

CRM-A-1776-2023(O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-A-1776-2023(O&M)

Date of Decision:-24.10.2024

Tej Kaur @ Mahinder Kaur

.....Appellant.

Vs.

Rattan Singh & Anr

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Himmat Singh Sidhu, Advocate for the Appellant.

JASJIT SINGH BEDI, J.

The present application under Section 378(4) of Cr.PC has been filed for grant of leave to appeal against the judgment of acquittal dated 26.07.2023 passed by Sub Divisional Judicial Magistrate, Jalalabad (West) Additional Sessions Judge, Faridabad.

2. As per record, the offence was committed in the year 2004, the complaint came to be registered on 04.09.2017. The judgement of acquittal was recorded on 26.07.2023. The leave to appeal was filed in 2023 and has come up for hearing today after more than 07 years of the filing of the complaint.

3. Briefly, the case of the complainant is that the husband of complainant namely Teja Singh was cultivating land measuring 08 kanals comprised in Rectangle No.1, killa no.18(4-0), 19(4-0) situated at village



Chak Roran Wala, Tehsil Jalalabad as *Mujara gair marsusi* and the entry of the said land was recorded in his name in the revenue record. Teja Singh died about 20 years ago and after his death, the complainant along with their children i.e. Harbans Singh, Gurmeet Singh sons and Harbans Kaur, Sukhwinder Kaur daughters were his legal heirs. Accused no.1 in connivance with the other accused persons got the rapat roznamcha No.332 dated 26.02.2004 entered and changed the khasra girdawri in favour of accused no.1 and got impersonated the complainant and her children and got forged signatures and thumb impression for changing of the khasra girdawri. The complainant approached the police and requested for appropriate action, to be taken but to no avail. Hence the complaint was being filed.

4. After considering the preliminary evidence, only accused Rattan Singh and Jagtar Singh were ordered to be summoned under Sections 419, 420, 465, 466, 467, 471, 120-B of IPC and the complaint qua the remaining accused Des Raj @ Hans Raj and Balvir Singh was dismissed by the then SDJM, Jalalabad vide order dated 04.01.2022.

5. The accused put in appearance and were released on bail. In pre charge evidence, the complainant examined CWI Mangat Ram Patwari who deposed regarding summoned record i.e. Roznamcha Register for the year 2003-04 of village Chak Roranwala, Tehsil Fazilka and original rapat No.332 dated 26.02.2004 and copy of the same was exhibited as Ex.C1.

6. Thereafter, the complainant examined CW-2 Anil Kumar Gupta - Handwriting and Finger Prints Expert, Fazilka, who gave his affidavit Ex.CW2/A along with report Ex.CW2/B and photocharts Ex.CW2/C to Ex.CW2/E. Further, he relied upon specimen sheet Ex.CW2/F.

He also clarified that original disputed thumb impression Mark-Q1 was



available in the Court as original roznamcha was produced by the concerned Patwari.

7. Thereafter, the complainant examined herself as CW3 and during her examination in chief reiterated the averments made in the complaint. In her cross examination she however conceded that her nephew Baljit Singh accompanied her for proceedings and she had filed this case to take possession of the land in dispute.

8. The complainant examined her daughter as CW4 namely Sukhwinder Kaur, who during her examination in chief stated that she was an illiterate lady and that she had never put her signatures on any paper and that they had never appeared before the Patwari to relinquish her possession by way of any rapat roznamcha. In her cross examination, she claimed inability to produce any document from the public record to clarify if in routine she was affixing thumb impressions or signatures.

9. The complainant examined Harbans Kaur as CW5, who also deposed on the lines of CW4 during her examination in chief and in her cross examination she admitted that when they came to know about Ex.C1 she got her signatures compared from the Handwriting Expert with Mark-X1 as well as thumb impression of her mother and respective signatures of other brothers and sisters.

10. Thereafter, the complainant tendered into evidence copy of rapat no.332 dated 26.02.2004 Ex.C1/A, copy of jamabandi for the year 2002- 03 Ex.C2, copy of khasra girdawri Ex.C3, copy of khasra girdawri for crop Sauni 2017 to Harri 2018 Ex.C4, application along with report dated 25.01.2023 Ex.C5 and notary attested copy of voter ID Card of Sukhjot Kaur Ex.C6 and closed her pre-charge evidence.



11. After considering the evidence, facts and documents on record and after hearing counsel for the parties, offences under Section 419, 420, 465, 466, 467, 471 read with Section 120-B IPC were made out against accused - Rattan Singh and Jagtar Singh and the charges were framed accordingly.

12. In after-charge evidence, the complainant Tej Kaur was recalled for further examination as CWI, and thereafter, she tendered into her after charge evidence jamabandi for the year 2017-18 Ex.C7, khasra girdawri for Sauni 2005 Ex.C8, newspaper Ex.C9, photocopy of her affidavit Mark-CX and thereafter, she closed her after-charge evidence.

13. All the incriminating evidence appearing against the accused was put to them in their statement recorded under Section 313 Cr.P.C. They pleaded their false implication. Accused - Ratan Singh and Jagtar Singh submitted that they were innocent. Ex.C1 was a genuine document and the complaint had been filed by giving false narration with respect to the document Ex.C1 which had been executed by the complainant and her sons/daughters. The complaint had been filed with the sole motive to put pressure upon them to take possession of the land in question from them by way of misusing the process of law as well as giving criminal colour to a civil dispute.

14. The accused tendered into defence evidence jamabandi for the year 2017-18 Ex DA, copy of khasra girdawri from year 2003-2004 to year 2022-2023 Ex.DB. Thereafter, accused Jagtar Singh tendered into defence evidence self attested photocopies of affidavit executed by Gurmeet Singh, Kashmir Chand and Madan Singh as Mark-DI to Mark-D3 and computer generated copies of FIR Ex.DC to Ex.DE and thereafter, the accused closed



their defence evidence.

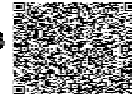
15. Based on the evidence led the respondents/accused were acquitted by the court of Sub Divisional Judicial Magistrate, Jalalabad (W) vide judgment dated 26.07.2023.

16. It is the aforementioned judgment which is under challenge in the present case.

17. The Counsel for the appellant/complainant contends that the judgment of acquittal has been passed on conjectures and surmises. The appellant proved her case beyond any shadow of a doubt by examining CW-1-Mangat Ram Patwari to prove the rapat roznamcha register for the year 2003/04, original Rapat no. 332 dated 26.02.2004(Ex-C-1), CW2- Anil Kumar Gupta, handwriting and fingerprint expert, CW3-herself to prove the complaint, CW4- Sukhwinder Kaur, CW5 Harbans Kaur and tendered into evidence document mentioned in para 10 of the impugned order. The Ld. Trial Court did not appreciate the above-said evidence in the right perspective.

18. The appellant proved on record beyond a shadow of doubt Rapat ExC-1 no 332 dated 26.02.2004 which had been entered by revenue officials in connivance with the accused under a deep-rooted conspiracy by forging thumb impression and signature of the complainant side. She further proved on record that neither the appellant nor her daughter ever marked any thumb impression or signed any document. Admittedly the beneficiary is the accused. The Trial Court had ignored this aspect.

19. The Trial Court did not take into consideration that entry dated 26.02.2004 pertain to rectangle no. 11 but a change had been made in Rectangle no. 1 which was unexplained and rather showed the criminal

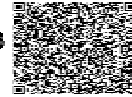


conspiracy of all the accused. He therefore contends that the impugned judgment was liable to be set aside

20. We have heard the counsel for the appellant and have gone through the lower Court record.

21. It is to be established on record if accused Rattan Singh and Jagtar Singh acted in conspiracy with each other and prepared documents in a fraudulent manner. Apparently, there is no evidence to this effect that any document has been prepared or used by the accused. A perusal of the document Ex.C1 rapat dated 26.02.2004 at Serial No.332 reflects that Jagtar Singh produced one affidavit dated 04.11.2003 as per which Tej Kaur widow and Harbans Singh, Gurmeet Singh, Harbans Kaur and Sukhwinder Kaur residents of village Roranwala, Tehsil Jalalabad came present and stated that the land mentioned therein be transferred in favour of Rattan Singh. It bears the signatures of said persons along with thumb impressions of complainant Tej Kaur. The cross examination of CW1 Mangat Ram-Patwari reflects that he was cross examined first on 12.10.2022 and he was asked a specific question regarding the affidavit, to which he answered that he had not produced the affidavit mentioned in the rapat and the matter was adjourned as he sought sometime to trace it. Then again on 04.11.2002 i.e. next date of hearing when his evidence was concluded he conceded that he had verified the entire record but could not find anything with regard to affidavit. Thus, it was upon the complainant to produce some other surrounding circumstances, on the basis of which it could be said that the said affidavit was a result of fraud etc. When any entry is made in the revenue record on the basis of an affidavit a copy thereof is to be attached.

The record is also sent to the District Headquarters as well as with the



CRM-A-1776-2023(O&M)

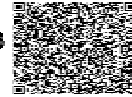
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Patwari at the Village level. The record is also maintained/updated on computer. An affidavit is normally typed on stamp paper and attested. The said document was to be brought on record by the complainant and the Court cannot assume that one affidavit was in existence, which was a forged and fabricated document.

22. Complainant Tej Kaur in her cross examination conceded that she had filed the case to take back the possession. However, at the same time she admitted that there is no other case, much less any civil suit filed by her to take the possession. She examined CW2 Anil Kumar Gupta - Handwriting and Finger Prints Expert but in her cross examination Tej Kaur denied giving any such thumb impression for the purpose of analysis. She admitted that it is her cousin Baljit Singh, who was accompanying her on every date and even on the date of her cross examination.

23. CW4 Sukhwinder Kaur and CW5 Harbans Kaur are daughters of complainant, who in their cross examination depicted different scenario which were contradictory to each other. This makes the case of the complainant highly doubtful. Cross examination of Sukhwinder Kaur recorded on 11.11.2022 reflects that she conceded that she was married for the last 18 years but she disclosed her address as that of her parental home. She stated that she had never seen her sister Harbans Kaur while signing, whereas CW-5 Harbans Kaur appeared and signed in Punjabi. CW-5 was also married at village Mohlan, District Ganganagar, Rajasthan for the last 28/29 years, but she showed her address as that of village Roranwali.

24. Most importantly, there is no explanation for the delay in filing the complaint. The occurrence took place in 2004 but the complaint was filed in 2017. If the complainant party had been dispossessed due to a



forgery of document, they would not have remained silent for 13 years.

25. The report of the expert can never be conclusive since it is only an opinion evidence. The attending facts and circumstances are to be seen in the instant case. The facts and circumstances do not support the opinion arrived at by the expert. It has been so held in ***Sher Bahadur Vs. State of Bihar 1967(2) SCWR 829*** as under:-

*“ 18. So far as expert evidence is concerned, it has been held, by a series of decisions of this Court that expert evidence as to handwriting, is only opinion evidence and it can never be conclusive. It has also been held, by this Court, that for acting on the evidence of any expert, it is usual to see if that evidence is corroborated, either by clear, direct, or by circumstantial evidence. It has been held further that the sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. The cases in which these principles have been laid down, have been referred to by this Court, in ***Fakhruddin v. State of Madhya Pradesh, AIR 1967 ISCWR 449 (1)***. In fact, in this decision, a conviction was based, on the sole testimony of a handwriting expert, and this Court after a review of all the authorities, hold that where an expert opinion is given, the Court must see for itself and, with the assistance of the expert, come to its own conclusion whether it can safely be held that the two writings are by the same person. This Court, further, to satisfy itself whether the testimony of the hand writing expert is acceptable or not, compared the disputed writings, with the admitted hand writings, and, ultimately, accepted the expert's testimony. No such attempt has been made, either by the Trial Magistrate, or the learned Session Judge on appeal, in this Case. The High Court has summarily dismissed the revision filed by the appellant.”*

26. CW-1 Modan Singh-Panch was examined as an independent witness during preliminary evidence. However, he was not examined during pre-charge evidence which also makes the version of the complainant doubtful.

27. Further, the non moving of any complaint to the office of the Deputy Commissioner or revenue authorities regarding any misdeeds of any

revenue official, Patwari etc., creates a doubt on the version of the complainant.

28. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon’ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

29. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment of acquittal passed by the Sub Divisional Judicial Magistrate Jalalabad (West). Therefore, the application seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

October 24, 2024
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>