

CRM-A-64-MA-2017

227 THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-64-MA-2017
Date of Decision:05.12.2023

BHOLA SINGH

.....Applicant-Appellant

Versus

MALKIT KAUR AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kartar Singh, Advocate for the applicant-appellant.

Mr. Vikas Bhardwaj, AAG Haryana.

Mr. Amritpal Singh, Advocate for

Mr. Jagjit Singh Gill, Advocate for respondents No. 1,2,4 & 5

HARPREET SINGH BRAR, J.

1. This instant application under Section 378(4) Cr.P.C is preferred against order of acquittal dated 22.11.2016 passed by Judicial Magistrate Ist Class, Sirsa vide which respondent no.1 to 5 have been acquitted in Criminal Complaint no.886/2013 dated 17.12.2010 filed under Sections 218, 120-B, 420, 467, 468, 471, 149, 34 of IPC.

2. The facts, in brief, are that the entire controversy revolves around a land dispute between the applicant, his grandfather and respondent no.1 to 5 qua which criminal conspiracy was hatched by the said respondents. In furtherance of this conspiracy, respondents no.1 to 5 along with other co-accused forged a report no.1828 dated 03.03.2009 stating to the effect that the stay granted by the Civil Court in said land dispute which was in favour of the applicant/his grandfather, had been dismissed. Thereby, respondent no. 1 & 2,

with the help of respondent no.3 to 5, unlawfully obtained a bank loan qua the disputed property by making the said wrong entry.

3. Having heard the learned counsel for the applicant-appellant and after perusing the record with his able assistance, it is clear that there is no cogent and convincing evidence against respondent no.1 to 5 since dishonest and fraudulent intentions of respondent no.1 & 2 cannot be made out from the fact that the above-mentioned stay order was only to the effect that they could not alienate the disputed land but said nothing about creating charge over the disputed land. As, respondent no. 1 & 2 are illiterate and old, such nuanced interpretation of the stay-order cannot be expected from them. Furthermore, merely a report made in the revenue record creates no title and does not fall under the definition of valuable security, hence, disproved the allegations under Sections 467, 468 and 471. Moreover, sanction under Section 197 Cr.P.C which is a mandatory formality, was not sought by the applicant as respondents No.3 to 5 are public servants. Therefore, the learned trial Court, after diligently considering the entire evidence on record, has correctly passed the impugned order of acquittal.

4. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. **(See H.D. Sundara and others Vs. State of Karnataka, Criminal**

Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P.,

1973 (2) SCC 808 and **Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit** and others CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

5. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

(HARPREET SINGH BRAR)
JUDGE

05.12.2023

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No