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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: July 25, 2023

Kashi Ram

....Applicant

versus

Dharambir Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Mukesh Yadav, Advocate for applicant.

ARUN MONGA, J. (ORAL)

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For the reasons stated in application, same is allowed. Delay of 38 days in filing application seeking leave to appeal is condoned.

Main case (O&M)

Present application has been filed under Section 378 (4) of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for grant of leave to appeal against judgment dated 16.09.2016 passed by Judicial Magistrate First Class, Rewari whereby complaint filed by applicant against respondents-accused for commission of offences punishable under Sections 420, 465, 466, 467, 468, 471, 120-B, 217, 218 read with Section 34 IPC, was dismissed.

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

"2. Brief facts of instant complaint are that complainant is resident of village Bhadaf, Tehsil Kanina Distt. Mahendergarh and is a law abiding citizen. It is averred that mother of complainant Smt. Laxmi d/o Prabhu w/o Amar Singh is an illiterate lady and is having no knowledge about the Court, Tehsil and government offices. It is further averred that accused no.1 Dharambir, took mother of complainant to court on the pretext of obtaining loan stating that her presence is required in court. Mother of complainant believing him went to court for preparation of loan documents on her land. It is further averred that mother of complainant was having land in Dungarwas, Masani and Titarpur. Accused no.1 Dharambir, fraudulently got passed a decree regarding total land of Laxmi Devi in his

favour on pretext of loan in case tiled as "Dharambir vs Harpal etc." Mother of complainant came to know about same on 01.07.2009. It is further averred that in decree dated 26.05.1989, tiled as "Dharambir vs Harpal" the total area of land in Dungarwas was 54 Kanal 2 marla to the extent of its 4/21 share and it was also mentioned in decree dated 26.05.1989. It is further averred that accused no.1 in collusion with officials of record room got sanctioned the mutation no.1029 dated 28.05.2009 after making cutting in decree dated 26.05.1989 as 1/21 in place of 4/21. On 15.07.2009, complainant obtained the copy of decree sheet in which the area of Dungarwas measuring 1/21 was changed and mutation was incorporated on the basis of same. It is further averred that mother of complainant filed an appeal titled "Laxmi Devi vs. Dharambir" against order dated 31.03.2009 passed by Sh. Rajmal Rawat, DRO-cum AC Ist Grade, Rewari, regarding order and mutation dated 28.05.2009. Said appeal dated 10.07.2009, was decided in favour of mother of complainant on 17.01.2011, by Sh. A. Srinivas, IAS, Collector, and case was remanded back to AC Ist Grade for making due inquiry about the certified copy of decree and pass fresh speaking order. On 17.09.2012, DRO, Rewari, after considering statement of both parties sent the file to AC IInd Grade, Rewari, with direction to sanction the mutation as per 4/21 share mentioned in civil court decree in favour of claimant however till date no action has been taken upon same neither the mutation no. 1029 has been cancelled. It is averred that Dharambir has filed the case on basis of 4/21 share and decree was also passed regarding same. When no action was taken on the application for correction of mutation as per 4/21 share then mother of complainant moved an application to SHO Dharuhera on 10.07.2009, and one application was moved to SP, Rewari, on 20.07.2009, but no action was taken thereupon. Complainant again moved an application to SP, Rewari, but police has not taken any action. It is alleged that local police has colluded with accused persons. Thereafter complainant also moved an application dated 22.05.2010, to Collector, Rewari, and during enquiry upon same it was found that tampering has been done with decree sheet dated 26.05.1989 from which it appears that complaint of complainant is correct. It is further averred that collusion of the incharge of record room and the officials posted there from 2008-09 appears. Mother of complainant also moved an application 11.02.2013 to SP, Rewari, but no action was taken there upon. Hence this complaint."

3. Learned counsel for the applicant would contend that respondent No.1-Dharambir Singh had filed a civil suit for declaration regarding ownership on the basis of family settlement regarding suit land mentioned therein. He submits that accused got recorded a compromise statement, on the basis of which compromise decree dated 26.05.1989 was passed. Learned counsel would contend that respondent No.1 got passed decree dated 26.05.1989 regarding land of mother of the applicant-complainant by taking her to the Court on the pretext of obtaining loan on her land. In the decree, total area of land in Dungarwas was 54 Kanals 2 Marlas to the extent of 4/21 share which was mentioned in the aforesaid decree. Respondent-accused in collusion with revenue

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officials and record keeper committed forgery in decree dated 26.05.1989 after making alternation/ amendment in the said decree as 1/21 in place of 4/21. He submits that mother of the applicant had no knowledge regarding the decree till 01.07.2009. Applicant came to know of the same when he obtained second certified copy of decree, on 15.07.2009.

4. I have heard learned counsel for the applicant and perused the case file.

5. After appreciating the evidence on record, vide impugned judgment dated 16.09.2016, learned Court below dismissed the complaint filed by the applicant-complainant.

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

7. Impugned order dated 16.09.2016 is *inter alia* premised on the following reasoning:

“10. Total controversy in this complaint, revolves around decree dated 26.05.1989. Perusal of original decree sheet shows that page of judgment is torned and same was against pasted with white tape from back side but still it is torned from one side. First page of Original decree is also torned and later on pasted with tape. In prayer clause/claim para of decree, the averments of the plaint and description of suit property is mentioned as per plaint. However near area of village Dungarwas where 421 was written there is a small hole in paper and 4/21 is appearing as 1/21. It is an admitted fact that record is very old and quality of paper used is also not good rather with afflux of time its condition is deteriorating. Only one small hole is visible near 4/21 due to which it is appearing as 1/21 however except this there is no other mark. Undisputedly if the cutting or scratching is done on paper then it leaves signs but on the decree sheet there is no other impression which can show that scratching has been done over same. Thus it is also difficult to say that whether is actually a tampering or is only a wearing/tearing of record due to afflux of time and low quality of paper. Further when the compromise decree was passed then mutation regarding same was to be entered. As per decree 4/21 share of land was to be mutated in favour of Dharambir and it is not believable that he will get reduced his share from 4/21 to 1/21 thus it is also clear that Dharambir cannot be said to be beneficiary of alleged forgery. Other accused no. 2 to 4 arrayed in complainant are not named and when complainant was asked to furnish detail of same he has stated that accused Dharambir will himself tell about same. However this plea of complainant cannot be accepted. Complainant is aggrieved with DRO and Tehsildar only because of mutations entered by them. However as per record no offence is made out against them. The record keeper namely Hari Ram has been examined by complainant himself in this case and he has not been named specifically anywhere in complainant. The fact finding enquiry is returned with finding that it is not possible to ascertain that who committed tampering with decree. The

theory of enquiry officer can also be accepted that record has passed through so many hands for taking certified copies time and again and therefore it is difficult to hold one person guilty and responsible for tampering with record.

11. Further from perusal of contents of complaint it is clear that no wrongful loss has ensued to complainant or his mother even if we accept the allegation of cutting in decree and mutation which was sanctioned regarding 1/21 share has also been corrected as 4/21. It is also unexplained that if fraud was committed then why other co-sharers kept silent. Complainant has not levelled any allegation of conspiracy against any other party to that suit. Perusal of jamabandi shows that Laxmi Devi and accused Dharambir along with their brothers and sisters were having 1/3 share in equal 8 share. Out of which Harpal and others have relinquished their share in favour of Dharambir. None of the persons arrayed as accused can be said to be beneficiary and other employees are not named."

8. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective.

9. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair¹**, 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.

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

"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)

¹ 2002(4) RCR (Criminal) 750 SC

² 2001(2) RCR(Criminal) 292 SC

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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.'

11. In this case, I am of the opinion that 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.

12. Instant application seeking leave to appeal is hereby dismissed.

13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 25, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No