

CRM-A-2540-MA-2018

2023:PHHC:082113

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

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CRM-A-2540-MA-2018

Date of decision: 24.05.2023

Iqbal Singh

...Applicant

Versus

Amrik Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. H. S. Batth, Advocate
for the applicant

AMAN CHAUDHARY. J.

1. The present application for grant of leave to appeal has been filed against the judgment dated 05.09.2018, passed by the learned Additional Chief Judicial Magistrate, SAS Nagar (Mohali), whereby the accused-respondent was acquitted in a complaint No. RBT-23 of 28.07.2017 instituted on 23.10.2013, under Section 420 IPC.

2. The facts as arising from the complaint filed by the applicant are that the accused-respondent had approached him and apprised, that his father, Ajit Singh is allotted the plot measuring 125 square yards in SAS Nagar Mohali and he has been duly authorised to sell the same. The applicant had entered into an agreement with the accused-respondent regarding the purchase of the said property for a consideration of Rs.5,39,688/- and the same was reduced into

writing vide an agreement to sell dated 25.12.2003. He had paid an amount of Rs.1,10,000/- as earnest money and the date of execution of the agreement to sell was fixed on or before 05.02.2004 but, the same could not be done due to non availability of the respondent and his father, thus the next date was fixed as 15.03.2004. An additional amount of Rs.1,00,000/- was received by the accused at that time also. On 15.03.2004 the applicant, alongwith respondent and his father, was present in the Sub Registrar alongwith a demand draft of the remaining sale consideration. However, they failed to perform their part of the agreement. On the basis of the preliminary evidence, the accused-respondent was summoned to face the trial.

3. To prove his case, the complainant examined Tejinder Singh as CW1 and himself as CW-2. On closing of his evidence, a statement of the accused-respondent was recorded under Section 313 Cr.P.C. All the incriminating material was put to him, which he denied and pleaded innocence. In defence, the accused did not lead any evidence.

4. On evaluating the evidence led by the parties and hearing their respective counsel, the learned trial Court acquitted the respondent herein.

5. Hence the present application is for leave to appeal.

6. Learned counsel contends that the learned trial court had wrongly ignored the evidence on record and erred in acquitting the accused-respondent. In a civil suit, the agreement in question was held to be valid. Further, the ingredients of Section 420 IPC were clearly made out in the present case, as the accused had fraudulently and knowingly received the money from the

complainant, with an intention to cheat him.

7. Heard the learned counsel for the applicant and perused the case file.

8. Hon'ble The Supreme Court in **Sunil Kumar Sambhudayal Gupta (Dr.) vs. State of Maharashtra**, (2010) 13 SCC 657 had framed the guidelines for the appellate court to deal with the matter of "appeal against acquittal", which read thus:

“Appeal against Acquittal:

38. It is a well-established principle of law, consistently re-iterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

39. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

40. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration

irrelevant/inadmissible material. A finding may also be said to be perverse if it is ‘against the weight of evidence’, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (See: **Balak Ram & Anr. v. State of U.P.**, AIR 1974 SC 2165; **Shailendra Pratap & Anr. v. State of U.P.**, AIR 2003 SC 1104; **Budh Singh & Ors. v. State of U.P.**, AIR 2006 SC 2500; **S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.**, AIR 2008 SC 2066; **Arulvelu & Anr. v. State**, (2009) 10 SCC 206; **Ram Singh alias Chhaju v. State of Himachal Pradesh**, (2010) 2 SCC 445); and **Babu v. State of Kerala**, (2010) 9 SCC 189).”

9. The trial Court while acquitting the accused-respondent had observed that, “It is to be further noted that there is admittedly no power of attorney in favour of son, who is accused and when there was no power of attorney as such, it was incumbent upon the complainant to ensure that it was mentioned in the written agreement regarding accused being authorized by his father. The perusal of agreement reveals that said document was being entered into between accused and complainant and merely because it is mentioned that he is signing for his father, is not sufficient to conclude that accused had authority by his father to enter into said agreement. It is mentioned in the agreement itself that PUDA, Mohali, vide letter dated 22.3.2001 had made an allotment of a plot measuring 125 sq. yds. to accused Amrik Singh which is not the case of complainant. Thus, there was no dishonest intention of deception while entering into an agreement on behalf of accused. The agreement clearly reveals that agreement was entered into between complainant and accused with full knowledge that father of accused was allottee, but assent of father of accused had nowhere been taken. There is no document on case file to show that accused was authorized to sell the property on behalf of his father. As per the complainant, the agreement was entered in the office of Ghulal

Property Dealer Baljit and the blank columns in the agreement were filled by the property dealer. So, it is very much possible that it is property dealer who was in known regarding signing by Amrik Singh on behalf of his father. It is further very surprising that although agreement has been entered into admittedly by the aid of property dealer as admitted by complainant in his cross-examination, but complainant nowhere mentions about role of any property dealer in getting the deal effected between the parties and as per complainant it was accused who had directly approached him. There is every possibility that due to negligence on part of property dealer, the agreement got executed between parties by showing that accused is allottee of the said plot and to cover up the said fact it was mentioned below signatures of accused that agreement is being signed by Amrik Singh on behalf of Ajit Singh, whereas this fact is not mention in the body of agreement at all. The agreement was in possession of the complainant the entire time before it was presented in the Court.”

10. Hon’ble The Supreme Court in **Jafarudheen vs. State of Kerala**, (2022) 8 SCC 440, had held that, “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.”

11. No glaring defect in the procedure or that a patent error has been committed by the trial Court in ignorance of law, has been pointed out by the counsel for the applicant, which has resulted in flagrant of miscarriage of justice. There is not even an iota of evidence against the present respondent, which would lead to his conviction and a perusal of the judgement shows that no other view is possible.

12. In view of the above, there being no perversity or illegality in the impugned judgment passed by the trial Court, whereby the respondent has been acquitted, the present application for leave to appeal is hereby dismissed being bereft of merit.

24.05.2023

Mehak

(AMAN CHAUDHARY)

JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No