

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-2917-2019
Reserved on: 20.2.2023
Date of Decision: 3.03.2023

Sabar Hassan

.....Applicant

Versus

Abdul Jabbar and others

.....Respondents

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

Present: Mr. M.K.Singla, Advocate
for the applicant.

SURESHWAR THAKUR, J.

1. Through the instant application, the aggrieved victim-complainant prays for leave being granted, to challenge the verdict of acquittal, as made on 20.9.2019, upon complaint No. 33 of 25.4.2013, by the learned Judicial Magistrate concerned. The above made verdict of acquittal, upon the accused concerned, was in respect of charges drawn against them qua offences punishable under Sections 420, 467, 468, 471 read with Section 120-B of the IPC.

Factual background

2. The complainant made an averment in the complaint, that despite one Mst. Gulzari Begum, who died during the pendency of the complaint, and, as such the proceedings against her, were ordered to become abated, being declared by this Court, in a decision made on 12.12.2001, upon RSA No. 1974 of 1981, to be not the lawful owner of the

disputed property, she yet proceeded to in respect thereof, hence execute an agreement to sell on 8.7.2005 with her son, who is arrayed as accused No. 2 in the complaint. The other accused are the marginal witnesses to the said agreement to sell, as was made in respect of the disputed property.

3. In pursuance to the drawing of the agreement to sell (supra) by the deceased Mst. Gulzari Begum in favour of her son, arrayed as accused No. 2 in the complaint, the latter succeeded in obtaining a decree of specific performance, whereafter he instituted an apposite execution petition before the learned Executing Court concerned. However, after issuance of warrants of possession by the learned Executing Court, hence on objections being raised by the JDs concerned, to the execution of the decree of specific performance, as made on suit No. 55 of 17.1.2016 by the learned trial Judge concerned, the said execution petition became withdrawn by accused No. 2.

Reasons for dismissing the instant application

4. However, the drawings of agreement to sell by deceased-accused No. 1 in favour of her son-accused No. 2, and, also the latter subsequently proceeding to successfully obtain a decree of specific performance of the said agreement to sell, and, thereafter only on objections, being filed by the complainant, to the execution petition, as instituted for enforcing the decree of specific performance, rather the plaintiff withdrawing the execution petition, all are contended to be the fraudulent acts. The reasons, as setforth in the complaint, are that, as the sale deed, as became purportedly executed in favour of deceased accused Mst. Gulzari Begum, and, the said sale deed dated 10.8.1971, being pronounced to be of no consequence, by this Court, through a decision made on 12.12.2001, upon RSA No. 1974 of 1981. Moreover, it became

also averred, that though the RSA (supra), appertains to a suit for injunction, and, not to any title suit but yet when subsequent to a decision made on 12.12.2001, upon RSA No. 1974 of 1981, accused Mst. Gulzari Begum, also unsuccessfully instituted a suit for possession bearing Suit No. 148 of 19.8.2002, before the learned trial Judge concerned, wherein, the complainant was arrayed as defendant No. 18. Therefore, it is averred, that the deceased Mst. Gulzari Begum had no right, title and interest to execute the agreement to sell with her son, who became arrayed as co-accused No. 2 in the complaint.

5. Predominantly if assuming so, yet the complainant except to the extent of receiving a favourable verdict, in the suit for permanent prohibitory injunction from this Court, through a decision made on 12.12.2001, upon RSA No. 1974 of 1981, rather visibly does not appear to cogently establish, that he had a superior title in the disputed property, than the one which Mst. Gulzari Begum purportedly held thereon. If so, prima facie only to the extent of the plaintiff's possession over the disputed property becoming validated through the protective shield of the verdict (supra), as made by this Court upon RSA (supra), rather he did not hold any vested title as owner theretos. Therefore, if Mst. Gulzari Begum was not able to establish the valid drawings by her, of the sale deed dated 10.8.1971, hence with her vendor.

6. Resultantly, when the dispute which emerged, with respect to the contentious property, was inter se the State Government, and/or the lawful alienating capacity of the vendor of Mst. Gulzari Begum, whereas, the State not supporting the allegations, reared by the complainant against the accused. Moreover, when primarily the State Government may have

been also aggrieved from the sale deed (supra), as became executed in favour of the deceased Mst. Gulzari Begum with her vendor. However, its failure to support the complainant, does bringforth an inference, that though through the execution of the disputed agreement to sell, did result, in the vendors successfully obtaining a decree of specific performance from the Civil Judge concerned, yet the said agreement, did not except, to the limited extent of unsettling the possessory interest of the complainant in the disputed property, rather did not unsettle the rights of the complainant, as a purported valid title holder to the disputed property.

7. Naturally then there was no wrongful loss caused to the complainant nor any wrongful gain accrued to the accused, except may be, to the limited extent, that in pursuance to the disputed agreement to sell, the vendor succeeding in obtaining a decree of specific performance, which but was not put to the fullest execution, as the apposite execution petition became withdrawn, on the apposite objections, being raised by the complainant-J.D.

8. Be that as it may, even if there was an attempt to disturb the possession of the complainant over the suit property, yet when also the said attempt never fructified. Therefore also no loss to the possessory interest of the complainant over the suit property was ever caused, nor his possession over the suit property became assumed by the co-accused No. 2, in pursuance to his obtaining a decree of specific performance, in respect of the disputed agreement to sell. Therefore, there was never ever a wrongful gain of possession over the suit property by co-accused No. 2, nor also any loss of possession of the disputed property was caused to the complainant.

9. Even otherwise, except co-accused No. 2, the other accused are the marginal witnesses to the disputed agreement to sell, and, obviously in that limited role, unless evidence surfeith that, they were aware of the lack of title, if any, in the vendor of the disputed agreement to sell to execute it with -co-accused No. 2, thus no penal inculpable mens rea was attributable to them. However, the above evidence is amiss. Therefore, no penally inculpable mens rea was attributable to the marginal witnesses to the agreement to sell.

10. In addition, since there is also no evidence on record displaying, that co-accused No. 2 was aware of the judgment and decrees, as became pronounced adversarial to his mother, thus he also cannot be construed to be amenable to face any penal inculpable mens rea, for his in pursuance to the said disputed agreement to sell hence successfully instituting a suit for specific performance before the learned Civil Judge concerned.

Final order

11. 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 20.9.2019, upon complaint No. 33 of 25.4.2013, by the learned Judicial Magistrate concerned, is declined, thus, 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. 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.

Personal, and, surety bonds, if any, furnished by the accused concerned, are

ordered to be forthwith cancelled, and, discharged.

12. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

March 3rd, 2023
Gurpreet

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