

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1675-MA-2016
Date of Decision: May 15, 2023

State of Haryana

...Petitioner

Versus

Ramesh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Randhir Singh, Addl. A.G., Haryana
for the applicant-appellant.

Mr. Amit Khatkar, Advocate for the respondents.

DEEPAK GUPTA, J.

Respondents and three others were tried by the Court of learned Judicial Magistrate 1st Class, Jhajjar, in case FIR No.123, dated 12.12.2005 registered under Sections 420, 467, 471, 468 and 120-B of IPC. Vide judgment dated 29.05.2012, all of them were convicted under Sections 420, 468, 471 and 120-B IPC and vide separate order dated 01.06.2012, all of them were sentenced to the varying imprisonments. However, the appeal filed against the aforesaid judgment of conviction and order of sentence has been allowed by learned Sessions Judge, Jhajjar, vide judgment dated 11.03.2015, against which the State of Haryana has filed this application for grant of leave to appeal.

2. Allegations are that land of Panchayat, on which a Dharmshala and certain shops were constructed, was sold by one Babu Gopal to the respondents vide two sale deeds No.2122 and 2123 dated 06.12.2005 and thus, they had committed cheating and forgery.

3. Learned State counsel appearing for applicant-appellant submits that well-reasoned judgment of conviction recorded by learned Trial Court, has been wrongly set aside by learned Court of Sessions.
4. On the other hand, counsel for the respondents submits that necessary ingredient to constitute offence under Section 420 IPC are not made out, inasmuch as there is no evidence that any of the respondents, who were bonafide purchasers, had made representation to anyone, so as to sell the land. Besides sale deeds No.2122 and 2123 dated 06.12.2005, which were executed in favour of the respondents, are not the forged documents and so offences under Sections 468 and 471 IPC are also not made out. Thus, learned Session Judge, Jhajjar, has rightly acquitted them.
5. After hearing both the sides, I find that the present application for grant of leave to appeal is devoid of any merit.
6. While recording the acquittal, learned Sessions, Jhajjar, observed as under: -

“It is clear from the facts as well as the evidence that Accused had purchased some land vide sale-deeds No.2122 and 2123 dated 6:12 2005 (Ex PW6/A and Ex PW6/B) from one Babu Gopal son of Sagar Mal for the sale consideration of Rs 202,000/- and Rs 2.54,000/- In fact. Babu Gopal was not the owner of the land. Further, there existed shops. In the sale-deeds. It was wrongly recited that there did not exist any construction The question which arise for consideration, is "Whether Accused had committed any cheating or forged any document for the purpose of cheating?" The prosecution has not led any evidence as to who is the owner of the land which vide sale-deeds No 2122 and 2123 dated 6 .12 .2005, Babu Gopal had sold to the Accused It was

incumbent upon the prosecution to lead positive evidence that the land was not owned by Babu Gopal and the Accused were fully aware of this fact. That apart, there is no evidence on the record that the Accused, by making any misrepresentation, had got any property from anyone. It is admitted on the record that Babu Gopal had sold the land to the Accused. Further, it is admitted on the record that the sale-deeds were executed by Babu Gopal, who claimed himself to be the owner of the land. The sale-deeds were executed by Babu Gopal and he did not impersonate anyone. It is admitted on the record that Babu Gopal himself had appeared in the office of Sub Registrar to execute the sale-deeds and he did not impersonate anyone. Accused have taken the defence that Babu Gopal had represented to them that the land belonged to his forefathers and at the time of execution of the sale-deeds, he was the owner of the same.

*20. Hon'ble Supreme Court, in **Md.Ibrahim's case (supra)**, in somewhat similar circumstances, has held that no case under Sections 420, 467 and 468 IPC was made out as the Accused had not cheated the seller or committed forgery of any document for the purpose of cheating.”*

7. In **Jafarudheen and others Vs. State of Kerala, 2022(2) R.C.R. (Criminal) 919**, Hon’ble Supreme Court discussed the scope of appeal against the acquittal. It was held as under: -

“Scope of Appeal filed against the Acquittal:

*25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr. PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that **an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted***

legal parameters. Precedents:

Mohan @Srinivas @Seena @Tailor Seena v. State of Karnataka, [2021 SCC OnLine SC 1233] as hereunder: –

“20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The

Appellate Court is expected to maintain a degree of caution before making any remark.

*23. This court, time and again has laid down the law on the scope of inquiry by an Appellate court while dealing with an appeal against acquittal under Section 378 CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in **Anwar Ali v. State of Himanchal Pradesh, (2020) 10 SCC 166**”*

8. In the present case, learned Appellate Court has analysed the evidence on record and has rightly come to conclusion that prosecution was not able to prove its allegations. I find no illegality in the findings recorded by learned Sessions Judge, Jhajjar, based on the evidence on record. Once it was found that there was no inducement on behalf of the respondents, there could be no question of cheating, so as to attract Section 420 IPC. Similarly, the sale deeds No.2122 and 2123, dated 06.12.2005 were not the forged documents. It was not the case of the prosecution that Babu Gopal, who executed those sale deeds had impersonated anyone or had forged the sale deeds. So much so, it was found by the Appellate Court that no evidence had been led by the prosecution as to who was the owner of the land, which was subject matter of sale deeds. It had been represented to the respondents that the ancestors of the vendor were the owners of the land. Not only this, it has also been observed by learned Sessions Judge that one of the villagers had filed civil suit for setting aside the sale deeds No.2122 and 2123 dated 06.12.2005, wherein statement had been made by the respondents that they do not claim ownership of land and so, the suit was decreed. Thus, on the one hand, respondents lost the land which was purchased by them by paying sale consideration as bonafide purchasers, on the other

hand they have been prosecuted in this case, though they are the real victims.

9. In view of the aforesaid discussion, I find no merit in this application for grant of leave to appeal. As such, the same is hereby declined.

May 15, 2023
Sarita

(DEEPAK GUPTA)
JUDGE

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