******* Vs. *******

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SooperKanoon Citation : sooperkanoon.com/1054772

Court : Punjab and Haryana

Decided On : Jan-16-2013

Appellant : *****

Respondent : *****

Judgement :

CRM No.30969 of 2012 in/and CRM-A No.400-MA of 2012 (O & M) -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH ***** CRM No.30969 of 2012 in/and CRM-A No.400-MA of 2012 (O & M) Date of decision :

16. 1.2013 Zile Singh ....Applicant-appellant versus Smt.

Neeta and another ....Respondents CORAM: Hon'ble Mr.Justice Jasbir Singh Hon'ble Mr.Justice Inderjit Singh Present:- Mr.Jasmer Singh Rozera, Advocate, for Mr.Vikram Singh, Advocate, for the applicant-appellant --- Jasbir Singh, J.

CRM No.30969 of 2012 After hearing counsel for the applicant, application is allowed.

Delay of 48 days in filing the appeal stands condoned.

CRM-A No.400-MA of 2012 This application has been filed under Section 378 (4) Cr.P.C.seeking leave to file an appeal against judgment dated 16.12.2011 acquitting both the respondents of the charges framed against them.

The process of law was initiated on a criminal complaint made by the applicant/complainant against the respondents and one Raj Bala, qua whom the complaint was dismissed at the time of summoning, vide order dated 9.9.2006.

The trial Judge has noted the following facts regarding case of the complainant from his complaint :- CRM No.30969 of 2012 in/and CRM-A No.400-MA of 2012 (O & M) -2- That on 22.12.2003, all the accused visited the house of complainant and accused No.1 by claiming herself to be owner of plot/house No.13-B, Ward No.1, situated in R.K.Puram offered to sell the aforesaid house to the complainant and accused No.2 and 3 also supported the claim of accused No.1.

Again on the same day i.e.22.12.2003, all accused came to the complainant, when Hari Singh was sitting with him and the deal of the house was finalized for ` 2.50 lacs.

Accused No.1 supported by accused No.2 and 3 executed an agreement to sell for a total sale consideration of ` 2.50 lacs and received an earnest money of ` 1.25 lacs and the target date for registration of the sale deed was fixed as 5.2.2004.

Accused No.1 had also sworn an affidavit dated 22.12.2003 at the time of execution of agreement to sell dated 22.12.2003 and the same was got attested from Jai Parkash Sharma, Notary Public vide his endorsement No.171 dated 22.12.2003.

The agreement was also got notarized from Sh.

Jai Parkash Sharma, Notary Public.

After sometime, the complainant requested the accused to get the sale deed executed and registered, but they postponed the matter on one pretext or the other and promised to get the sale deed executed on 5.2.2004.

Further on the averments that at the time of execution of agreement to sell, all the accused persons have shown photo copy of sale deed executed by Gaurav Dhamija, power of attorney of Ramesh Kumar, owner of the aforesaid plot.

All the accused pretended that original sale deed is lying in the locker and at that time, they were having only photo copy of the sale deed.

On 4.2.2004, the complainant visited the accused and at that time, all the accused assured that on 5.2.2004, they shall get the sale deed executed and registered.

On 5.2.2004, the complainant equipped with the balance sale consideration and expenses for CRM No.30969 of 2012 in/and CRM-A No.400-MA of 2012 (O & M) -3- registration remained present in the office of Sub Registrar, but accused No.1 did not turn up and resultantly, the complainant executed an affidavit and got the same attested from Executive Magistrate on 5.2.2004.

It is further case of the complainant that afterwards he came to knot that the respondents were not the owners of the house in question.

It was alleged that the accused, knowing the above said fact, by forging photocopy of the sale deed, sold that house to the applicant/complainant.

The trial Judge after analysing preliminary evidence, summoned both the respondents vide order dated 9.9.2006 to face trial for commission of offences punishable under Sections 420, 467, 468, 471 and 120 B IPC.

In pre-charge evidence, the complainant has examined two witnesses and his evidence was closed vide order dated 30.8.2011.

The charge was framed against the respondents to which they pleaded not guilty and claimed trial.

Thereafter, the complainant again produced two witnesses and also brought on record documentary evidence to prove his case.

The incriminating material existing on record, was put to the accused, which they denied, claimed innocence and false implication.

They also led evidence in defence.

The trial Judge on appraisal of evidence, found the respondents/accused not guilty and accordingly, they were ordered to be acquitted.

It was an allegation against respondent No.1 that she claimed herself to be the owner of House No.13B, Ward No.1, R.K.Puram, Karnal.

She executed an agreement to sell that house to the complainant for an amount of ` 2.50 lakhs.

She received ` 1.25 lakhs towards earnest CRM No.30969 of 2012 in/and CRM-A No.400-MA of 2012 (O & M) -4- money against a receipt.

The sale deed was to be executed on 5.2.2004.

When she failed to do so and on coming to knot that she was not owner of the said house, the present complaint was filed against her and her Co.accused.

The trial Judge after analyzing the evidence in a proper manner, has rightly come to a conclusion that the allegations against the respondents-accused were not proved on record.

In that regard, it was observed as under :- Moreover, even if it is taken to be true for the sake of arguments, although not proved, that at any point of time, accused No.1 had entered into alleged agreement to sell and executed affidavit as well as receipt on receipt of earnest money of ` 1.25 lacs.

In this regard, it is pointed out here that since the complainant has alleged that huge amount of earnest money has been paid by him, this story cannot be believed with the reasons that not a days, since the property carries more price and no one would be ready to spend money without getting the documents of title from the vendor.

Rather, on the other side, accused in defence have set up that complainant Zile Singh was having visiting terms with accused No.1 since long and was aware of the fact that house/plot in question was in the name of Nepal Singh (accused No.2).However, the complainant being a very clever person induced them to hand over the blank papers duly signed on the averments that he will get pension arranged for the handicapped son of accused No.1.

This defence on the part of accused has not been rebutted and the defence set up by the accused has caused a hole in the complainant's version, which otherwise itself has become suspicious and unbelievable with the reasons that best and CRM No.30969 of 2012 in/and CRM-A No.400-MA of 2012 (O & M) -5- star witnesses have been withheld by the complainant and on account of not examination of Hari Singh, the witness of receipt, agreement to sell has not been proved and mere obtaining signatures of witness and getting the agreement to sell and affidavit attested from Notary Public is not sufficient to rely upon these documents and to believe the case of complainant, in the aforesaid circumstances, of this case.

Moreover, the complainant did not utter even a single word regarding source from which the earnest money of ` 1.25 lacs was arranged and paid to the accused No.1.

Further, it would not be out of place of mention here that complainant during his examination in chief stated that he after seeing the photo copy of sale deed of accused No.1 had agreed to purchase the plot/house and moreover, attestation of notary public on two documents by a single entry on the same date also cast a cloud of doubt and it is evidence on judicial file from the cross examination of Zile Singh, complainant (CW1 in pre-charge evidence) who categorically admitted that house /plot in respect of which the present complaint has been filed, was purchased by Nepal Singh and this fact that Nepal Singh was owner of the plot was in his knowledge from the very beginning and more so has categorically admitted that he does not knot the source from where the earnest money was arranged and could not disclose the name of bank or any other source.

Also, admitted that his wife had given complaint to the police against him and Neeta, accused No.1, Nepal Singh, accused No.2 and Raj Bala, accused No.3 wherein it was find out that complainant has illicit relations with Neeta.

Also admitted the fact to be correct that he has been discarded by his wife and children and could not enter in the house.

He also could not depose who purchased the stamp paper for CRM No.30969 of 2012 in/and CRM-A No.400-MA of 2012 (O & M) -6- affidavit and what is written in Ex.C1 and in the same breath deposed that he has purchased the same, so, in this way, version of complainant cannot be believed, especially while this witness has categorically admitted that Hari Singh is his friend and used to take food together and also deposed that he had seen the original sale deed of the house, copy of which is Ex.C5 which bears the photograph of Neeta and thereafter he had agreed to purchase the house and photograph contravenes the allegations in the complaint wherein he has levelled allegations that he was told that original sale deed is in the bank and he was only shown photo copy, on which photograph of Neeta was affixed.

Thus, in view of the above facts, it cannot be said that the complainant has failed to prove the allegations against the accused persons and the oral as well as documentary evidence of complainant is not sufficient to believe the allegations of the complainant and since the complainant has failed to prove receipt, the possibility of getting the signatures of Neeta, accused No.1 in the circumstances explained by the defence and converting those papers into receipt and photo copy of agreement cannot be ruled out.

In the prevailing circumstances of this case and in view of the allegations levelled by the complainant, and the list placed on record by the accused, although not proved, but judicial notice can be taken, it is established on record that the present complainant has filed many cases against various persons and this fact reflect that complainant is habitual.

It has also come on record that as per statement made by the applicant/complainant Zile Singh CW-1, it was known to him that respondent No.2 was owner of the plot in dispute.

The entire evidence has been discussed in detail in Para No.21 and onwards of the judgment CRM No.30969 of 2012 in/and CRM-A No.400-MA of 2012 (O & M) -7- under challenge.

The findings given by the Court below are perfectly justified and as per evidence on record.

Their Lordships of the Supreme Court in 'Allarakha K.Mansuri v.

State of Gujarat, 2002(1) RCR (Criminal) 748', held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in 'State of Punjab v.

Hansa Singh, 2001(1) RCR (Criminal) 775', while dealing with an appeal against acquittal, has opined as under:- We are of the opinion that the matter would have to be examined in the light of the observations of the Honble Supreme Court in Ashok Kumar v.

State of Rajasthan, 1991 (1) SCC 166.which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perveRs.or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.

Similarly, in State of 'Goa v.

Sanjay Thakran, (2007) 3 SCC 755', and in 'Chandrappa v.

State of Karnataka, (2007) 4 SCC 415', it was held that where, in a case, two views are possible, the one which favours the accused has to be adopted by the Court.

In 'Mrinal Das & others v.

The State of Tripura, 2011(9) SCC 479', decided on September 5, 2011, the Supreme Court, after looking into many earlier judgments, has laid down parameteRs.in which interference can be made in a judgment of acquittal, by observing as under: CRM No.30969 of 2012 in/and CRM-A No.400-MA of 2012 (O & M) -8- An order of acquittal is to be interfered with only when there are compelling and substantial reasons., for doing so.

If the order is clearly unreasonable., it is a compelling reason for interference.

When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reveRs.the decision of the trial Court depending on the materials placed.

Similarly, in the case of 'State of Rajasthan v.

Shera Ram alias Vishnu Dutta, (2012) 1 SCC 602', the Honble Supreme Court has observed as under:- 7.

A judgment of acquittal has the obvious consequence of granting freedom to the accused.

This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence.

A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons.

An appeal against acquittal has always been differentiated from a normal appeal against conviction.

Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

CRM No.30969 of 2012 in/and CRM-A No.400-MA of 2012 (O & M) -9- Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:- 10.

There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other.

The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with.

Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction.

The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

Counsel for applicant-appellant has failed to show any error in law on the basis of which interference can be made by this Court in the judgment under challenge.

Accordingly, the application is dismissed.

(Jasbir Singh) Judge (Inderjit Singh) Judge 16.1.2013 Ashwani