

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2186-MA of 2017(O&M)

Date of Decision: April 26, 2023

Ajit Singh

.....Applicant-appellant

Versus

Ramanjit Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr.Aakash Singla, Advocate
for the applicant-appellant.

LISA GILL, J(Oral).

1. Applicant-appellant (complainant) seeks leave to appeal against judgment dated 09.08.2017, passed by the learned Sub-Divisional Judicial Magistrate, Dhuri, whereby respondents have been acquitted of the charges under Sections 420, 467, 468, 471 read with Section 120-B IPC.

2. Brief facts necessary for adjudication of the matter are that applicant-appellant filed a complaint against all the respondents under Sections 420, 467, 468, 471, 120-B IPC. It is stated therein that Bant Ram was father of the complainant. Complainant's father Bant Ram (since deceased) had three brothers namely Ram Swaroop, Harbans Lal and Ram Chand. Bant Ram and his brothers had filed an application for installation of a new tube-well connection in their joint property. They gave their consent

for release of the tubewell connection in favour of Ram Swaroop before the Electricity Board. Motor connection bearing A/c No. 4-G/104 was installed in the joint property after completion of all formalities in the name of Ram Swaroop alone. It is stated that this motor connection was got installed jointly by Ram Swaroop, Harbans Lal, Ram Chand and Bant Ram while incurring equal expense, even though, said connection was in the name of Ram Swaroop. Property of Bant Ram and others is stated to be joint without any partition having taken place. Said motor connection is claimed to be the only source of irrigation for the entire joint property. Ram Swaroop, Bant Ram and Harbans Lal, it is stated have passed away with only Ram Chand surviving. It is further stated that all the accused persons in connivance with each other, with mala fide intention and in criminal conspiracy prepared an incorrect pedigree table by forging and fabricating documents and then got the motor connection bearing A/c No. 4-G/104 transferred in the name of Ramanjit Singh-respondent no.1 son of Harbans Lal. Complainant filed an application before the Punjab State Power Corporation Limited, Bhalwan, requesting that the connection should not be transferred in the name of Ramanjit Singh-respondent no.1. Action in question is stated to have been taken by all the accused in connivance with each other with a view to cause unlawful loss to the complainant. Harbans Lal is stated to have died 30 years ago, Ram Swaroop in the year 2005 and Bant Ram in the year 2006. Bant Ram, father of complainant is stated to have executed a legal and valid Will in favour of the complainant on 25.10.2006. Legal heirs of Ram Swaroop and Harbans Lal are alive. Consent for transfer of connection from all was required. It is stated that matter was reported to the police authorities, but no action has been taken against the accused. Hence, complaint was filed.

3. Complainant examined CW-1 Baldev Singh, CW-2Ajit Singh,

CW-3-Sukhdev Singh, CW-4-Sher Singh, CW-5-Jaswant Singh and himself in the preliminary evidence.

4. All the respondents were summoned vide order dated 14.08.2014 to face trial under Sections 420, 467, 468, 471, 120-B IPC.

5. Complainant in the pre-charge evidence stepped in the witness box as CW-1 and examined Baldev Singh as CW-2, Inspector Baljinder Singh as CW-3, Nirmal Singh as CW-4 and Sukhdev Singh as CW-5. Documents alongwith jamabandi for the year 2007-08 was tendered as Ex.C10 and pre-charge evidence closed.

6. Charge under Sections 420, 467, 468, 471, 120-B IPC, was framed on 28.09.2016, to which accused pleaded not guilty and claimed trial.

7. In the after charge evidence, all witnesses of the complainant were cross-examined. Statement of accused under Section 313 Cr.P.C., was recorded, wherein they were confronted with all the incriminating evidence against them. The same was denied, with the accused pleading innocence and false implication. It was stated by the accused that complainant had filed civil suit regarding the same subject matter which was dismissed by the learned Civil Judge (Jr. Division), Dhuri and that complainant had a dispute with the legal heirs of Mohan Singh son of Bant Ram regarding estate of Bant Ram and all suits regarding the estate of Bant Ram already stood decided against the complainant. It is further stated that as the accused had good relations with legal representatives of Mohan Lal son of Bant Ram, complainant held a grudge against them, due to which the complaint was filed. Documents Ex.D-1 to D-9 and Mark X were tendered in evidence in defence.

8. Learned trial Court on considering the evidence on record, facts

and circumstances of the case, concluded that complainant failed to prove that accused persons in connivance with each other while preparing an incorrect pedigree table by forging and fabricating documents, had got transferred the motor connection in question, causing wrongful loss or injury to the complainant or wrongful gain for themselves. Ingredients of offences punishable under Sections 420, 467, 468, 471, 120-B IPC, it was found were not proved by the complainant beyond reasonable doubt. Therefore, all the respondents were acquitted of the charges framed against them.

9. Aggrieved therefrom, present applicant seeks leave to appeal against judgment dated 09.08.2017, passed by the learned Sub-Divisional Judicial Magistrate, Dhuri.

10. Learned counsel for the applicant vehemently argued that learned trial Court has incorrectly ignored the clear and cogent evidence on record which indicates complicity of all the accused in commission of the offences as alleged. It is submitted that land in question is admittedly joint. Tubewell connection was installed in the year 1983 in the name of Ram Swaroop, i.e., one of the co-owners. It is contended that expense for installation of the connection was borne by all the brothers in equal share. Respondent no.1-Ramanjit Singh applied for transfer of connection in his name while claiming to be the son of Ram Swaroop. Pedigree table, Mark Z, is an incorrect pedigree table, wherein all brothers of Bant Ram are not reflected. As per pedigree table, only Ram Swaroop and Harbans Lal are mentioned to be the sons of Baru Ram. Furthermore, as per applicable rules, no objection certificate should have been taken from all the co-sharers, which was not done. Therefore, transfer of the tube-well connection in the name of Ramanjit Singh is clearly illegal, on the basis of forged and fraudulent documents. Furthermore, the applicant-appellant it is submitted

approached the department with clear cut objections, but despite the same, connection was transferred in favour of Ramanjit Singh. Learned counsel has also referred to report Ex.C-15, by Inspector Intelligence, Punjab State Power Corporation Limited, Patiala to submit that complicity of accused in commission of the offence is proved. It is further submitted that withdrawal of civil suit filed by the applicant claiming that connection should not be transferred to respondent no.1 was withdrawn on 26.10.2014 in order to avail his remedy before the Electricity Department. Therefore, withdrawal of civil suit cannot be held against the applicant. It is thus prayed that leave to appeal be granted to the applicant, appeal be allowed and judgment dated 09.08.2017, passed by the learned Sub Divisional Judicial Magistrate, Dhuri, be set aside and respondents be convicted for the offences as charged and punished in accordance with law.

11. We have heard learned counsel for the applicant and have gone through the file with his able assistance.

12. Complainant while deposing as CW-1 reiterated the averments in the complaint. It is stated that respondent no.1-Ramanjit Singh got transferred the motor connection in his favour by impersonating himself to be the son of Ram Swaroop. Incorrect pedigree table was got prepared from Halqa Patwari Kesar Singh, respondent no.8 and Numberdar Jagjit Singh, respondent no.7 had identified him at that time. Sarpanch Punnu Ram, respondent no.6 stood witness in the self declaration, which was given by Ramanjit Singh before the Electricity Board claiming to be the son of Ram Swaroop, whereas he is in-fact son of Harbans Lal. CW-1 further stated that Jagjit Singh Numberdar, Kesar Singh Patwari, Punnu Ram Sarpanch, SDO Dharampal, respondent no.9, Bhagat Singh, Lal Singla, Kulwinder Singh son of Joginder Singh, Ashdeep Singh son of Karamjit Singh, Bimla Devi

wd/o Ram Swaroop, respondent no.3, Bhinder Devi wd/o Harbans Lal, respondent no.4, Pritpal Kaur, respondent no.5 and Swarna d/o Ram Swaroop, respondent no.2 were involved in preparation of forged and fabricated documents used by Ramanjit Singh, respondent no.1. Kulwinder Singh, Bhagat Singh and Mandeep Singh submitted requisite bond before the Electricity Board, copy of which is Mark B. Complainant further stated that despite filing of application by the complainant before the SDO Dharampal, who was posted at Bhalwan at the relevant time, motor connection was illegally transferred by the said person in favour of Ramanjit Singh. It is stated that Inspector Baljinder Singh and Inspector Nirmal Singh of the Vigilance Bureau of Punjab State Electricity Board, Patiala, found the accused to be guilty. Complainant further claimed that a Will had been executed in his favour by his father Bant Singh. Photocopy of the same was tendered as Mark A.

13. CW-3-Inspector Baljinder Singh and CW-4-Inspector Nirmal Singh deposed in respect to the enquiry conducted by them. It is to be noted at this stage that specific case of the complainant is that motor connection in question was installed in the joint property in the name of Ram Swaroop alone after consent was given by all the four brothers. Expense of installation was borne by all the four brothers in equal share. Reliance has been placed on affidavit dated 13.12.1979, Mark X, to show that connection in question is joint between all the four brothers, though in the name of Ram Swaroop. Perusal of said affidavit, Mark X, by Bant Ram, Harbans Lal and Ram Chand, reveals that it is Ram Swaroop, who had applied for the tube-well connection and all the other brothers had expressed that they had no objection to motor connection being installed in the name of Ram Swaroop.

The affidavit does not give an inkling about the connection being joint.

14. Learned counsel for the applicant is unable to point out any document on record to indicate that expense for installation of the tube-well connection was incurred by all four brothers in equal share. To the contrary, documents on record indicate that at all stages; Ram Swaroop has taken responsibility for all expenses.

15. It is relevant to note that complainant while testifying as CW-1 has himself admitted that there is no other record available regarding motor connection to be joint between Bant Ram and other brothers other than affidavit, Mark X. It is to be noted that one of the brothers namely Ram Chand was still alive at the time of decision of the complaint. Said Ram Chand has not been examined neither sought to be summoned as one of the witness for reasons best known to the complainant. It is correctly held by the learned trial Court that Ram Chand would have been the best witness to prove that motor connection in question was a joint one and got installed by incurring expenditure by all the four brothers. Complainant has indeed withheld the best evidence available to prove his case. Necessary inference has thus been correctly drawn. Thus, the very bases of the case set up by the complainant falls like a pack of cards on this count alone.

16. Allegations have also been raised by the complainant regarding an incorrect pedigree table being presented by respondent no.1 by forging and fabricating documents in connivance with other respondents. Pedigree table available on record bears the heading "Pedigree Table of Ram Swaroop son of Baru Ram, resident of village Mir Heri, Tehsil Dhuri". Said pedigree table clearly is in respect to Ram Swaroop. Therefore, non-mentioning of all the sons of Baru Ram, father of Ram Swaroop is not relevant. Doubtlessly, apart from Ram Swaroop son of Baru Ram being mentioned with Swarna Devi as his daughter, Harbans Lal son of Baru Ram with his legal heirs

Pritpal Kaur and Ramanjit Singh-respondent no.1 and Bhinder Devi w/o Harbans Lal, are also mentioned, however in the given circumstances, the same cannot be of any avail to the applicant. The co-lateral Harbans Lal son of Baru Ram has clearly been shown to clarify the relationship between Ram Swaroop and Ramanjit Singh son of Harbans Lal.

17. It is a matter of record that self declaration form submitted by respondent no.1-Ramanjit Singh reveals that he has mentioned himself to be son of Harbans Lal and not of Ram Swaroop. Furthermore, Bimla Devi, wd/o Ram Swaroop and Swarna Devi daughter of Ram Swaroop; besides Bhinder Devi wd/o Harbans Lal, Pritpal Kaur daughter of Harbans Lal have submitted their self declaration form giving no objection regarding transfer of motor connection in favour of respondent no.1.

18. Applicant-appellant is admittedly, not the legal heir of Ram Swaroop. Even Will dated 25.10.2006 as pleaded by present complainant to have been executed in his favour by his father Bant Ram, has not been proved on record. It is correctly observed by the learned trial Court that neither original of the Will was brought on record nor any evidence led to prove its execution, whereas accused persons placed on record certified copy of judgment dated 18.04.2013, Ex.D-3 and decree Ex.D-4, passed in the suit titled as 'Jit Singh @ Ajit Singh Vs. Bimla Devi and others'. Civil Suit filed by the present applicant on the basis of Will dated 25.10.2006 was dismissed and the Will in question was held to be a forged document and not a genuine one. Appeal filed by the present applicant was also dismissed on 25.05.2015.

19. Thus, once complainant was unable to prove that tube-well connection in question was joint between all the four brothers and installed in favour of Ram Swaroop alone with expense thereof being borne by all the

brothers, we find no merit in the argument that Electricity Department has proceeded incorrectly to transfer the connection in favour of Ramanjit Singh-respondent no.1 without taking no objection certificate from all the joint owners. It is reiterated, at this stage, that legal heirs of Ram Swaroop have submitted a declaration to the effect of having no objection to transfer of the connection in favour of Harbans Lal.

20. Last but not the least, we find that reliance by learned counsel for the applicant on the enquiry report submitted by Inspector Intelligence, Punjab State Power Corporation Limited, Patiala, is of no avail to the complainant for proving criminal liability on the part of accused persons. Perusal thereof reveals that observations have been made in reference to the stand of respondent no.1 that he had been adopted by Ram Swaroop and it is mentioned that even if Ram Swaroop had executed a registered Will in favour of respondent no.1, an incorrect pedigree table has been prepared by Ramanjit Singh, on the basis of which the tube-well connection has been transferred in his favour. Perusal of this report does not in any manner indicate commission of the offences as alleged by the complainant. It is a matter of record that applicant is engaged in multifarious litigations with his family members including his own brother. Though, this fact in itself cannot in any manner impinge upon the veracity of the allegations, but it does cast a duty on the Court to scrutinize the evidence on record with a finer lens to separate the shaft from the grain. In our considered opinion, complainant has failed to prove commission of offences as alleged, by the accused beyond reasonable doubt.

21. It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible, cannot be a ground for reversing a judgment

of acquittal. Hon'ble Supreme Court in ***Arulvelu v. State represented by the Public Prosecutor, 2009(10) SCC 206*** held that :-

“ Unquestionably, the Appellate Court has power to review and reappraise the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court.”

22. Reference in this regard can also be made to judgment of Hon'ble Supreme Court in ***State of Rajasthan versus Kistoora Ram, 2022(4) RCR (Criminal) 324***, wherein it is held that it is not permissible to interfere with finding of acquittal unless it is found that the view taken by Court is impossible or perverse. It is settled position of law that acquittal of accused is not to be set aside only if another view may be possible under the given facts and circumstances. In the present case, we do not find the impugned judgment of acquittal to be perverse with an impossible view being taken by learned trial Court. Learned counsel for the applicant is unable to point out any evidence on record, which calls for interference in the impugned judgment dated 09.08.2017, acquitting the respondents.

23. No other argument has been raised.

24. Keeping in view the facts and circumstances as above, leave to

Appeal against judgment dated 09.08.2017, passed by the learned Sub-Divisional Judicial Magistrate, Dhuri, is denied and application is accordingly dismissed.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

April 26, 2023.
s.khan

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