

**(2012) 07 P&H CK 0266**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous No. A-919-MA of 2011

Harjit Singh

APPELLANT

Vs

State of Punjab and another

RESPONDENT

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**Date of Decision:** July 17, 2012

**Acts Referred:**

- Limitation Act, 1963 - Section 5
- Penal Code, 1860 (IPC) - Section 420

**Hon'ble Judges:** Naresh Kumar Sanghi, J

**Bench:** Single Bench

**Advocate:** B.S. Jaswal, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

Naresh Kumar Sanghi, J.

The present application for grant of leave to file an appeal against the judgment of acquittal has been filed by Harjit Singh-applicant. He has also filed an application u/s 5 of the Limitation Act, for condonation of delay of 156 days in filing the present application for leave to appeal. The learned trial court acquitted the respondent, Karnail Singh, who was charged for having committed the offence punishable u/s 420, IPC, vide judgment dated 09.3.2011 (Annexure P-1). The applicant filed the appeal before the Court of Session challenging the order of acquittal and the said appeal was dismissed as withdrawn with liberty to avail legal remedy in accordance with law by the learned Additional Sessions Judge, Amritsar, vide judgment dated 01.09.2011 (Annexure P-3). The said judgment is under challenge before this Court.

2. Learned counsel contends that the learned lower Appellate Court had wrongly allowed the appellant to withdraw his appeal with permission to file the same with an application for grant of leave to file an appeal. He further submits that the learned lower Appellate Court has not decided the appeal on merits, therefore, the application for grant of leave to appeal has been filed before this Court along with

an application for condonation of delay.

3. Without going into the controversy of filing the appeal before the learned Court of Session, I have heard the applicant on merits.

4. The learned trial court acquitted the accused primarily on the following grounds :

1) The prosecution could not prove the execution of agreement (Ex.PW1/A) dated 05.4.1980, on the basis of which the complainant/applicant claimed his possession over the land.

2) It was a civil dispute.

3) The prosecution failed to prove that the agreement was for Rs. 19500/- or Rs. 17,000/-

5. The brief facts of the case are that at the instance of Harjit Singh-applicant, the present case was registered on the allegations that he (Harjit Singh) purchased some land from his brother Jarnail Singh for a consideration of Rs. 19,500/- in the year 1990. The sale deed was executed with regard to part of the land. Later, Karnail Singh did not stand by his words and he sold the same land to Nirmal Singh and Jagir Singh. The applicant came to know about the said fact when Nirmal Singh and Jagir Singh came to take possession of the land in dispute. The applicant along with relatives approached the respondent-accused to return the amount, which he took from him about 25-26 years ago as sale consideration of the land in dispute but he did not agree.

6. The alleged agreement was executed in the year 1980 while the FIR was lodged in the year 2008, i.e. after a gap of about 28 years. The applicant could not prove the execution of the agreement, which was the only base of the whole litigation. Even otherwise, the applicant had tried to convert the civil dispute into a case of criminal nature, therefore, it cannot be said that the findings recorded by the learned trial court are ill founded, perverse or contrary to the facts and law. Therefore, finding no merit in the application for grant of leave to appeal, the same is hereby dismissed. As a necessary consequence, the application for condonation of delay of 156 days in filing the application is also dismissed.