

CRM-A-1088-MA-2014 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1088-MA-2014 (O&M)

Date of decision : March 22, 2024

Dharama Raj

....Applicant

VERSUS

Subhash and others

....Respondents

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

Present : Mr. Raghav Garg, AAG, Punjab,  
*Amicus Curiae*, for the applicant

**KULDEEP TIWARI,J. (ORAL)**

CRM-21017 OF 2014

1. Considering the valid, and, good reasons, as mentioned in the application for condoning the apposite delay of 47 days, therefore, the application is **allowed**.

2. Delay of 47 days in filing the application, is condoned.

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3. The instant application under Section 378(4) of the Cr.P.C., seeking grant of leave to appeal, has been filed by the present applicant against the judgment of acquittal recorded by the learned trial court concerned, in a private complaint No. RBT 138 of 2012 dated 1.5.2009/23.4.2012, registered under Sections 420,467,468,471,148,149,506 of the Indian Penal Code, whereby, the respondents have been acquitted of

the charges framed against them.

4. Learned counsel for the applicant has submitted that the applicant, who is complainant, has proved charges by leading cogent evidence beyond reasonable doubt, which has not been appreciated by the learned trial court concerned, in its right perspective. He has further submitted that the learned trial court concerned, overlooked the fact that it has never been proved on record, that the land purchased vide sale deed Ex. DD, and Ex. DE, by Kehar Singh and Bhagwan Singh, respectively, the said land was actually adjacent to the land in dispute, and has been merged with it.

5. This Court has examined the judgment passed by the learned trial court concerned. The complaint in the instant matter was filed by the applicant with the allegations that the forefathers of the complainant, and accused no. 1 to 4, had purchased a plot measuring 440 sq. yards in equal shares vide registered sale deed No. 140 dated 9.4.1951. However, accused nos. 1 to 4, in connivance with each other, hatched a criminal conspiracy, and sold 361 sq. yards to accused no. 5, thus, deprived the complainant of his 1/3<sup>rd</sup> share in the said plot.

6. After preliminary evidence, respondents-accused Nos. 1 to 4, were summoned to face trial under Sections 420, 506, 120-B IPC, whereas, complaint against accused no. 5 was dismissed. Accused No. 4-Manohar Lal, died, before he could surrender before the Court concerned. After pre-charge evidence, the charges were framed by the learned trial court

concerned. Post-charge evidence, the complainant examined Devi Dayal, Registration Clerk as CW-1 and himself as CW-1. The complainant further placed reliance upon copy of sale deed No. 1859 dated 28.12.2007 Ex. CW1/A and sale deed No. 140 dated 9.4.1951 as CW2/A, Hindi translation of Ex. CW2/A has also been placed on file as Ex. CW2/A/T.

7. In defence, the respondents-accused examined Rajesh Kumar Civil Ahlmad as DW-1, Deepak Verma, Draftsman as DW-2 besides some documents.

8. The learned trial court concerned, after considering the evidence led by both the parties, concerned has held that the applicant has miserably failed to prove that, accused nos. 1 to 4, in a criminal conspiracy, had sold the plot in question to accused no. 5, beyond their shares, and thus, deprived the complainant of his 1/3<sup>rd</sup> share in the said plot. The relevant observation of the learned trial court concerned is read as under:-

*“ The whole case of the complainant is based upon documentary evidence and all the documents relied upon by the complainant are admitted. A perusal of Ex.CW1/A shows that while selling the land measuring 361 Sq. yards to Shakuntla Devi by accused No.1 to 3 and Manohar Lal, the land 361 sq. yards has been described as purchased vide sale deed No.140 dated 9.4.1951 (Ex. CW2/A) and being ancestral. It is the stand of defence that vide Ex.DD and Ex.DE, some land was purchased by their forefathers and after including the said land into the shares inherited by them in pursuance of sale deed Ex. CW2/A they sold land measuring 361 sq. yards to Shakuntla Devi. A*

*perusal of Ex.DD and Hindi translation thereof Ex. DD/T show that 33 sq. yards of land was purchased by Kehar Singh and a perusal of Ex.DE and Hindi Translation thereof Ex. DE/T show that land measuring 33 sq. yards was purchased by Bhagwan Singh. Both the sale deeds were executed on 27.5.1963. The site maps Ex.D1 and Ex.DF to Ex.DH further show that the land so purchased vide Ex.DD and Ex.DE is adjacent to land purchased vide sale deed Ex. CW2/A. In the light of these circumstances, if we look into the matter it came out that 2/3<sup>rd</sup> share of fathers of accused in land purchased vide Ex. CW2/A comes to 294 sq. yards and after merging the total land purchased vide Ex.DD and Ex.DE i.e. 66 sq.yards, the total land with the accused persons was 360 sq. yards. In this manner, the plea of defence seems to be probable. In Ex. CWI/A also it has been specifically mentioned that the whole land measuring 361 Sq. yards was purchased vide Ex. CW 2/A and land being ancestral. Therefore, it cannot be said in strict sense that there was any fraudulent and dishonest intention on the part of the accused persons while executing sale deed in favour of Shakuntla Devi. Moreover, it is specifically averred in the complaint itself that complainant has raised construction over his share. In this manner, it cannot be said that the complainant was in any manner deprived of any area land belonging to him. As regards admissibility of Ex.DD and Ex.DE is concerned, it is established that these are the certified photocopies of original placed in the civil suit file. Since, these are the certified copies of the original and the original being 30 years old, a presumption is there regarding their due execution and as such Ex.DD and*

*Ex.DE cannot be outrightly ignored.*

*16. It is settled law that judgment of the civil court, cannot be said to be binding on the criminal court, for the purpose of deciding the guilt of the accused in a criminal case. In this regard, reliance can be placed upon case titled as **Budh Ram Vs. State of Haryana 2010(2) RCR (Criminal) 352(P&H)**. Further, there is no principle of law that judgment of civil court, would be a conclusive proof of the facts involved in the criminal trial relating to the same issue and in this regard reliance can be placed upon **B.N.Kashyap Vs. Emperor AIR 1945 Lahore 23**. Thus, this case has to be decided on the basis of the evidence led therein. Moreover, document Ex.DA, certified copy of affidavit of complainant Dharamraj clearly shows that the land in his possession and the land measuring 361 sq. yards reflected in Ex. CW1/A are different lands. In these circumstances, it is clear that the matter involved in the present complaint is purely of civil nature and as such when the matter squarely falls within the ambit and jurisdiction of civil court, it cannot be reagitated in criminal court. In view of above discussion, none of the ingredients of Section 420 IPC is present which could attract the liability under Section 420 IPC. As regards criminal intimidation, there is no such allegation in the deposition of complainant himself as CW-2, as such no offence under Section 506 IPC is made out.”*

9. Today, the learned counsel for the applicant has failed to point out any infirmity or illegality in the above findings.

10. Ordinarily, the order of acquittal will not be interfered with, merely because an other view is possible. Upon passing the 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.***

11. 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 **dismissed**, it being bereft of merit, and, the impugned judgment of acquittal, rendered by the learned Judicial Magistrate Ist Class, Kaithal is hereby **upheld**.

( KULDEEP TIWARI )  
JUDGE

March 22, 2024

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*Whether speaking/reasoned ?*    *Yes/No*  
*Whether Reportable ?*            *Yes/No*