closure of post charge evidence; the statement of the respondent No.1-accused under Section 313 Cr.P.C., was recorded and all incriminating evidences were put to her, to which, she denied the allegations. Thereafter, defence evidence was closed vide order dated 03.08.2018.

8. Learned trial Court, after appreciating the evidence/material available on record, acquitted the respondent No.1-accused of the charges framed against her vide judgment dated 04.08.2018 passed by learned Judicial Magistrate Ist Class, Faridabad.

9. In the afore-said circumstances, the present application for grant of leave to file appeal has been filed before this Court.

10. I have heard learned counsel for the applicant/complainant and gone through the impugned judgment dated 04.08.2018 passed by learned Judicial Magistrate Ist Class, Faridabad.

11. As regards the scope of interference in a judgment of acquittal, recently, in *Criminal Appeal No. 1904 of 2014, Roopwanti v. State of Haryana (Decided on 24.02.2023)*, reported as *2023(3) Scale 323*,

Hon'ble Supreme Court of India, has held as under: -

“7. In cases where a reversal of acquittal is sought, the courts must keep in mind that the presumption of innocence in favour of the accused, on grounds of it surviving the rigours of a full trial, is strengthened and stands fortified. The prosecution then, while still working under the same burden of proof, is required to discharge a more onerous responsibility to annul and reverse the fortified presumption of innocence. This fortification of the presumption of innocence has been held in a catena of judgments by this court.

*8. In the case of **Allarakha K. Mansuri v. State of Gujarat 2002(1) RCR(Criminal) 748**, this Court has held that in cases of reversal of acquittal, where two views are possible, the view which favors the accused has to be adopted. For the sake of Convenience, the relevant paragraph of the judgment is being produced hereunder:*

"The settled position of law regarding the powers to be exercised by the High Court in an appeal against the order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is based, it will not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced. The High Court should be slow in disturbing the finding of the fact arrived at by the trial court. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."

9. Further, in the case of **Suman Chandra v. Central Bureau Of Investigation Criminal Appeal No.1645 of 2021** wherein the acquittal of the accused was challenged, this court held that while exercising its powers to reverse an acquittal, the order of the trial court must not only be erroneous, but also perverse and unreasonable. The relevant paragraph of the judgment is being extracted herein:

"It is well settled law that reversal of acquittal is permissible only if the view of the Trial Court is not only erroneous but also unreasonable and perverse. In our considered opinion, the view taken by the Trial Court was a possible view, which was neither perverse nor unreasonable, and in the facts and circumstances of the present case, ought not to have been reversed or interfered with by the High Court."

10. Similarly in the case of **Mrinal Das & Others v. The State of Tripura 2011(9) SCC 479**, this Court held that interference in a judgment of acquittal can only be made if the judgment is "clearly unreasonable" and there are "compelling and substantial reasons" for reversing the acquittal. The relevant paragraph of the judgment is being reproduced herein:

"An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed".

11. As can be seen from the above-mentioned judgments, an additional layer of protection is granted to an accused in cases where the accused already enjoys an acquittal. In the present case, we are in agreement with the decision of the High Court. From a perusal of the judgment of the Trial Court, it can be seen that no perversity has been committed by the Trial Court while reaching its conclusion. All the evidence on record has been carefully perused and a detailed analysis has been carried out to come to the conclusion.

12. In such circumstance, we find no reason to interfere with the decision of the Trial Court as well as the High Court.”

12. Coming to the facts of the case, the learned trial Court, while acquitting the respondent-accused, returned the following findings :-

“12. On perusal of alleged agreement it is clear that if there is any defect in the title of alleged property the accused no.1 will be liable for damages and actual possession has to be delivered at the time of execution of sale deed. As per their agreement it is clear that complainant has a right to claim damages if there is any defect in the alleged property. Now, complainant has alleged that accused no.1 was not having actual possession of the alleged property but it is specifically mentioned in the alleged agreement that possession has to deliver at the time of execution of sale deed. If accused no.1 has not delivered the actual possession at the time of execution of sale deed then complainant has to claim that accused no.1 has represented herself as owner in possession of the alleged property.

13. Further complainant has admitted in her cross-examination that she has not issued any legal notice as and when she came to know about alleged Pattanama. Further she deposed that she cannot answer whether she wanted to purchase the alleged property if actual

possession has to be delivered and Pattanama was executed in the name of accused no.2 to 5 (not summoned) are the sons of accused no.1. Further she deposed that she cannot understand whether she was admitted the alleged agreement or not and she has not paid any further amount except Rs.20 lacs. Later on, she deposed that she only wanted the repayment of her amount and she did not wanted to purchase the entire land. On perusal of entire evidence of complainant, it is clear that she only wanted to repayment of earnest money and did not ready to purchase the entire property. If she wanted the repayment of earnest money then she has to file a civil suit for damages. Further it is proved that Pattanama were executed only in the name of sons of accused no.1 and during arguments it is submitted that it is mere a paper transaction. Further complainant has not issued any notice to accused no.1 after getting the knowledge of Pattanama with regard to their relevancy. It is the duty of the complainant to verify the alleged Pattanama from accused no.1 and if accused make any false representation then complainant has to file any complaint. Further it is clear from the entire evidence of complainant that accused No.1 has not induced the complainant to execute the alleged agreement and parties are known each other and complainant has not seen the actual paper of alleged property before executing the alleged agreement. When complainant has not seen the paper of alleged property then it can not said that accused no.1 has make any inducement to enter into agreement to sell. In such condition, it is clear that there is no such inducement or any false representation at the time of execution of alleged agreement.

14. Further complainant herself admitted that she only wanted repayment of earnest money then as per the agreement she has to file a civil suit. It is specifically mentioned in the para no.4 of the alleged agreement that in case accused has make any default then complainant

has a right to claim double of the earnest money. Further it is also mentioned in the agreement that if it is proved that there is any default in the title of the alleged property then accused is liable to pay the damages. In such condition, it is clear that complainant has a right to file a civil suit against the accused in case she make any default. In Madan Lal and another case (supra) our Hon'ble High court has held that matter involved the dispute of civil nature cannot legally be allowed to become the subject matter of criminal procedure. On perusal, entire evidence of complainant as well as term and condition of alleged agreement it is clear that it is a civil dispute and complainant has a right to file a civil suit for damages instead of filing of present criminal complaint. Further it is also clear that complainant has not verified the alleged Pattanama from accused no.1 and did not issue any legal notice. In such condition, finding of Madan Lal case (supra) is applicable in the present case as facts are similar.

15. In view of the above said discussion, I am of the view that complainant has failed to prove her case against accused beyond all reasonable doubt and dispute between the parties are civil nature and therefore, accused is hereby acquitted from charges levelled against her. Her bail bond and surety bond stands discharged. Case property, if any, be disposed of accordingly as per rules after expiry of period of appeal/revision, as the case may be. File, after due compliance be consigned to record room."

13. The perusal of the findings given by learned Magistrate shows that after execution agreement to sell between respondent No.1-Vendor with complainant, no further payment was made by the complainant except Rs.20,00,000/- as stated by her. It has come in evidence of complainant that she wanted her money back and she did not want to purchase land. Thus, in

case, the complainant wanted return of her money then the remedy was to file Civil Suit. Thus, the trial Court has rightly dismissed the complaint by holding that the dispute between the parties was civil in nature. In no way, the findings can be held as perverse or against the evidence and law. Applicant-complainant had miserably failed to show any error of law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

14. When the findings given by the trial Court are considered in the light of the legal position indicated above; no interference is called for; especially when the applicant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 04.08.2018 passed by learned Judicial Magistrate Ist Class, Faridabad.

15. No other argument was raised.

16. In view of the above discussion, the instant appeal is bereft of any merit and the same is accordingly dismissed.

17. All pending application/s, if any, shall stand closed.

May 3rd, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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