

CRM-A-715-2020

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-A-715-2020(O&M)

Date of decision: July 24, 2023

Desh Raj

....Applicant

versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. R.K. Arya, Advocate for applicant.

ARUN MONGA, J. (ORAL)

This is an application seeking leave to appeal against judgment dated 09.12.2019 passed by Learned Judicial Magistrate 1st Class, Gurdaspur, vide which accused/respondent Nos.2 to 5 were discharged in complaint case No.Comi/220/2016 dated 01.08.2016 filed for the offences punishable under Sections 420, 419, 467, 468, 471, 120-B IPC, Police Station Kahnuwan, District Gurdaspur.

2. Succinct facts of the present case, as noted by learned trial Court in the impugned judgment, are as under:

“Brief facts of the complaint as stated by the complainant are that complainant is permanent resident of Village Puranian Bagrian, Tehsil and District Gurdaspur and is poor person of the locality. It is further submitted that Dhoonda Ram was the owner of the land measuring 64 Kanals 17 Marlas in village Fattu Barkat. Dhoonda Ram was grandfather of the complainant in the brotherhood. After the death of Dhoonda Ram, Saido Devi became owner of the land left by the Dhoonda Ram. There was on daughter namely Jeeto who was married by Dhoonda Ram during his life time and Saido Devi became alone and complainant used render the services to Saido Devi just like his mother. On account of services rendered by the complainant, Saido Devi executed a Will on 10.03.2003 of his entire estate in favour of the complainant and complainant has also performed her all last rites being as obedient son. It is further submitted that after the death of Saido Devi, complainant produced will before the revenue authorities for sanction the mutation. Nobody legal representatives of the Saido Devi including Jeeto and her Lrs had came forward to raise any objection in the Court of SDM, Gurdaspur and only Sham Singh accused No. 1 raise objection and produced false and fabricated sale deed dated

29.05.2006 allegedly executed by Kamlesh Kaur d/o Jeeto in favour of accused No. 1 Sham Singh. But the learned SDM Court ignored the said sale deed dated 29.05.2006 and sanctioned the mutation on the name of complainant. Jeeto has three daughters namely Swarni, Kamlesh Kaur and Pushpa accused No. 6 Kamlesh Kaur died on 13.09.1992. It is further submitted that in order to usurp the land and put hindrance in the peaceful cultivation of the complainant and to grab the land of the complainant given by the accused Saido Devi on account of service rendered by the complainant with the connivance of the accused No. 1 to 6 by making criminal conspiracy got executed sale deed dated 29.05.2006 allegedly executed by Kamlesh Kaur d/o Jeeto in favour of accused No. 1 regarding land measuring 9 kanal 15 marlas. It is pertinent to mention here that Pushpa accused No. 6 impersonated as Kamlesh herself and accused No. 2,3 and 5 put their witness and wrongly identify Pushpa accused No. 6 as a Kamlesh and accused No. 3 and 4 also played active role in playing the fraud with the complainant. Moreover, the sale deed was executed on 29.05.2006 whereas Kamlesh Kaur died on 13.09.1992. then how it is possible for Kamlesh Kaur to execute the sale deed on 29.05.2006. The accused have no concern whatsoever with the land. The Sham Singh is habitual is making fraud with the innocent people alongwith others. Sham Singh also got change the khasra Girdawari of the land left by Saido Devi w/o Yhnunda Ram on his name by producing the false person Baljinder Singh son of Chanchal Singh from which he took possession of the land whereas there is no person in the village with name Baljinder Singh present at village Fattu Barkata and the accuse No. 1 Sham Singh with the connivance of other accused have played fraud with the complainant just to allure the land of the complainant and intentionally got registered the sale deed illegally dated 29.05.2006 and also changed khasra Girdawri on his name. Hence, the complaint.”

3. After appreciating the evidence on record, vide impugned judgment dated 09.12.2019, learned Court below did not find sufficient material on record to frame charge against the accused persons (respondent Nos.2 to 5 herein) and discharged them.

4. Aggrieved, applicant-complainant filed the present application seeking leave to appeal against aforesaid impugned judgment.

5. The contentions raised before me are as under:

a) Kamlesh Kaur had died on 13.09.1992 and Pushpa Devi had impersonated for her and signed the sale deed dated 29.05.2006 while accused No. 2,3 and 5 as attesting witnesses and wrongly identified Pushpa Devi as Kamlesh Kaur in order to cheat the complainant and to snatch his valuable property.

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b) Land measuring 9 kanals 15 marlas, being the subject matter of the sale deed dated 29.05.2006 had been bequeathed in his favour by Saido Devi the then owner through her will dated 10.03.2003.”

6. Perusal of the impugned judgment shows that both these contentions were also raised before the Court below, duly considered and rejected by the learned trial Court giving sound and sufficient reasons. It found on the basis of record that Kamlesh Kaur was alive till **after 2007** and that the complainant had failed to prove Will dated 10.03.2003 of Saido Devi bequeathing the land in question in his favour and that the complainant failed to prove offences of impersonation and cheating. Accordingly, it passed the impugned order discharging the accused.

6.1 Section 245 (1) read with Section 244 of the Code of Criminal Procedure provides that in any warrant case instituted otherwise than on a police report, if upon taking all the evidence of the prosecution, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

6.2 I am inclined to agree with the reasons given, view taken and conclusions arrived at by the learned trial Court.

7. It is a settled law, as has been held in *C. Antony Vs. K.G. Raghavan Nair*¹, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

8. In *Anil Kumar Gupta vs. State of U.P.*², it was held as under:

¹ 2002(4) RCR (Criminal) 750 SC

² 2001(2) RCR(Criminal) 292 SC

“This Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions.

(emphasis supplied)

11. This Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.”

9. In the instant case, findings recorded by learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.
10. Instant application seeking leave to appeal is hereby dismissed.
11. Pending application(s), if any, shall also stand disposed of.

July 24, 2023
Sachin M./jyt

(ARUN MONGA)
JUDGE

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