

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1101-MA-2010
Date of Decision: January 31, 2023

Joginder Kaur

...Applicant/Complainant

Versus

Surjit Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. M.S. Dhami, Advocate,
for the applicant/Complainant.

None for the respondents.

SANJAY VASHISTH, J.

1. Instant application, under Section 378(4) Cr.P.C., has been filed by the applicant/Complainant – Joginder Kaur, seeking special leave to appeal, against the judgment dated 14.06.2010, passed by learned Judicial Magistrate Ist Class, Dasuya, in IPC Complaint No. 43, dated 07.01.2008, titled 'Joginder Kaur v. Smt. Surjit Kaur and another', whereby respondents-accused, namely, Surjit Kaur and Surinder Singh, were acquitted for the offences punishable under Sections 406, 417, 420 & 426 read with Section 34 IPC.

2. It is noticed in the order dated 09.01.2017 that record was received and time was sought by respondents to examine the same. Thereafter, time and again matter was adjourned on the request of one side or the other. In the order dated 27.04.2018, this Court has already discussed that how at first instance, appeal filed before this Court was disposed of by giving liberty to file an appeal before the Court of

Sessions, in view of the amended provisions of Section 372 Cr.P.C.

Thereafter, appeal was filed before Sessions Court, but the same was also held to be non-maintainable, in view of Full Bench judgment of this Court in the case of M/s Tata Steel Limited v. M/s Atma Tube Products Limited and others, 2013 (2) R.C.R. (Criminal) 1005. Thus, again applicant/complainant has approached this Court for the purpose of seeking special leave to appeal.

3. Facts leading to the filing of complaint are that accused persons agreed to sell the land measuring 1 Kanal – 13 Marlas, bearing Khasra No. 6//2/3 (1-13), situated in Village Balala, Hadbast No. 20, for total sale consideration of Rs.1,40,000/-, and executed one sale deed dated 27.07.2007. Entire consideration amount, for purchase of said land, was paid to the accused. Complainant also averred that she had given money to Accused No. 1 – Surjit Kaur, for purchase of stamp-papers for execution of sale deed as well as Special Power of Attorney. On the stamp-papers of Rs.7,000/-, Deed Writer – Raj Gopal Singh scribed sale deed and entered the same at Serial No. 34 on the same date. **Complainant paid Rs.1,40,000/- before Deed Writer and witnesses to the sale deed.** After scribing of the sale deed, both parties appeared before Naib Tehsildar, Garhdiwala, for registration of sale deed, but the office time was over and next day was holiday. Therefore, they decided to appear on next working day. But due to ill idea in the mind of accused persons, they did not turn up for registration of sale deed. When the accused were asked by the complainant, she found them reluctant and

accordingly a legal notice dated 30.08.2009, was issued, but they remained adamant. Civil litigation was also pending before the parties, therefore, present complaint was filed.

4. Learned counsel for the applicant/complainant argued that as per complaint, an amount of Rs.1,40,000/-, i.e. total sale consideration, was paid in the presence of Deed Writer and the witnesses to the sale deed.

5. I have gone through statement of Deed Writer – Raj Gopal Singh, who appeared as CW-3. Examination-in-Chief and Cross-examination of this witness reads as under:-

“CW3: Raj Gopal Singh Deed Writer, Sub Tehsil, Garhdiwala on S.A.

I have brought the summoned record pertaining to 27.7.2007. I scribed the sale Deed dated 27.7.2007 at the instance of Surjit Kaur and Surinder Singh in the favour of complainant. The complainant has paid total sale consideration in the sum of Rs.1,40,000/- to the accused. I have scribed Sale Deed at the instance of Surjit Kaur and Surinder Singh in favour of the complainant. Both the parties put their thumb impression and signatures in my register and after that they also signed the Sale Deed. The sale deed pertaining to area of 1K-13mls. Piara Singh Lamberdar and Gurmit Singh attested the Sale deed. Both attesting witness and Lamberdar duly signed the sale deed as well as in my register. I have also scribed the duplicate copy of sale deed and original sale deed as well as duplicate copy of the sale deed handed over to Surjit Kaur. Then the parties went before the Tehsildar for presentation and get registered. The attested copy of entries of entries of my register is Ex.CW3/A.

xxxxxxx Examination by Sh. B.S. Ghuman Adv., Counsel for accused.

I do not personally known to the parties and attesting witnesses. Bargain was not struck in my presence.

*The sale deed was scribed after 12:00 noon. I have not scribed any other documents after the sale deed dated 27.7.2007. Firstly, I made the entry in the deed writer register and I also read over the said entries to both the parties and then parties to the sale deed put their signatures and thumb impression respectively on my deed writer register and after that I scribed the sale deed. One and half hours have taken place while scribing the said Sale Deed. Stamp Paper was purchased in my presence. The stamp vendor used to sit in front of my seat. The accused did not sign the register of stamp vendor in my presence. The parties reached on my seat at about 12:00 noon. The joint sub-registrar used to sit at the seat after 4/5 P.M. I cannot tell if joint Sub-Registrar was present in the Sub Tehsil premises Garhdiwala on that day or not. On the same day, I scribed two mortgage deed, two Wills. Again said One Will and four mortgage Deeds. I cannot tell whether the other documents were got registered on that day or not. **The payment was not done in my presence but however, I asked to the accused regarding payment and they replied that they have received the payment.** It is wrong to suggest that the entry in my deed writer register was not scribed in the presence of the accused. It is also wrong to suggest that the said entry was also not read over and explained to the parties and attesting witnesses in the presence of the accused. It is also wrong to suggest that the accused never replied that they have received the payment from the complainant. I have not seen the original sale deed today in the Court. I have seen only my entry in the Deed writer register. At the time of scribing the document, I used to handover to the seller parties. It is wrong to suggest that I have deposed falsely at the instance of complainant. It is wrong to suggest that I have taken the signatures of accused on the pretext of purchasing the stamp vendor on the blank entry on my deed writer register.”*

6. Aforementioned reproduction of deposition of material witness shows that “he has brought the summoned record, but does not say that he has brought original record”. Meaning thereby, this witness brought the record before the Court which was summoned at the instance of complainant. In examination-in-chief, this witness further deposed that ‘.....*The complainant has paid total sale consideration in the sum of*

Rs. 1,40,000/- to the accused.’ But in the cross-examination, he categorically admitted that ‘payment was not done in my presence but however, I asked to the accused regarding payment and they replied that they have received the payment.’

7. In regard to the statement of Deed Writer Raj Gopal Singh (CW-3), this Court is of the view that the stand taken in the complaint and argument addressed by learned counsel is contrary to the deposition. In cross-examination, this witness has categorically accepted the fact of not making any payment in his presence. Thus, his status is only of a hearsay witness on the issue of payment of sale consideration.

8. Learned Trial Court has also recorded deposition of witnesses produced by the complainant in regard to the reason of non-registration of the sale deed. As per complainant, office of the Sub-Registrar had closed because office time was over. But all the witnesses in their examination-in-chief as well as cross-examination have not made reference of this fact. Rather, by improving the story, said witnesses have pleaded that when they went for registration, computer went defective due to non-supply of electricity, therefore, sale deed could not be executed. In this regard also, learned Trial Court has recorded its detailed and well reasoned findings, which says as under:-

“11. After hearing arguments and after going through the material on record, this court has observed that complaint is based on agreement to sell dt. 27.7.2007 which was allegedly executed by accused but same could not be registered due to reasons that computer went defective and no registration was made from 3:37 to 4:28 P.M. on said date ld. Counsel for accused referred to cross examination of witnesses showing that complainant has put forward false

complaint. First of all, he has pointed out that abstract of register of deed writer has not been duly proved by complainant as he has not brought the original record in the court and the attesting witness as well as the complainant have not seen said extract in the court at the time of their evidence of abstract of register. The attesting witnesses have not identified their signature on the extract, meaning thereby the complainant has not duly proved this document on record.

12. The plea of complainant is that the accused persons had kept the original as well as the duplicate copy of sale deed with them and therefore the complainant is not in possession of any document. On the other hand, ld. Counsel for accused has vehemently argued that it cannot be presumed that sale deed as well as duplicate copy of the same is kept in possession of person who is selling the property (accused in present case has alleged). He has submitted that a person who is purchasing the property always keeps copy of agreement or sale deed as receipt of payment of amount put in the present case, since accused persons have not signed Sale Deed due to reason that controversy arose on the point of sale consideration, therefore, complainant has kept unsigned sale deed with her and withheld the same, thereafter, she has filed the present complaint in order to put pressure upon accused and to grab the property of accused at very less rate.

13. After minutely going through the testimony of all witnesses examined by the complainant, this court has observed that the complainant has examined CW1 Mohan Singh who is the stamp vendor, in his examination in chief before framing of charge he has stated on oath that on 27.07.07 he had sold stamp papers worth Rs.7,000/- to Surjit Kaur accused and another stamp paper of Rs.100 for execution of power of attorney and the amount for these papers was paid by the complainant. CW2 Gurmit Singh is the attesting witness of sale deed who has stated on oath that on 27.07.07, the sale deed was executed, he has put his signature on the sale deed as attesting witness, further that the complainant had paid Rs. 1,40,000/- to the accused in his presence. CW3 Rajgopal is the deed writer who has scribed the sale deed and has stated on oath that he had scribed the sale deed dt. 27.07.07 at the instance of Surjit Kaur and Surinder Singh accused and that the complainant had paid Rs. 1,40,000/- to the accused in his presence. He has further stated on oath that after scribing the sale deed, he had landed over the original as well as the duplicate copy of the sale

deed to the accused. Witness Piara Singh CW4 has duly supported the version of the complainant in his pre charge evidence, in after charge evidence, Id. Counsel for the accused had got recorded the statement that there is no need to cross examine this witness. Further in the last the complainant has herself stepped into the witness box as CW5 and has reiterated entire story on oath.

14. After giving thorough consideration to the cross examination of witnesses, one thing which has come to the notice of court is that in the complaint, the complainant has taken the plea that the sale deed could not be executed due to the reason that the time of office of Registrar was closed time was over but all witnesses in their examination in chief as well as in cross examination have not made reference of this fact, however they have improved the story and have pleaded a new fact that when they went for registration, at that time of computer went defective and thereafter electricity was gone, therefore the sale deed could not be executed.

15. Ld. Defence counsel has brought the attention of court towards the cross examination of witnesses out of which it emerges that the stamp papers were purchased at about 2 P.M. and the parties went for registration at about 4/5 p.m. But the evidence of complainant is silent as to why they did not register the sale deed in between 2 p.m. and 4 p.m. This also raises doubt as to story of complainant.

16. Further Piara Singh CW2 has stated in his examination in chief that the payment was made to accused through deed writer Rajgopal, and the deed writer in his cross examination as CW3 has stated on oath that the payment was not made in his presence. Further the complainant has herself stated in cross examination that she has withdrawn some amount from her account in SBI and the remaining amount was collected by her from her relatives, but she does not remember the account number and does not remember from whom she had borrowed the amount, meaning thereby the complainant has failed to prove the making of payment. It is not possible that a person does not remember the name of relative from whom she has borrowed money. It is further plea of the accused that the deed writer in connivance with accused had got signatures of accused on his deed writer register on the pretext of purchasing stamp papers.”

9. It is worth noticing that in defence, Registration Clerk has

been produced as DW-1, who categorically deposed about registration of total 14 documents on 27.07.2007 and in the cross-examination categorically denied that there was any failure of electricity on the said date.

10. Learned counsel also argued that qua same subject matter, complainant filed a civil suit, which was dismissed. Thereafter, first appeal was also dismissed and now regular second appeal is pending adjudication before this Court. Therefore, he requests that either present application/appeal against acquittal may be heard alongwith said regular second appeal or after decision of the civil appeal.

I do not find any justifiable reason to withhold decision of the present application, which is for considering the issue as to whether it is a good case for grant of special leave to appeal or not.

11. After going through the record and the evidence available therein and hearing arguments, I do not find any infirmity, illegality or perversity in the impugned judgment of acquittal, passed by learned Trial Court. Same does not require any interference and, thus, affirmed.

12. Present application seeking special leave to appeal, being devoid of merit, is accordingly dismissed.

(SANJAY VASHISTH)
JUDGE

January 31, 2023

Pkapoor

Whether Speaking/Reasoned: YES/NO

Whether Reportable: YES/NO