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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-3045-2019 (O&M)

Date of decision: 03.08.2023

Gurcharan Singh

....Appellant/Applicant

versus

Harjit Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr.Preetwinder Singh Dhaliwal, Advocate for appellant-applicant.

ARUN MONGA, J. (ORAL)

Present application has been filed under Section 378 (4) of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for grant of leave to appeal against judgment dated 04.06.2019 passed by learned Additional Chief Judicial Magistrate, Barnala, whereby complaint filed by applicant/appellant against respondents-accused was dismissed and they were discharged.

2. Succinct facts of the present case, as noted by learned trial Court in the impugned judgment, are as under:

"The FIR was registered under-section 448, 427, 148, 149 IPC on the statement of Gurcharan Singh son of Babu Singh who submitted that he is an agriculturist and they are five brothers. All are married and living separately. He purchased land measuring 1 kanal 9 marla comprised in khata no. 48/81 khasra no. 309 (1-6) khasra nc. 796 (0-3) to the extent of 703/6960 share and 1/8th share comprised in khata no. 199/341 khasra no. 307(7-9) situated in the revenue limits ofllage Tallewal. Jangir Singh was owner in possession of the said property. On 22.08.2013 vide sale deed and agreement to sell and possession (Yadashatnama) was written on stamp paper vide which Jangir Singh has purchased from Mukhtiar Singh. The possession of the same was delivered to him. The sale deed was got executed in favour of his wife Sandeep Kaur. The property purchased on stamp paper i.e. land of house was is his own name. Land measuring 10 marlas stands in his name. The said land was abutting to the house of Harjit Singh, Gurwinder Kaur and Amritpal Kaur. The boundary wall was constructed there by Jangir Singh himself. In the intervening night of 29.03.2018 Harjit Singh, Babaljit Singh, Gurwinder Kaur and Amritpal Kaur in furtherance of common intention alongwith Bakshish Singh, Kunda Singh and 8/10 unidentified persons demolished the wall and constructed the 100 feet wall in length and took the possession. When he went there he

came to know this fact. There was a word of compromise in the panchayat. Now he was going to police station to get his statement recorded. The accused demolished the wall and constructed the new wall to take the possession as Jangir Singh vendor is having only five daughters and all are married. On the statement of complainant FIR under-section 441, 427, 148, 149 IPC was registered. 10 prepared the site plan. During investigation cancellation report was moved but complainant did not agree to the investigation and then the court took the cognizance and after recording the statement of witnesses, accused Harjit Singh, Kewal Singh, Babaljit Singh, Gurwinder Kaur, Amritpal Kaur, Bakshish Singh and Kunda Singh were summoned under-section 447, 448, 427, 148, 149 IPC.”

3. Learned counsel for applicant would contend that the witnesses clearly deposed that the land was purchased through sale deed Ex.C1 but forcible possession of property i.e. subject matter of sale deed Ex.C1, was taken by accused Harjit Singh. Kewal Singh sons of Gurdev Singh, Babaljit Singh son of Harjit Singh, Gurwinder Kaur wife of Harjit Singh, Amritpal Kaur wife of Kewal Singh, Bakshish Singh son of Kunda Singh and Kunda Singh son of Amar Singh resident of Village Tallewal alongwith 8-10 unidentified persons. She specifically deposed that a compromise was executed in the Panchayat but accused party did not fulfill the terms of compromise and this fact has also not been taken into consideration by the Ld Trial Court while passing the impugned order.

3.1. Learned counsel further submits that the Trial Court further failed to consider the fact that the complainant examined Nachhatar Singh as CW4 who deposed that agreement Ex.C5 was executed on the basis of fraud. He also deposed that agreement Ex.C5 is meaningless and has no value in the eyes of law. Complainant further examined Surinder Singh as CW5 who deposed that Jangir Singh had executed agreement to sell Ex.C6 in favour of Gurcharan Singh. He further deposed that possession of subject matter of agreement to sell was handed over to Gurcharan Singh. He proved the signatures of Gurcharan Singh on agreement to sell as Ex.C7.

3.2 Learned counsel would further urge that learned trial Court has wrongly and illegally ignored the natural and probable evidence of the applicant which is sufficient to convict the respondents but on the other hand the same has been ignored by learned trial Court. Further submits that that the prosecution has fully proved on record

the case against the respondents and no link evidence is missing. There is more than sufficient evidence on record to connect the respondents with the crime which they have committed and ingredients of Sections, under which they have been charge-sheeted are clearly made out from the evidence on record but learned trial Court has wrongly and illegally ignored the same and acquitted the respondents without applying judicious mind to the evidence on record, after misreading the evidence on record. The judgment passed by learned trial Court is based on surmises and conjectures and is a non speaking one and evidence of the appellant has not been appreciated in a proper manner, contends the learned counsel.

4. I have heard learned counsel for the applicant and perused the case file.

5. After appreciating the evidence on record, vide impugned judgment dated 04.06.2019, learned Court below dismissed the complaint filed by the applicant-complainant.

6. Aggrieved, applicant-complainant filed the present application seeking leave to appeal against aforesaid impugned judgment.

7. Impugned order dated 04.06.2019 is *inter alia* premised on the following reasoning:

".....From the evidence led by the complainant and documentary evidence it is clear that a share was purchased from Jangir Singh and every co-sharer is considered to be in possession of every inch of land unless until the same is partitioned. It is admitted by the complainant in cross-examination that khasra no. 796 is not abutting to khasra no. 309 and as per sale deed Ex.C1/A, Sandeep Kaur purchased the land from khasra no. 309, 796 and 307 and Yadashatnama executed by Jangir Singh in favour of Gurcharan Singh is not having any value in the eyes of law as per section 17 and 49 of the Registration Act. The complainant could not prove his exclusive possession over the property in dispute. No revenue official is examined to prove the possession or exclusive possession of Jangir Singh vendor over the suit property. So there is no ground to frame the charge under any of the section against any of the accused. So present complaint is dismissed and accused are ordered to be discharged. File be consigned to the record room after due completion."

8. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective. The contentions

raised herein by learned counsel for applicant are colored and negated by the findings recorded by learned trial Court.

9. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair**¹, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their favour; first the presumption of innocence, and secondly the accused having secured an acquittal/discharge, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

10. In **Anil Kumar Gupta vs. State of U.P.**², it was held as under:

“This Court held that “the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only- reappraise the evidence to arrive at its own conclusions.

(emphasis supplied)

11. This Court following the decision in *Ramesh Babulal Doshi*, further observed that ‘there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappraising the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.’”

¹2002(4) RCR (Criminal) 750 SC

²2001(2) RCR(Criminal) 292 SC

11. In the instant case, findings recorded by learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.
12. Instant application seeking leave to appeal is hereby dismissed.
13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

03.08. 2023
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No