

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-1394-2019
Reserved on: 25.4.2023
Date of Decision: 3.5.2023

Hari Ram

.....Applicant

Versus

Paramjit Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Bipin Ghai, Senior Advocate with
Mr. Sushant Kareer, Advocate
for the applicant.

Mr. Chetan Kapoor, Advocate
for respondent No. 1.

Mr. Raman K. Sharma, Advocate
for respondents No. 4 and 5.

SURESHWAR THAKUR, J.

1. Through the instant application, the aggrieved victim-complainant prays for special leave to appeal being granted, to challenge the verdict of acquittal, as made on 27.2.2019, upon, Complaint No. 07 of 21.5.2012, by the Judicial Magistrate Ist Class, Rajpura. The said verdict of acquittal was made qua the accused therein, but was made on a private complaint, instituted by the complainant before the learned trial Judge concerned.

Factual Background

2. The genesis of the prosecution story become embedded in the complaint, which mentions that the accused No.1 to 3 namely Paramjit Kaur,

Ashwinder Singh and Amrik Singh fraudulently and dishonestly misappropriated an amount of Rs.79,50,000/- of the complainant, in connivance with the accused No. 6 Umesh Pandey, and, cancelled the agreement to sell dated 19.09.2008 executed by the complainant with accused No.1 to 3, and, thereafter on the same day i.e. 04.03.2011 executed the sale deed of the land in question with the accused No.4 and 5 Mohan Singh and Amandeep Singh by creating a forged document i.e. cancellation deed dated 04.03.2011 and affidavit given by Umesh Pandey. It is further submitted that accused No. 1 to 3 executed agreement to sell dated 19.09.2008 with the complainant @ Rs.16,00,000/- per bigha but all the accused in connivance with each other, sold the entire land only for Rs. 29,75,000/- which clearly shows their dishonest intention to misappropriate the hard earned money of the complainant. It is further submitted that in the sale deed it was mentioned that the land is free from all sort of encumbrances but there was no mention about the agreement to sell dated 19.09.2008. In his affidavit Umesh Pandey has stated that the General Power of Attorney executed by the complainant in his favour is still effective, and, has not been revoked but the said affidavit was not attested by any Notary Public. It is further submitted that the complainant never authorized his attorney to cancel the agreement to sell dated 19.09.2008 and Umesh Pandey has misused the attorney. The complainant approached the Police Authorities for taking action against the accused, but nothing was done.

Preliminary evidence and summoning of the accused

3. After recording the preliminary evidence, vide order dated 24.7.2013, all the accused were ordered to be summoned for offences punishable under Sections 420, 406, 465, 467, 468, 471 of the IPC.

4. After receiving the summons of the Court, the accused appeared, and, they were then released on bail.

Trial Court Proceedings

5. The learned trial Judge concerned, after hearing the learned counsel for the complainant, as well as the learned defence counsel, came to a prima facie conclusion, that the accused were amenable for theirs being tried for offences punishable under Sections 420, 406, 465, 467, 468, 471 of the IPC. Resultantly, the learned trial Judge concerned, drew a charge against the accused, for offences punishable under Sections 420, 406, 465, 467, 468, 471 of the IPC. However, the accused did not plead guilty to the above drawn charge, and, rather claimed trial.

6. Importantly, accused No. 6 one Umesh Pandey, despite becoming validly served, rather did not appear before the learned trial Judge concerned, on the date already on the summons, thereupon, through an order made on 10.9.2018, he became declared a proclaimed offender.

7. In the post charge evidence, the complainant himself stepped into the witness box as CW-1. However, the complainant could not conclude his after charge evidence despite availing sufficient opportunities, as such the after charge evidence of the complainant was closed by the order of the Court.

8. After the closure of the after charge evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. They also chose to adduce defence evidence, and, tendered documents Ex. D-1 and D-2 in their defence.

9. The learned trial Judge concerned, after appraising the post charge evidence, as became adduced before her, made a conclusion, that the

complaint (supra), deserves its becoming rejected. Therefore, she proceeded to make an order of acquittal, upon the accused concerned.

Reasons for declining the special leave to appeal to the complainant against the verdict of acquittal, as made upon the accused concerned, by the learned trial Judge concerned.

10. Admittedly, an agreement to sell was drawn amongst the complainant, and, the accused concerned, on 19.9.2008, whereby the accused concerned, received a sum of Rs. 79,50,000/-, as earnest money from the complainant. Since the accused did not execute the relevant registered deed of conveyance, in favour of the complainant, rather in pursuance to the said agreement to sell, as became drawn by them in favour of the complainant, and, that too despite theirs receiving the earnest money in a sum (supra) from him. Therefore, the complainant became aggrieved, and, was led to institute the complaint (supra), before the learned Magistrate concerned, on the ground, that subsequent thereto, the accused executed a registered deed of conveyance in favour of accused No. 4 and 5. Since in pursuance to the power of attorney, executed by the complainant, in favour of accused No. 6 one Umesh Pandey, who became declared a proclaimed offender, the latter had cancelled the agreement to sell drawn on 19.9.2008, inter se accused No. 1 to 3 with the complainant, in contemporaneity whereof, the earnest money, comprised in a sum of Rs. 79,50,000/- became received by them from the complainant. Therefore, the above cancellation rather facilitated the execution of a registered deed of conveyance, on 4.3.2011, by accused No. 1 to 3 in favour of accused No. 4 and 5.

11. Therefore, the validity of the authorization conferred, upon co-accused No. 6, by the complainant through the execution, in his favour the apposite power of attorney, thus becomes the fulcrum for concluding

whether the allegations made in the complaint against the accused concerned, are either truthful or are untruthful. In the above endeavour, since the complainant, does not deny his executing the said power of attorney in favour of co-accused No. 6, which but resulted in his cancelling the agreement to sell entered into on 19.9.2008, inter se the complainant, and, accused No. 1 to 3. Therefore, when the cancellation of the said agreement to sell by the validly constituted attorney, of the complainant, resulted in the registered deed of conveyance becoming executed by accused No. 1 to 3 in favour of accused No. 4 and 5, thereby the drawing of the said latter instrument thus does not become stained with any element of fraudulence. The reason is but simple, that after cancellation of the agreement to sell, on 19.9.2008, the obligation, as cast therein also became rescinded, besides facilitated accused No. 1 to 3 to execute a valid deed of conveyance in respect of the complaint property, in favour of accused No. 4 and 5. Consequently, there was no *mens rea* in the minds of either of the accused to defraud the complainant.

12. Be that as it may, accused No. 1 to 3 claim, that to the said constituted power of attorney, by the complainant, they had liquidated to him, the amounts of the earnest money, as became tendered by the complainant to them. The said fact though became denied by the complainant but since co-accused No. 6, to whom the earnest money became liquidated by accused No. 1 to 3, has been declared as a proclaimed offender. Thus, when unless on his appearance before the learned trial Judge concerned, the complainant could prove against him, that despite his receiving the earnest money from accused No. 1 to 3, his not thereafter transmitting the said received sum of earnest money to the complainant.

given his being declared a proclaimed offender, thus it cannot be said, that such a plea, as, raised by accused No. 1 to 3, is false or engineered. Moreover, the power of attorney, constituted by the complainant in favour of accused No. 6 was not placed on record. Therefore, in the absence of adduction of evidence of the original power of attorney (supra), it cannot be said that the allegations against the accused concerned, have been cogently established nor it can be said that the said constituted power of attorney exceeding the terms of the authorization conferred by him. Consequently, not only the agreement to sell executed inter se accused No. 1 to 3, and, the complainant, on 19.9.2008, thus became validly cancelled by the duly constituted power of attorney of the complainant, but also the sum of earnest money, as became tendered by the complainant to accused No. 1 to 3, thus was also at the time of the apposite cancellation taking place, but liquidated by them to the power of attorney constituted by the complainant. Resultantly, the verdict of acquittal, as made upon the accused concerned, in respect of charges drawn against them, is a validly drawn verdict of acquittal, and, does not require any interference.

Final order

13. Consequently, for the reasons assigned hereinabove, this Court finds no reason to interfere with the impugned verdict of acquittal, as made by the learned trial Court concerned. Thus, leave to appeal against the verdict of acquittal, as made on 27.2.2019, upon, Complaint No. 07 of 21.5.2012, by the Judicial Magistrate Ist Class, Rajpura, is declined. Consequently, the application, seeking leave to appeal, is hereby dismissed. The impugned verdict of acquittal, as made by the learned trial Court, is maintained, and, affirmed. Personal, and, surety bonds, if any furnished by the accused are hereby cancelled, and, discharged. The case property, if any,

be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

14. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 03, 2023
Gurpreet/Ithlesh

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