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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-A-424-2022 (O & M)
Date of Decision : 08.08.2023

RAJ MOHINDER PAL VERMA .....Appellant

Versus

STATE OF HARYANA AND ANOTHER ....Respondents

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

Present : Mr. Hemant Bassi, Advocate
for the applicant.

Mr. P.P.Chahar, DAG, Haryana.

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<u>SURESHWAR THAKUR, J. (Oral)</u>

<u>CRM-12958-2023</u>

1. The application is allowed subject to all just exceptions and the judgment and decree dated 14.09.2022, as passed by the learned Additional Civil Judge (Senior Division) Ambala, in Civil Suit No. 2331 of 2013, is taken on record as Annexure A-1.

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2. Through the instant application, the appellant seeks special leave to appeal against the verdict of acquittal, as made by the learned Chief Judicial Magistrate, Ambala on 24.11.2021, on complaint No. 20 of 2014.

<u>Factual Background</u>

3. Briefly stated the facts of the complaint are that complainant

was Ex-Class-1 Gazetted Officer and Senior Scientist, Bhabha Atomic Research Centre, Department of Atomic Energy Mumbai. He alleged that Shri Dasondhi Ram son of Shri Gobind Ram was the owner in possession of shop-cum-flat No. 162/9502 & 163/9503 located at Ward No. B-5, Sarafa Bazar, Ambala City. It is alleged that he was doing business of Goldsmith for more than 70 years in the said premises. It is alleged that the shop-cum-flat No. 162/9502 & 163/9503 is recorded in the ownership column as Desondhi Ram as owner in the Municipal Records of House Tax Register of Municipal Committee of Ambala City. It is alleged that after the death of Shri Desondhi Ram, his two sons Raj Mohinder Pal and Rajinder Prasad became the owners and after the death of Shri Rajinder Prasad and his wife Kanta Verma, he and his nephew Upendra Verma became the owners and in possession of shop-cum-flat No. 162/9502 & 163/9503, located at Ward No.B-5, Sarafa Bazar, Ambala City. It is alleged that ownership in ownership column of Municipal records has been changed from Shri Desondhi Ram to Madhavi Luthra wife of Rajesh Luthra without any knowledge of complainant and his brother or his legal heirs. Further submitted that no power of attorney or sale deed has been executed by us in favour of Madhavi Luthra or anybody for that matter. Further submitted that it has been done by accused Rajesh Luthra, Madhavi Luthra and others based on forged and fabricated documents. It is alleged that Rajesh Luthra accused is doing the business of jewellery in the name of Luthra Jewellers and the shop-cum-flat is located in prime jewellery market, Sarafa Bazar on main road. It is alleged that he wanted to purchase the property from complainant but he refused as it was memorial of his father. Further submitted that accused threatened that by any means by hook or crook, he will grab the property. Further submitted that he hatched a criminal conspiracy with Satya Devi, Rajesh Kumar, Anil Verma, Rohit Luthra and one lady Laxmi Devi to grab the property of the complainant. Further submitted that the transfer of property in the name of Madhavi Luthra has happened when civil suit was going on and stay was granted by the Court. Further submitted that Rajesh Luthra was a mischievous person and knows all ways and means to grab the property. Further submitted that his master mind has done a very unique fraud through which property of anyone can be sold / purchased just by obtaining power of attorney from any third person, who is not even the owner and making it record by converting into sale deed and taking legal sanctity by registering it with the Sub-Registrar. The power of attorney was executed at a place where property was not located and nobody including the executor and receiver resided there. Further submitted that nobody saw or checked the ownership of the property both at issuing power of attorney and registering the sale deed. Further submitted that it also raises question on State to protect the property of person who stays outside to earn their livelihood. Further submitted that Rajesh Luthra obtained two power of attorneys executed at Chamkaur Sahib, where neither property was located nor the executor and receiver resided. Further submitted that one power of attorney was from one lady Laxmi Devi No. 93/4 dated 18.4.2001. It was in favour of two persons Satya Devi and Rajesh Kumar Luthra for the area 13.5 ft. x 13.5 ft. Further submitted that the said Laxmi Devi was in no way related with the said property and was resident of Morinda (Pb.) and both Satya Devi and Rajesh Luthra are resident of Ambala City. Further submitted that address of Laxmi Devi was given as House No.457, Ward No.13, Morinda, District Ropar and of Rajesh Luthra was 4627/3, Patel Road, Ambala City. Further submitted that address of Sub-Registrar while issuing power of attorney, no ownership documents, resident proof has been seen or some forged documents must have been shown to him. His brother

Rohit Luthra was witness to the whole process and the signatures of Laxmi Devi were both in Punjabi and Hindi. Further submitted that accused Rajesh Luthra obtained another power of attorney from Satya Devi and Rajesh Kumar vide No.26/4 dated 12.4.2001 for the area 13.5 ft. x 33.5 ft. both of them were not the owners in the said property at that time and till date and time. Further submitted that all Satya Devi, Rajesh Kumar and Rajesh Luthra are residents of Ambala City and property is also located in Ambala City. The address of Satya Devi, Rajesh Kumar and Anil Verma was given as 9502-9503/6, AMC No. 162-163/5, Ambala City and Rajesh Luthra was given as 4627/3, Patel Road, Ambala City. Further submitted that Shri Anil Verma is the son of Smt. Satya Devi and brother of Shri Rajesh Kumar and both Satya Devi and Rajesh Kumar had died and succeeded by Shri Anil Kumar as legal heir. It is alleged that whole process of obtaining the power of attorney and sale deed is fraud is proved from the statement given by Shri Anil Verma. Further submitted that he admitted that there was no address of residence of Satya Devi, Rajesh Kumar and himself Anil Kumar except of Ambala City and Delhi. Further submitted that Shri Anil Verma read the order dated 18.5.2001 in which his advocate appeared and stay was extended on the same property No. 162/9502 & 163/9503, located at Ward No.B-5, Sarafa Bazar, Ambala City. Further submitted that he further admitted that this property was not in his name nor in the name of his mother and brother as much as from beginning it was not in his name, his mother and brother name. He further admitted that neither he nor his mother and brother had sold this property to Madhavi Luthra and till date no registry has been executed in favour of anyone. Further submitted that he knows Madhavi Luthra and possession was given to Madhvi Luthra and money of about Rs.5 lacs has been taken but no registration was done. Further submitted that he admitted that Shri Desondhi Ram was working on disputed shop till his death. Further submitted that Smt. Satya Devi, Rajesh Kumar and Sadhu Ram forcibly entered into the said premises and obtained the perpetual injunction from the Court against the complainant and his brother. Further submitted that Smt. Satya Devi filed a civil suit for declaration and possession against Smt. Savitri Devi titled as 'Satya Devi vs. Savitri Devi etc.' which is pending in which complainant was also one of the defendant. Further submitted that in the said suit, they were seeking a share of 12.5% only which is also admitted by Shri Anil Kumar in his statement before the Court. Further submitted that Shri Rajesh Luthra executed a sale deed no. 1460 dated 25.7.2002 in favour of his wife Madhavi Luthra on the basis of false and fictitious documents power of attorney. In the sale deed, it is mentioned that there was no stay order. Further submitted that he has willfully concealed the fact that Shri Sundeep Singh, Hon'ble Judge has given the stay on 22.3.2001 on this property against Smt. Satyawati and Rajesh Kumar from whom he has obtained the power of attorney dated 12.4.2001 during period of stay and the same case titled as Rajinder Prasad vs. Satya Devi was pending. Further submitted that the size of the property was shown as 31 ft. x 11.6 ft. with shop size 10 x 10 and rest of the area is shown vacant, whereas it is admitted by Shri Anil Kumar that he has given possession of shop and flat. Further submitted that in Municipal Records, it is shop cum flat. Further submitted that he had shown financial transaction of Rs. 3 lacs whereas Anil Kumar said that financial transaction about Rs. 5 lacs has been done. Further submitted that at the time of sale deed, no power of attorney was produced before the Registrar/ Sub-Registrar nor any document regarding proof of ownership was shown to the Sub-Registrar. Further submitted that the Sub-Registrar registered a false and frivolous sale deed in favour of Smt. Madhavi

Luthra on 25.7.2002. The complainant had no knowledge about the sale deed as well as registered power of attorney. Further submitted that Shri Rajesh Luthra, Satya Devi and Anil Verma had never revealed about said power of attorneys and sale deed in the Court even in the reply given by Anil Verma in the case titled as 'Raj Mohinder Pal vs. Madhavi Luthra' in which sale deed was challenged. The complainant came to know about the fictitious sale deed and fictitious power of attorneys from Chamkaur Sahib, District Ropar (Punjab) throught RTI. Further submitted that complainant requested the accused to get the sale deed canceled but the accused persons refused to accede to the genuine request of the complainant. Hence, the present complaint.

Trial Court Proceedings.

4. In preliminary evidence, complainant examined himself as CW1. He also examined CW2 Balbir Singh, Clerk, MC office, Ambala City and CW3 Vikas Sharma. Thereafter, complainant placed on record copy of death certificate Ex.C8 of his father and closed the preliminary evidence.

5. In his pre charge evidence, the complainant examined six witnesses including himself as CW6. Thereafter, he closed the pre-charge evidence. The accused were charge sheeted under Sections 420, 467, 468, 471 and 406 read with Section 120-B of IPC.

6. In the after charge evidence complainant examined five witnesses including himself as CW1. Thereafter, the complainant closed the after charge evidence.

7. Statements of the accused under Section 313 Cr.P.C. were recorded wherein all the incriminating evidence against the accused was put to them. In the defence evidence, accused examined two witnesses.

8. After conclusion of the trial, as, became entered upon the complaint (supra), by the learned Chief Judicial Magistrate, Ambala, the

latter proceeded to make the afore verdict of acquittal.

<u>Inferences of this Court.</u>

9. It appears that the vendors of the respondents/accused/vendees, were earlier engaged thus with the other co-owners concerned, hence in a civil dispute about their entitlement to make alienations of the disputed property to the respondents-accused, but the latters remained un-arrayed as a defendants therein. In the above regard, reliance was placed upon Exhibit C-6, which embodies an order passed by the learned civil Court concerned against the vendors of the accused, rather against their alienating the suit property. Therefore, an effort was made to assign a penally inculpable mensrea rather to the accused.

10. However, in Civil Suit No. 2331/2013, as became instituted before the learned Additional Civil Judge (Senior Division) Ambala, therein became respectively arrayed as plaintiffs and defendants, only thus the complainant and the vendors of the accused. The said suit was decided on 14.09.2022, hence subsequent to the impugned order being made on the complaint, thus by the learned Chief Judicial Magistrate, Ambala. It is therefore necessary but to extract the decree of permanent prohibitory injunction, as became passed by the learned civil Judge concerned, on the suit (supra), thus the said operative part is extracted hereinafter.

> *" Issue No. 5 (Relief)*
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> *25. As a sequel to my findings on the above said issues, the suit of the plaintiff succeeds, hence, the same is hereby decreed with costs. It is declared that sale deed dated 25.07.2002 and other entry on the basis of said sale deed qua the suit property are illegal, null and void and not binding upon the rights of the plaintiffs and same are set aside. Further, plaintiffs are entitled to possession of their share in the suit property only after partition of the suit property.*

> *Further, the defendants are restrained from alienating the suit property."*

11. It appears that there was a purported violation of the order carried in Exhibit C6, and, which became rendered during the pendency of the civil suit No.92 of 2002 and whereby the vendors concerned were restrained from alienating the suit property. Though the said interim order became affirmed, thus through the learned civil Judge concerned, ultimately passing the above extracted decree of permanent prohibitory injunction against the defendants. However, if so, the said purported violation of Exhibit C-6, or transfer lis pendens of the suit property was redressable, rather only through an action for willful and intentional disobedience thereof, being raised at the instance of the plaintiffs, thus against the vendors of the accused in the complaint, and, or such alinees lis pendens being strived to be arrayed as defendants in the civil suit. Contrarily, the said was not being done, and, also as is evident from a reading of paragraph No. 26 of the impugned order, paragraph whereof is extracted hereinafter, qua the vendees of the accused/defendants in the said civil suit, rather being unaware about the dispute whereins the litigants were embroiled.

> *"26. It is alleged that accused himself mentioned in the written statement Ex.C27 that Smt. Satyawati etc. were co-sharers in the suit property. However, said written statement was filed on 8.8.2005 as reflected from Ex.C27 and there is nothing on record to show that on the dates on which power of attorneys Ex.C3 and Ex.C4 and sale deed, were executed, accused were having any notice about the dispute as to ownership of his vendors qua the property in question."*

12. Therefore, but obviously the accused in the complaint, cannot be said to be carrying the culpable *mensrea* to commit the charged offences. Even otherwise if subjudice the apposite civil suit, thus alienation of the suit property did occur, thereupon the vendees of the accused who were but

alinees lis pendens, rather were required to be impleaded as parties in the civil suit. However, they remained unimpleaded therein. Since only on impleadment of the accused, the vendees of the defendants, in the civil suit, thus they could have well attempted to vindicate the sale deeds executed, in their favour, thus through their relying upon the provisions of Section 41 of the Transfer of Property Act, 1882 embodying therein the principle of ostensible ownership. However, they became precluded to do so, merely on theirs remaining unimpleaded in the said civil suit. Contrarily, the complaint (supra) became instituted against them which however was an imperfect and untenable recourse to undo the breach, if any, as made of the order, as carried in Exhibit C6, exhibit whereof embodies an interim order of injunction becoming rendered thus, for restraining the vendors of the accused, against their alienating the suit property rather during the pendency of the civil suit (supra). The said order was also affirmed through a verdict made upon Civil Suit No. 2331/2013, arraying therein the complainants as plaintiffs and the vendors of the accused in the complaint, as defendants therein, yet reteiratedly when thus the alienees lis pendens who are but the accused rather remained unimpleaded thereins.

13. Consequently, the effect of the above non impleadment, is also, that thereby the accused had no knowledge of any interim order passed during the pendency of the civil suit, and/or, of the decree of permanent prohibitory injunction whereby the said interim order was affirmed. The sequel thereof, is that, the accused in complaint (Supra) could not be said to ever carrying any culpable *mensrea* to commit the charged offences.

Final Order of this Court.

14. For all the above reasons, the asked for special leave to appeal is declined. The impugned verdict of acquittal is maintained and affirmed.

However, liberty reserved to the plaintiffs to recourse the appropriate civil remedies, if permissible, before the Civil Court concerned.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

08.08.2023
kavneet singh

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