

CRA-S-2199-SB-2007 (O&M)
Date of Decision: 15.05.2023.

VS.

Present : Mr. Bobby Girdhar, Advocate
as Amicus Curiae and
Ms. Jasleen Chahal, Advocate
For the appellant.

Mr. Gurcharan Dass, Advocate
For respondents No.2 to 5.

1. The present appeal is directed against the judgment dated 06.03.2007 passed by the Court of Learned Judicial Magistrate 1st Class, Ludhiana, whereby the respondents were ordered to be acquitted of the charge under Sections 420, 468, 471, 120-B of Indian Penal Code (for short 'IPC') in a complaint case. During the pendency of the complaint before the learned trial Court, Zora Singh, complainant expired and his legal representatives were ordered to be impleaded as the complainants in the present case. It also requires mention that during the pendency of the appeal before this Court, respondents No.3 to 5 have expired and the appeal stands abated qua them. The appeal has

been contested only by respondent No.2 Mrs. Harbans Kaur widow of Bachittar Singh i.e. daughter-in-law of the complainant.

2. Zora Singh, complainant (since deceased) initially filed the complaint against his son Bachittar Singh, his daughter-in-law Mrs. Harbans Kaur and two more accused, namely, Bant Singh and Malkiat Singh, Deed Writer under Sections 420, 465, 468, 471, 474, 120-B and 34 of IPC. The complainant alleged that he was the owner of land measuring 12K-7M which was 1/4th share of land measuring 42K-19M comprised in Khewat No.164, Khatauni No.208, Khasra Nos.348, 105, Rect. No.9, Killa No.23/1, Rectangle No.24, Killa No.6, 7/1, 16/1, Rect. No.25, Killa No.2/1, 9, 10, Khatauni No.209, Rectangle No.17, Killa No.19 and 32/839th share of land comprised in Khewat No.166, Khatauni 211, Rectangle 17, Killa No.3/1, 7, 8, 12/1, 13, Rectangle No.24, Killa No.16/2, Rectangle No.25, Killas No.1 and II as entered in the jamabandi for the year 1990-91 situated in the revenue estate of village Chomon, Sub Tehsil Maloudh, Tehsil Payal, District Ludhiana. He alleged that Harbans Kaur, respondent No.2, in connivance with her husband-respondent No.5 and marginal witness respondent No.3 and Deed Writer i.e. respondent No.4 forged an agreement to sell on 17.07.1992, by forging the thumb impressions of the complainant so as to grab the property of the complainant and to cheat him. On the basis of the said forged agreement, Harbans Kaur, respondent No.2 filed a suit for injunction in the learned Civil Court and the suit was dismissed as withdrawn by her on 24.08.1993. Respondent No.2 / accused again filed a suit for specific performance of the contract on the basis of the same forged agreement, which was pending in the Court of learned Civil Judge.

As a matter of fact, the complainant had already suffered a decree of the said land in favour of his sons Nachattar Singh and Bala Singh, and had made a statement on 16.07.1992 in the Court of learned Additional Senior Sub-Judge, Ludhiana, which was ultimately decreed on 20.07.1992 in favour of the aforesaid sons of the complainant. Since the complainant had already made a statement in favour of his two other sons, there was no occasion for him to enter into any such agreement on 17.07.1992 with respondent No.2. Further, respondent No.5, who is husband of respondent No.2, had taken the said land on lease/chakota on 22.07.1992 which clearly proves that the agreement dated 17.07.1992 was a forged document. Had there been any such agreement in favour of respondent No.2 on 17.07.1992, there was no question of taking the said land on lease by her husband i.e. respondent No.5 on 22.07.1992. He further alleged that after withdrawing the earlier suit, another suit was filed for specific performance of the contract and the same was still pending before the learned trial Court. It was alleged by the complainant that the agreement dated 17.07.1992 was forged and fabricated.

3. I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

4. Learned counsel for the appellant vehemently argued that the impugned judgment is based on misappreciation of evidence and law. Learned trial Court wrongly recorded that the statement of Bala Singh, who was the only surviving complainant, could not be believed for want of corroboration. Learned counsel for the appellant vehemently argued that there was sufficient oral and documentary evidence on record to bring home the guilt of the

accused, which was clearly overlooked. Still further, learned trial Court wrongly observed that the Civil Court was yet to give its verdict on the validity and genuineness of the alleged agreement to sell Ex.PW3/1, whereas it was against the settled principles of law that criminal and civil action can go side by side and there was no bar on initiation of the criminal prosecution of the accused in the present case. The learned trial Court wrongly acquitted the respondents on the ground that the document in question was never referred to any forensic laboratory of the Government and wrongly discarded the evidence in the shape of hand writing experts, who had already been subjected to lengthy cross-examinations. Further, learned trial Court wrongly observed that the complaint in question is a counter blast to the civil suit filed by Harbans Kaur against Zora Singh for specific performance of agreement dated 17.07.1992. Still further, learned trial Court wrongly observed that there was a delay in filing the present complaint, whereas there was enough documentary evidence to show the complicity of the respondent No.2 to 5 in the commission of crime and the question of period of limitation was totally irrelevant. Learned trial Court further held that it is completely brushed aside the evidence on record and is liable to be set aside by this Court.

5. The said submissions have been opposed by the learned counsel appearing on behalf of respondent No.2 by contending that the impugned judgment is based on correct appreciation of evidence and law. Still further, detailed findings have been recorded on all the submissions raised by learned counsel for the appellant before this Court and the impugned judgment is legally sustainable.

6. Having considered the rival submissions made by learned counsel for the parties, I find no substance in the submissions made by learned counsel for the appellant. There is no strength in the arguments raised by learned counsel for the appellant that there was enough oral and documentary evidence on the record to bring home the guilt of the accused. In fact the learned trial Court has elaborately discussed the evidence led before it and detailed findings have been recorded on each aspects. Even valid reasons have been recorded by the learned trial Court, while acquitting the accused.

7. The argument was raised by learned counsel for the appellant that civil and criminal proceedings can continue simultaneously and in the present case, the trial Court had not adjudicated the matter and it was no ground for acquittal of the respondents. In fact, the said submission is also meritless. There is no dispute with regard to the fact that civil and criminal proceedings can continue simultaneously. However, in the present case, respondent No.2 - Harbans Kaur had filed a suit for permanent injunction on the basis of the agreement dated 17.07.1992 Ex.PW3/1, which was later on withdrawn on 24.08.1993. It was withdrawn by her with a permission to file a suit for specific performance, which was ultimately withdrawn on 23.08.1993 and another civil suit No. 883 titled as Harbans Kaur vs. Zora Singh was filed, which was still pending. Since the Civil Court was already ceased of the matter with regard to the genuineness of the agreement to sell dated 17.07.1992, Ex.PW3/1, the present complaint was not at all maintainable before the learned trial Court. Apart from that, the learned trial Court has rightly observed that the second suit i.e. the suit for specific performance was filed by respondent No.2 on

23.8.1993, whereas, the present complaint was filed by the complainant on 09.06.1994 i.e. after unexplained delay of about 10 months. Apart from that, the first suit for permanent injunction was filed by respondent No.2 on 26.09.1992 and even the complainant had come to know about the existence of the said agreement to sell. Still, he preferred not to file the complaint for almost a period of two years. This raises adverse inference against the complainant and the complaint has been rightly dismissed by the learned trial Court.

8. Apart from that, I have perused the findings recorded by the learned trial Court and find that the learned trial Court has rightly arrived at a conclusion that there is no merit in the case of the present appellant. In the present case, as per the complainant, he had transferred the land in question in favour of his two other sons, namely, Nachattar Singh and Bala Singh by way of Court decree dated 20.07.1992. Consequently, there was no occasion for the complainant to execute a lease deed/chakotanama in favour of respondent No.5 i.e. his son Bachhitar Singh on 22.07.1992. Thus, the learned trial Court correctly found the story of the prosecution to be doubtful and the respondents were acquitted after due appreciation of evidence.

9. Still further, I have gone through the judgment recorded by the learned trial Court, while acquitting the accused. The scope of interference in an appeal against acquittal is very limited. In the instant case, all the arguments raised by learned counsel for the appellant have been dealt with by the learned trial Court in detail and the said findings are liable to be upheld. Even learned trial Court rightly observed that both the sides had examined two private witnesses i.e. PW-6 Inderjit Singh and N.K. Jain, DW-1. Both these witnesses

had given reports Ex.PW6/1 and Ex.DW1/A in favour of the parties, who had engaged them i.e. the complainant as well as the accused. Thus, there was no independent finding to prove the offence against the respondent. Unless, it is found that the view taken by the Court is impossible or perverse, it is not permissible to overturn the findings of acquittal. It is equally settled if two views are possible, it is not permissible to set aside an order of acquittal merely because the Appellate Court finds the way of conviction to be more probable.

10. Apart from that, this Court also agrees with the finding recorded by the learned trial Court that the present complaint seems to be a counter blast to the civil suit filed by respondent No.2 against Zora Singh, complainant for the specific performance of the agreement dated 17.07.1992. Apart from that, the delay of almost two years in the institution of present complaint also remained unexplained on the part of the present appellant/complainant and the findings recorded by learned trial Court are ordered to be upheld.

11. In view of the above discussion, this Court does not find any ground to interfere with the impugned judgment dated 06.03.2007, passed by the Court of Learned Judicial Magistrate 1st Class, Ludhiana, whereby the respondents were acquitted. The trial Court has correctly appreciated the evidence on record in the light of the settled principles of law and the impugned judgment does not suffer from any material irregularity or illegality and is, ordered to be upheld and accordingly, the appeal is dismissed as such.

12. Pending applications, if any, are also disposed off, accordingly.

13. Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back.

14. I record by appreciation for Mr. Bobby Girdhar, learned Amicus Curiae, who had rendered able assistance to this Court.

15.05.2023
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(N.S.SHEKHAWAT)
JUDGE

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