

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

Neutral Citation No. 2023:PHHC:075906
CRM-A- 249-MA-2017
Date of Decision: May 24, 2023

Paramjit Singh

... Applicant-appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rajiv Joshi, Advocate for the applicant-appellant.

Mr. R.S. Khaira, DAG, Punjab.

Mr. Ramandeep Kaur Sihag, Advocate for
Mr. Rahul Bhargava, Advocate for respondent Nos.2 and 3.

DEEPAK GUPTA, J.

On the complaint filed by applicant-appellant Paramjit Singh seeking prosecution of the two respondents Joginder Singh and Lakhwinder Singh under Sections 420, 406 and 506/34 of IPC, both of them were acquitted by the Court of learned Judicial Magistrate 1st Class, Phillaur, vide impugned judgment dated 22.11.2016, against which this application for grant of leave to appeal has been filed.

2. It was alleged that accused-Joginder Singh had got constructed his kothi from the complainant, who is a mason, in the year 2008. The expenses of labour, construction material etc. came out to be ₹17,85,000/-, but complainant was paid only ₹4,70,000/- in installments. It was also alleged that the shuttering and the construction material of the complainant was still lying in the illegal custody of the accused. Neither accused made the balance payment nor returned his shuttering and remaining construction material, despite various demands and despite repeated Panchayat meetings, in which the accused had assured to give the payment. It was also alleged that on demands being made for the

balance payment, accused had threatened the complainant and even called him in the name of his caste.

3. After recording preliminary evidence, the two accused were summoned to face trial. Pre-charge evidence was taken and then charges were framed under Sections 420, 406 and 506/34 of IPC. After taking post-charge evidence, recording the statement of accused under Section 313 Cr.P.C. and the defence evidence, matter was heard and acquittal was recorded.

4. It is contended before this Court that the Trial Court did not notice that there was specific allegation against respondents under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, but no charge was framed for the offence punishable under the said Act. Much stress has been laid by the Trial Court regarding mode of proof of the alleged agreement Ex.C-1, which is the centre of the dispute without appreciating that during cross-examination, accused admitted the facts asserted in the complaint. The Trial Court also ignored that accused Joginder Singh had admitted his liability during the Panchayats convened between 2009-2011 and had agreed to pay the balance amount and so, in all these circumstances, impugned judgment cannot be sustained.

5. During proceedings before this Court, accused-respondent No.1-Joginder Singh admittedly expired and therefore, proceedings qua him stood automatically abated.

6. Even otherwise, this Court finds that reasons for recording acquittal given by learned Trial Court are quite cogent. The case of the complainant was based upon an agreement dated 14.06.2008, but original

of the same was never produced. Its photocopy was placed on record without seeking any permission from the Court to prove it by secondary evidence. The construction of the kothi was completed in 2009, but the complaint was made in November, 2011. No suit for recovery was ever filed by the complainant. No evidence was produced regarding delivery of shuttering or the construction material to the accused. Although, certain bills were placed on record, but it was not proved that construction material as referred in those bills, was used for building the house of the accused. There was no evidence of deception since beginning. The entire matter was rightly found by the Trial Court to be civil in nature, which had been given the criminal colour. It was further found that charge under the provision of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was not framed and as far as accused-respondent Lakhwinder Singh is concerned, there was no specific allegation against him.

7. I find no reason to interfere in any of the findings as above. Even otherwise, accused-respondent Joginder Singh has already expired, whereas there is no evidence whatsoever against respondent-accused Lakhwinder Singh.

8. Consequently, leave to appeal is declined. Application is dismissed

May 24, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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