2023:PHHC:039117-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-17798-2019 and
CRM-17799-2019 in/and
CRM-A-991-2019
Date of Decision: 18.01.2023

Kamlesh Rani ... Applicant

Versus

Vijay Munjal and another ... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Paramjit Singh Jammu, Advocate,
for the applicant.

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MANISHA BATRA, J.

CRM-17798-2019

This is an application for condonation of delay of 29 days in filing the application for seeking leave to file the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 29 days in filing the application for seeking leave to file the appeal is condoned.

CRM-17799-2019

The application is allowed, as prayed for subject to just exceptions.

CRM-A-991-2019

1. The applicant Smt. Kamlesh Rani who was complainant before the Court of Sub Divisional Judicial Magistrate, Dabwali, had filed Criminal Complaint No.56-1 of 2014 titled *Kamlesh Rani v. Vijay*

Munjal and another alleging therein that the respondents named therein had hatched a criminal conspiracy against her and had committed offences of cheating and forgery and that the respondents No.1 & 2 had also committed offences punishable under Sections 504 & 506 of IPC against her. The trial ended in the acquittal of the present respondents who only had been summoned as accused and the applicant-complainant then filed the instant application for grant of leave to file appeal against the judgment dated 29.01.2019 passed by learned trial Court.

2. The brief facts of the case relevant for the purpose of disposal of this application as emanating from the record are that the applicant filed the aforementioned complaint alleging therein that she had become owner of a house bearing No.171 situated at Ram Nagar Colony, Mandi Dabwali vide a registered sale deed dated 11.05.2009. She had appointed her brother Gulshan Kumar as her power of attorney holder subsequently by executing a power of attorney in his favour on 19.03.2010. Half portion of the abovesaid property was sold by her through her power of attorney holder to one Smt. Anita Rani vide sale deed dated 28.05.2010. Then, vide another sale deed dated 04.07.2013, the said Anita Rani and herself had sold 30 feet x 18 feet 11 inches area of the property jointly owned by them to one Smt. Kamlesh Rani wife of Suresh Kumar. The remaining portion of the said property over which a shop was constructed still remained under the ownership and possession of the complainant.

3. It was alleged that on 09.11.2013, the respondent No.1Vijay Munjal who is her real brother called her on phone and told her to come to his house at Dabwali by representing that they would got entered the name

of Yashpal son of the applicant at Sirsa Dera for matrimonial purposes. On his invitation, the applicant along with her son Yashpal had gone to the house of respondent-Vijay Munjal and thereafter he took them to Sirsa Dera wherein they had got entered the name of Yashpal for marriage prospects. On 11.11.2013, the respondent-Vijay Munjal and his wife i.e. respondent No.2-Anju Munjal represented to the applicant that they needed her as a witness for the purpose of filling some form and also needed her photographs and signatures. On that pretext, they took her to Tehsil Office Dabwali wherein they procured her signatures on some blank and some written papers. In the said office, her photographs as well as photographs of respondent-Anju Munjal and one male and female who were unknown to the applicant were also taken. Subsequently, the applicant came to know that the respondents-Vijay Munjal and Anju Munjal in connivance with the remaining persons named in the title of the complaint had procured a sale deed in respect of the shop owned by her as well as the property which was already sold by her to Smt. Kamlesh Rani wife of Suresh Kumar and had thereby cheated her and practised fraud upon her. The complainant convened meetings with the respondents-Vijay Munjal and Anju Munjal with the intervention of relatives and other respectable persons of the society and requested them to get the sale deed executed in favour of respondent-Anju Munjal set aside but in vain . She also reported the matter to the police but no action was taken against them. On 19.02.2014, the applicant and her son had gone to Gurudwara Mandi Dabwali wherein the respondents met them and criminally intimidated them. Therefore, she prayed for taking penal action against the culprits.

4. On the basis of preliminary evidence led by the applicant, the learned trial Magistrate vide order dated 19.05.2015, summoned the present respondents as accused for commission of offences punishable under Sections 120-B, 420, 467, 468, 471, 504 and 506 of IPC. Thereafter, pre charge evidence of the applicant was recorded wherein she produced PW-1 Gurdev Singh, PW-2 Ram Singh, Clerk, office of Sub Registrar, Mandi Dabwali, PW-4 Gulshan Kumar her brother and power of attorney holder and herself appeared as PW-3. In documentary evidence, she produced Ex.PW1/A copy of extract of Municipal Register, Ex.PW2/B copy of power of attorney executed by her in favour of her brother Gulshan Kumar, PW2/C copy of sale deed executed in favour of Smt. Anita Rani, Ex.PW2/D sale deed executed in favour of Smt. Kamlesh Rani, Ex.PW2/E copy of sale deed shown to be executed by her in favour of respondent-Anju Munjal, Ex.PW3/A application moved by her before Superintendent of Police, Sirsa, Ex.PW3/B and Ex.PW3/C receipts of complaint filed by her before police authorities and Ex.PW3/D copy of protest petition.

5. Vide order dated 13.04.2018, the present respondents were charge-sheeted for commission of offences punishable under Sections 120-B, 420, 467, 468, 471 & 506 of IPC. They pleaded not guilty to the charges and claimed trial.

6. In after charge evidence, the applicant and PW-4 Gulshan Kumar were further cross-examined by the respondents and the applicant produced documents Ex.P-9 certified copy of order dated 21.05.2018 passed in Civil Suit No.14 of 2016 titled as Kamlesh Rani v. Anju Munjal and another, Ex.P-10 certified copy of plaint of Civil Suit No.14 of 2016, Ex.P-

11 certified copy of order dated 09.05.2017 passed in Civil Suit No.230 of 2014 titledc as Anju Munjal v. Kamlesh Rani and others, Ex.P-12 copy of statement of Anju Munjal recorded in the above named civil suit and Ex.P-13 certified copy of plaint of Civil Suit No.230 of 2014. Statements of the respondents were recorded under Section 313 of Cr.P.C. wherein they claimed themselves to be innocent and pleaded false implication.

7. In defence evidence, the respondents examined DW1 ASI Sita Rani who proved Ex.DW1/A photocopy of a complaint shown to be submitted by the respondent-Vijay Munjal with SP, Sirsa on 21.06.2016, Ex.D1 certified copy of status report filed in FIR No.195 dated 13.06.2014 registered on complaint of respondent-Anju Munjal, Ex.D-2 certified copy of FIR No.195 dated 13.06.2014, Ex.D-3 certified copy of complaint titled as Anju Munjal v. Kamlesh Rani and another, Mark X photocopy of letter shown to be written by DSP, Sirsa to SP, Sirsa on 03.11.2016 and Mark Y copy of criminal complaint titled Anju Munjal v. Kamlesh Rani and another.

8. Keeping in mind the points canvassed in the arguments raised by both the parties, the learned trial Court considered the evidence and thereafter pronounced the judgment of acquittal of the respondents. Aggrieved by the said judgment, the applicant/complainant has filed the present application for seeking leave to file appeal.

9. It was argued by learned counsel for the applicant that the learned trial Court had committed a grave error in acquitting the respondents. The controversy between the parties had not been appreciated in a correct perspective. The learned trial Court did not apply its judicious mind. There was overwhelming evidence on record to prove that the

respondents had hatched a conspiracy with each other and in pursuance thereof they had cheated the applicant by making dishonest concealment of facts and by fraudulently making her to put her signatures on certain documents by representing that those documents were forms to be filled by the respondent-Anju Munjal for her employment. The applicant who was real sister of the respondent-Vijay Munjal had appended her signatures on sale deed Ex.PW2/E on being induced by him. The respondents had used her signatures and photographs for the purpose of committing the offence of forgery and cheating by procuring a false document and had used the same. Therefore, it was argued that the findings as given by learned trial Court were not all sustainable and the same were liable to be set aside and it was urged that the application for grant of leave to file appeal against the impugned judgment deserved to be allowed.

10. We have given due deliberations to the contentions as raised by learned counsel for the applicant and have scrutinized the material available on record minutely. Before adverting to the merits of the case and the contentions raised by the applicant, it would be appropriate to review the approach to be adopted while deciding the appeal against acquittal by the trial Court. In **Chandrappa and others v. State of Karnataka**, (2007) 4 SCC 415, the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a double presumption in favour of the accused. **Firstly**, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. **Secondly**, the accused having secured an

acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. The Hon'ble Apex Court further culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:-

> i) An Appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
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> ii) The Code of Criminal Procedure puts no limitation, restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.
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> iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.
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> iv) If two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court.

11. Reference can also be made to **Atley v. State of U.P.**, AIR 1955 SC 807; **Aher Raja Khima v. State of Saurashtra**, AIR 1956 SC 217; **Ramesh Babulal Doshi v. State of Gujarat**, 1996 SCC (Crl.) 972; **Sadhu Saran Singh v. State of U.P. and others**, 2016 (2) RCR (Criminal) 319 & **State of Maharashtra v. Fazal Rehman Abdul**, 2014 (7) SCC (Criminal) 1, wherein similar proposition of law had been laid down and it was observed that while entertaining appeal against judgment of acquittal, the Appellate Court was required to seek an answer to the question whether

the findings of the trial Court were culpably wrong, manifeslty erroneous and demonstrably unsustainable. It was held that the Appellate Court should not ordinarily set aside the judgment of acquittal in a case where two views are possible, though the view of the Appellate Court may be the more probable one and further that in an appeal against acquittal, the Appellate Court would interfere only when there exists perversity of facts and law.

12. Now taking the above discussed principles of law into consideration, it is to be considered as to whether the prayer made by the applicant for grant of leave to file and pursue the appeal against judgment of acquittal of the respondent deserves to be allowed or not? The allegations as levelled by the applicant/complainant were that the respondents entered into a criminal conspiracy and in pursuance thereof on 11.11.2013, they had taken her to Tehsil Office, Dabwali on the pretext that they needed her signatures as a witness for the purpose of filling some forms and had procured her signatures on some blank and written papers, her photographs were also taken and subsequently, she had come to know that by doing so, the respondents had procured a sale deed in respect of the shop owned by her as well as the property which was previously owned by her and already sold to one Smt. Kamlesh Rani wife of Suresh Kumar and thereby the respondents had cheated her and had practised fraud upon her. The respondents had been charge-sheeted for commission of offences punishable under Sections 120-B, 420, 467, 468, 471 and 506 of IPC. Let us firstly discuss the ingredients required to constitute the offence of cheating as defined under Section 415 of IPC which are that there should be fraudulent or dishonest inducement of a person by deceiving him; the

person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property or the person so deceived should be intentionally induced to do or omit to do anything which he did not do or omit if he were not so deceived; and the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

13. Section 420 of IPC deals with cases of cheating whereby the deceived person is dishonestly induced to deliver any property to any person or; to make, alter or destroy; the whole or part of a valuable security or; anything which is signed or sealed and which is copy of being converted into valuable security. Now keeping these ingredients in mind, it is to be seen as to whether the applicant had made out a case for proving commission of offence of cheating by the respondents against her or not? On perusal of evidence produced on record, it is revealed that the applicant had summoned two witnesses namely, PW-1 Gurdev Singh and PW-2 Ram Singh, officials of Municipal Council, Mandi Dabwali and Clerk, office of Sub Registrar, Mandi Dabwali respectively. PW-1 Gurdev Singh proved document on record Ex.PW-1/A to Ex.PW-1/H respectively showing that as per record the house bearing No.171 was jointly owned by Anita Rani wife of Narender Kumar, respondent Anju Munjal and one Tarsem son of Shiv Lal, PW-2 Ram Singh proved Ex.PW-2/A copy of sale deed of house bearing No.171 Ward No.9 measuring 108.33 yards in favour of the applicant as on 11.05.2009, Ex.PW-2/B a power of attorney shown to be executed by the applicant in favour of PW-4 Gulshan Kumar, her brother, Ex.PW-2/C sale deed dated 28.05.2010 executed by the applicant through

her power of attorney holder Gulshan Kumar in favour of Smt. Anita Rani wife of Narender Kumar in respect of 54.16 yard of property bearing No.171 and Ex.PW-2/E sale deed dated 11.11.2013 shown to be executed and registered by the applicant in favour of Smt. Anju Munjal in respect of 54.16 sq. yards of property bearing No.171. These documents prove that out of property bearing No.171 total measuring 108.33 yard purchased by the applicant vide sale deed Ex.PW2/A, she had sold 54.16 yard area to Smt. Anita Rani vide sale deed Ex.PW-2/C and the remaining area measuring 54.16 sq. yard was shown to be sold to respondent Anju Munjal vide sale deed Ex.PW-2/E. The case of applicant with regard to the allegations of committing cheating by the respondents rested upon the testimonies of her brother PW-4 Gulshan Kumar and herself. Though PW-4 supported the claim of the applicant in his sworn deposition, but it is clear from the evidence led by this witness that he was not present at the time when the sale deed Ex.PW-2/E was executed in favour of respondent-Anju Munjal by the applicant. As such, his testimony that fraud was committed upon the applicant and she was cheated at the time of execution of this sale deed, is hearsay in nature only and, therefore, cannot be acted and relied upon to prove that the applicant had been fraudulently or dishonestly induced and had been deceived by the respondents at the time of execution of this sale deed.

14. Further, apart from self serving statement of the applicant, no other evidence had been produced by her in this regard. Even, her own son who as per the allegations levelled by her had accompanied her to Mandi Dabwali as on 10.11.2013 had not been examined by her as a witness. The

bare oral testimony of the applicant could not be considered to be sufficient to prove that she had been fraudulently or dishonestly induced by the respondents to execute sale deed Ex.PW-2/E in favour of the respondent Anju Munjal in respect of her property. The applicant herself admitted that she was educated up to 8th class. Meaning thereby that she was not a totally illiterate person and could read and understand at least Hindi language in which the sale deed Ex.PW-2/B had been prepared. She herself had purchased the property bearing No.171 vide sale deed Ex.PW-2/A by appearing before the concerned Sub Registrar. Not only this, she had also executed a power of attorney Ex.PW-2/B_ in favour of her brother Gulshan Kumar for managing her property at Mandi Dabwali. Meaning thereby that she had fair idea of the proceedings which were conducted before Sub Registrar, Mandi Dabwali at the time of execution of the sale deed. A perusal of the sale deed Ex.PW-2/E shows that she had appeared before the Sub Registrar and her photograph had also been taken in his office as on 11.11.2013.. The allegation as levelled by her that her signatures were obtained on blank papers is apparently false in view of the fact that on the back of first page of sale deed Ex.PW-2/E, there is a type written endorsement to the effect that the applicant had appeared for registration of sale deed before the Sub Registrar and it is against that type written endorsement that the applicant is shown to have appended her signatures. Her signatures are also shown to have been appended on another type written endorsement made on the same page by the office of Sub-registrar to the effect that the contents of the sale deed were read over in presence of both the parties and they accepted the same to be correct. These endorsements are shown to be duly signed by the concerned Sub-Registrar. It is well settled proposition of law that a registered document carries a presumption that it was validly executed and it is for the party who questions the genuineness of the transaction, to show that in law, the transaction was not valid. Reference in this regard can be made to **Jamila Begum (D) through Lrs v. Shami Mohd. (D) through Lrs. and another**, 2019 (1) RCR (Civil) 387 wherein the Hon'ble Supreme Court had observed that registration of sale deed reinforces valid execution of the same. A registered document carries with a presumption that it was validly executed and it is for the party challenging genuineness of transaction to show that the transaction is not valid in law. Similar proposition of law was laid down in **Prem Singh and others v. Birbal and others**, 2006 (3) RCR (Civil) 381 & **Abdul Rahim and others v. Sk. Abdul Zabar and others**, 2009 (2) Apex Court Judgments (SC) 518. Reliance can also be placed upon **Vimal Chand Ghevarchand Jain and others v. Ramakant Eknath Jajoo**, 2009 (2) RCR (Civil) 738 wherein it was held that a registered sale deed carries a presumption that the transaction was genuine one. It is also well settled that registration of a document is a solemn act of registering authority and the burden to prove otherwise is upon the person who denies this fact. Reference can also be made to **Sulakhan Singh v. Smt. Pal Kaur**, 2011 (2) PLR 259 wherein it was held by a Coordinate Bench of this Court that in the absence of any clear evidence regarding fraud, the plea that a registered sale deed was not valid cannot be accepted. The signatures as appended on the endorsements made on sale deed by the applicant in the presence of Sub Registrar, Mandi Dabwali are proof of the fact that she had not appended her signatures on blank papers rather had signed Ex.PW-2/E in the presence of Sub Registrar Dabwali by accepting the contents of the sale deed to be correct and while fully knowing the nature of the transaction which was being conducted vide this sale deed. The burden lied heavily upon the applicant to prove that she was deceived by the respondents in any manner whatsoever at the time when this sale deed was executed by her. On the basis of her simple testimony, this fact had, however, not been established. Therefore, it is held that the applicant had failed to prove the most essential ingredient to constitute the offence of cheating to the effect that there was any fraudulent or dishonest inducement on the part of the respondents by deceiving her to deliver the property owned by her to them by way of execution of the sale deed Ex.PW-2/E.

15. So far as the offences punishable under Sections 467, 468 and 471 of IPC are concerned, it is relevant to mention that the offence of forgery is defined under Section 463 of IPC. In order to constitute 'forgery', the first essential ingredient is that the accused should have made a false document or a part of such document. In the absence of proof of this ingredient, a person cannot be held liable for offence of a forgery.

16. It is well settled proposition of law that simply by asserting a false claim in a document, such document is not constituted as false one. The mere fact that a document contained some false recital or untrue statements would not make it a false document and a document can be said to be falsely made within the meaning of Section 464 of IPC, if the signatures, seal or the date mentioned therein is false. In other words, in case of forgery of signatures, such signatures must be affixed by a person

other than the person whose signatures it purports to be. A person is said to have made a false document, if he made or executed a document claiming to be someone or authorized by someone else; or he altered or tampered a document; or he obtained a document by practising deception or from a person not in control of his sense. In the present case, there was no allegation against the respondents that they had dishonestly or fraudulently made, signed, sealed or executed any such document with the intention of causing it to be believed that such document was made, signed, sealed or executed by any other person which the respondents knew that it was not made, signed, sealed, executed or affixed. Mere allegation that the sale deed Ex.PW-2/E contained false recitals was not sufficient on the part of the applicant and she was required to show that a false document within the meaning of Section 464 of IPC had been made by either of the respondents. However, no such evidence had been produced.

17. The applicant was further required to prove the involvement of the respondents in commission of offences punishable under Sections 467, 468 and 471 of IPC. The offences punishable under Sections 467, 468 and 471 of IPC are aggravated forms of offence of forgery as Section 467 of IPC relates to forgery of valuable security whereas Section 468 of IPC deals with forgery with the intention of committing cheating and Section 471 of IPC concerns fraudulent or dishonest use of a forged document. Since there was no allegation in the complaint that any false documents had been prepared by the respondents and the evidence produced on record by the applicant also does not prove that the respondents had either forged signatures or altered or tampered some document or affixed some false seal,

therefore, the basic ingredient for proving offence of forgery had not been made out. Therefore, no case for holding the respondents guilty for commission of offences punishable under Sections 467, 468 and 471 of IPC had either been made out and accordingly, it is held that the findings of learned trial Court on that point cannot be stated to be wrong, manifestly erroneous or unsustainable.

18. So far as the allegation that the respondents had committed offence under Section 506 of IPC is concerned, they had been acquitted of charge under that section also. The applicant had alleged in her complaint that as on 19.02.2014, the respondents had criminally intimidated her by hurling abuses and by extending threat to kill her if she initiated any action against them. In her sworn deposition, she reiterated the same allegation. However, for the purpose of proving charge under Section 506 of IPC, the applicant was required to prove that the respondents had threatened her with injury to her person, reputation or property; that they did so with intent to cause alarm to her and that they did so to cause the applicant to perform any act which she was not legally bound to do. The gist of offence under Section 506 of IPC is the effect, which the threat is intended to have upon the mind of the person so threatened. It is necessary that the threat given is real and the person giving the threat means it. The threat should be a real and not just a mere word when the person uttering it does exactly mean what he says. Empty threats do not mean that any case under Section 506 of IPC is made out. An offence under this section by spoken words cannot be made out unless it is proved that these words were uttered with specific intention. In the present case, from the testimony of applicant, it has not been proved that

she was actually alarmed by the so-called threats as held out by the respondents. It was not her version that any threat was given by the respondents to force her to deliver any property. Mere allegation of extending threat by the respondents to kill the applicant cannot be stated to be enough to attract the provisions of Section 506 of IPC. As such, the observations made by learned trial Court as to acquittal of the respondents for commission of offence punishable under Section 506 of IPC can also not be stated to be perverse or unsustainable.

19. No other point had been urged before us.

20. Taking the above discussed circumstances into consideration, we are of the opinion that the learned trial Court had rightly appreciated the evidence produced on record while passing the impugned judgment and no perversity can be found in the findings recorded by learned trial Court and there is no compelling reason to interfere with its judgment. Accordingly, it is held that no ground has been made out to grant leave to appeal to the applicant. Finding no merit in the application, the same is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

18.01.2023
manju

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