

2023:PHHC:038904-DB
**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

219

CRM-A-426-2022
Date of Decision : **March 03, 2023**

SHISHPAL SINGH

.....Applicant

VERSUS

CHIRANJI LAL

.....Respondent

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

Present : Mr. Sachin Bhardwaj, Advocate
for the applicant.

KULDEEP TIWARI. J.

The applicant-complainant has filed the present application under Section 378(4) Cr.P.C. for the grant of special leave to appeal against the order of acquittal dated 13.3.2020 recorded by the learned Judicial Magistrate 1st Class, Mahendragarh whereby the respondent-accused was acquitted from the charges framed against him under Sections 419, 420, 467, 468, 471, and, 506 IPC.

FACTUAL MATRIX

The respondent-accused was summoned in a private complaint vide order dated 9.4.2018 for the commission of offences punishable under Sections 419, 420, 467, 468, 471 and 506 IPC. The applicant-complainant filed the complaint on the allegations that he was employed in BSF, and, after his retirement, he is doing the work of agriculture. The respondent-accused, who is his real brother, and, is cunning and dishonest person, used to cultivate his land. The accused

taking the advantage of employment of the complainant, got executed a sale-deed bearing No. 285 dated 6.5.1999 regarding land measuring 9 kanal 16 marla by impersonating him in order to cause wrongful loss. The complainant was having no knowledge about the aforesaid sale-deed nor any amount has been received by him nor he has any knowledge about the revenue record, and, also about his share in the ancestral land. The complainant after retirement raised objection in this regard before his family members but the respondent-accused assured him that inadvertently 9 kanal 16 marla land was earlier coming in their names, but now, due to rectification of revenue record, it has come to the share of somebody else. About six months ago, the complainant came to know about the aforesaid sale-deed, and, he requested the respondent-accused to get the sale-deed cancelled upto the extent of his share, or, he would indemnify the complainant by giving the land from his share but the respondent-accused flatly refused to do so, and, hence the present complaint.

In order to substantiate his claim, in pre-charge evidence, the complainant examined four witnesses i.e. Devender Kumar, Clerk as CW1, Gurdayal Sharma, Deed Writer as CW2, the complainant stepped into the witness box as CW3, and, Bastiram as CW4. During pre-charge evidence, he again examined himself as CW1, and, one Manudev, Clerk as CW2. After framing of charges, in post-charge evidence, the complainant examined only Bastiram as CW4, and, closed the evidence, and, submitted that he does not want to lead any other evidence in after-

charge evidence, rather stated that pre-charge evidence led by him be read in after-charge evidence.

The respondent-accused though opted to lead evidence, however, no evidence was led by the respondent-accused. However, he tendered documents Exs.D1, and, D2, and, mark DA and mark DB in his defence evidence, and, closed his evidence.

The learned trial Court after considering the oral as well as documentary evidence, recorded the impugned verdict of acquittal.

Being aggrieved by the said order of acquittal, the complainant filed the present application for grant of special leave to appeal against the order of acquittal(Supra).

Learned counsel for the applicant submitted that the learned trial Court has recorded the order of acquittal without taking into consideration the fact that the complainant was neither present nor he had affixed his signatures or thumb impressions over the said sale-deed at the time of the execution of the same. Even from the sale-deed, it is clear that the complainant was not present at the time of execution of the sale-deed. The photographs affixed upon the sale-deed are only of five persons from the side of the complainant family which does not include the photograph of the complainant.

He further submitted that the statement of CW4 who is the brother of the complainant, and, of the respondent-accused, and, was present at the time of execution of the sale-deed has specifically stated that the complainant was not present at the time of execution of the sale-

deed as the complainant was on duty at the time of execution of the sale-deed. Learned counsel for the applicant while placing reliance upon the sale-deed dated 6.5.1999 argued that the same has been executed by impersonation. His thumb impressions and signatures on the sale-deed are forged and fabricated which is established on record by the complainant. He further argued that he was posted at 12 BSF in Rani Nagar at West Bengal on the date of his execution of sale-deed. Therefore, it is a clear cut case of impersonation as the same person cannot be present at both places at one point of time.

ANALYSIS

We have considered the entire trial Court record, and, the evidence led by the complainant with the able assistance of the learned counsel for the applicant.

There is no dispute that this Court can re-appreciate the entire evidence while dealing with a order of acquittal. The High Court has full power to appreciate the entire evidence to reach its own conclusions and it is also open for the High Court, to re-determine the question of facts and law. For this, we place reliance upon the judgment passed by Hon'ble Supreme Court in *State of Maharashtra vs. Sujay Mangesh Poyarekar, 2008 (9) SCC 475*.

Ordinarily, the order of acquittal will not be interfered with, lightly, merely because other view is possible. Upon passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened, as laid down by Hon'ble Supreme Court in *Harijana Thirupala vs. Public Prosecutor, High Court of A.P., (2002) 6*

SCC 470.

We are unable to find any infirmity, perversity or illegality in the order of acquittal recorded by the learned Judicial Magistrate 1st Class, Mahendragarh. The sole allegation of the complainant was that one sale-deed was got executed regarding the land measuring 9 kanal and 16 marla in which the complainant has also share which was sold by impersonation, and, the complainant was neither present nor he has affixed his signatures, and, thumb impressions over the sale-deed at the time of execution of the same. However, the complainant neither got examined any handwriting expert or any Forensic expert to compare the disputed signatures as well as the thumb impressions over the alleged sale-deed with his admitted signatures, and, thumb impressions. It is relevant to note that in one page of the sale-deed, the thumb impressions of applicant appear and on the second page of the sale-deed, there are signatures of the applicant. In the absence of such evidence, it cannot be concluded that the signatures, and, thumb impressions on the sale-deed are forged and fabricated.

The complainant stepped into the witness box as CW3, and, stated that he was employed in BSF in the year 1974, and, had retired on attaining the age of superannuation on 31.8.2013. He has not produced any document on record to prove his contention that on the date of execution of the sale-deed i.e. 6.5.1999, he was present on duty, and, not present in the office of Registrar for the execution of the sale-deed. He has neither produced roster or attendance register or any witness from the

BSF to substantiate the allegations levelled by him. Moreover, the complainant has also not examined other vendors and vendees or the document writer, and, the attesting witness of the sale-deed. Infact, only one of the vendors, namely, Bastiram was examined as CW4, whose testimony was not found credible by the learned trial Court. In the absence of any material witness, the bald statement of the complainant cannot be relied upon, especially when he himself admitted that civil litigation is going on between him, and, the accused. The alleged sale-deed was got executed in the year 1999. Thereafter mutation was entered in favour of the vendors on 28.5.1999, and, the relevant entry in the revenue record has also been entered thereafter. However, the present complaint was filed on 4.1.2016 i.e. after 16 years of the execution of the sale-deed. The delay has not been explained by the complainant. The only reason for the delay as explained by the complainant is that he was posted at BSF, Rani Nagar, West Bengal, and, he retired on 31.8.2013, and, therefore, he was not aware of the execution of the sale-deed. Even this explanation cannot be considered as worth. The reason that even the complaint was filed after about 2½ years after his retirement.

Therefore, this Court does not find any ground to interfere with the order of acquittal. In sequel, the application for leave to appeal is hereby declined, it being bereft of merit, and, the impugned order of acquittal, rendered by the learned Judicial Magistrate 1st Class, Mahendragarh is hereby upheld.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

March 03, 2023

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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No

**RESERVED JUDGMENT
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Ajay Kumar