



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-4854-2016 (O&M)
Date of decision: 07.11.2024

Dhir Singh

...Petitioner

Versus

Gurvinder Singh @ Lalli and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Balram Singh, Advocate for the petitioner.

Mr. Inderjeet Singh Ladher, DAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present revision petition has been filed by the petitioner/complainant challenging the judgment dated 14.09.2016 passed by the Court of Additional Sessions Judge, Jalandhar vide which the appeal filed by petitioner against the judgment of acquittal passed by the Court of Judicial Magistrate Ist Class, Jalandhar dated 03.06.2013, was dismissed.

2. The brief facts of the case are that accused/respondents No.1 and 2 approached petitioner Dhir Singh to have talk with him regarding sale of vacant plot belonging to their relative. The deal was struck and the accused received cheque of Rs.1 lac dated 12.05.2006 from the petitioner which was issued in the name of respondent No.2 Bikramjeet Singh (Vikramjeet). The said cheque was encashed by the accused persons. However, later on, the petitioner came to know that the plot in question belongs to some third person and not to the relative of the accused. The petitioner made request to the accused to return the money on which respondent No.2 agreed in writing to return the cheque amount and the



concerned writing was executed on 26.08.2007. However, despite this, the accused failed to make the payment of cheque amount. The matter was also reported to the police. Resultantly, FIR No.376 dated 14.12.2007 under Section 420 IPC was registered against both the accused in Police Station Maqsudan, Jalandhar. The accused were arrested. On completion of investigation, challan was presented in the Court.

3. Finding a *prima facie* case under Section 420 IPC, charges were framed to which both the accused pleaded not guilty.

4. In order to bring home, the guilt of the accused, prosecution examined PW-1 Dhir Singh, who reiterated the allegations made by him in the FIR, he proved writing Ex.P-A, whereby both the accused admitted their liability and agreed to return the amount of Rs.1 lac. He also proved complaint Ex.P-B lodged by him with the police and copy of the cheque Mark-A whereby amount of Rs.1 lac was given to the accused persons. PW-2 Charan Singh, corroborated the statement of petitioner and proved writing Ex.P-A which bears his signatures. PW-3 ASI Surjit Singh, deposed that he inquired into the matter and submitted his report Ex.PW-3/A. PW-4 ASI Ashwani Kumar deposed that on the basis of aforesaid inquiry report Ex.PW-3/A, police registered FIR Ex.PW-4/A and thereafter, he investigated the matter and arrested both the accused and on completion of investigation, SHO presented the challan in the Court. PW-5 Surinder Singh, Branch Manager produced the summoned record pertaining to cheque No.811471 dated 12.05.2006 and the copy of the said cheque is Ex.PW-5/A. His further examination in chief was deferred, but thereafter, the witness failed to appear in the Court. PW-6 Amrik Singh, Accountant in



Jalandhar Co-operative Bank proved the bank account of petitioner which was there in the said bank. He further stated that cheque in question Ex.PW-5/A was encashed. He also proved statement of bank account Ex.PW-6/A. Finally, the prosecution evidence was closed by order.

5. Both the accused were examined under Section 313 Cr.P.C who denied the incriminating evidence which was put to them. They pleaded false implication and innocence but did not examine any witness in their defence.

6. After hearing the counsel for the parties, the learned trial Court acquitted both the accused vide judgment dated 03.06.2013.

7. Being aggrieved, petitioner filed an appeal which was dismissed by the Court of Additional Sessions Judge, Jalandhar vide judgment dated 14.09.2016.

8. The petitioner being aggrieved by both the aforesaid judgments passed by the Courts below, preferred the present criminal revision petition.

9. The counsel for the petitioner submits that the aforesaid judgments passed by the Courts below are not sustainable, as the same were passed without proper appreciation of the evidence available on the record. It is further submitted that both the accused cheated the petitioner and induced him to hand over amount of Rs.1 lac by projecting that the plot in question was owned by their relatives. It is further submitted that the said payment of Rs.1 lac was made to the accused vide cheque Ex.PW-5/A which was got encashed by the accused, as is evident from testimony of PW-5 and PW-6. It is further submitted that later on, petitioner came to know that the said plot was not owned by the relative of the accused.



Petitioner requested the accused to return the cheque amount. On this, respondent No.2 vide writing Ex.P-A dated 26.08.2007 agreed to return the aforesaid amount of Rs.1 lac. However subsequently, both the accused refused to repay the cheque amount. That the accused were having dishonest intention from the very beginning to defraud the petitioner.

10. No one appeared on behalf of accused/respondents No.1 and 2, in response to notice of motion issued by this Court.

11. I have considered the submissions made by counsel for the petitioner.

12. Admittedly, both the accused/respondents No.1 and 2 faced trial under Section 420 IPC and were acquitted by the Court of Judicial Magistrate Ist Class, Jalandhar vide judgment dated 03.06.2013. Complainant/petitioner preferred appeal against the said judgment but the same was also dismissed by the Court of Additional Sessions Judge, Jalandhar vide judgment dated 14.09.2016. It being so, firstly the presumption of innocence was available to both the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, both the accused having secured acquittal, the presumption of their innocence is further re-inforced and re-affirmed by the trial Court. Furthermore, in the instant case, the appeal filed by the petitioner against the aforesaid judgment of acquittal passed by the trial Court, is also dismissed by the appellate Court.

13. Now coming to the facts of the present case, it is not clear as to on what basis, the petitioner issued cheque worth Rs.1 lac Ex.PW-5/A in



favour of respondent No.2. It is the case of the petitioner that the said cheque was delivered to the accused persons as deal was struck between the parties as per which the petitioner agreed to purchase one plot belonging to the relative of the accused. No such agreement to sell if any executed between the parties, was produced in the trial Court by the prosecution/petitioner. Further, no date, month and year of any such deal which was struck between the parties is given in the FIR Ex.PW-4/A. Furthermore, no description or location of the plot in question which the petitioner agreed to purchase has come on the record of the trial Court. As per the case of prosecution, the petitioner later on came to know that no such plot was owned by relative of the accused and when petitioner requested the accused to return the aforesaid cheque amount, respondent No.2 gave in writing dated 26.08.2007 Ex.P-A that he would return the said amount. From the persual of Ex.P-A, it is evident that in the said writing, there is no mention with regard to any deal which was stated to be struck between the parties regarding purchase of one plot. Further, the original of writing Ex.P-A was not produced during trial. In order to prove the execution of writing Ex.P-A, prosecution examined its attesting witness Charan Singh as PW-2. However, the said witness failed to turn up before the trial Court for his cross examination which was deferred on 25.02.2010. The incomplete statement of PW-2 cannot be taken into consideration. The petitioner while appearing in the witness box as PW-1 admitted that at the time of handing over cheque Ex.PW-5/A, he did not take any receipt in this regard from the accused. In the given circumstances, the petitioner has failed to prove that some deal was struck between the parties whereby he



agreed to purchase one plot belonging to relative of the accused persons. Otherwise also, it is settled law that mere non performance of an agreement to sell by itself does not amount to cheating.

14. Cheque Ex.PW-5/A may have been given by the petitioner to respondent No.2 in connection with some other financial deal and for recovery of the cheque amount, petitioner was having adequate remedy on the civil side, as the act of the accused persons at the best constitute a civil wrong and does not call for any criminal action against them.

15. In light of the above discussion, the petitioner has failed to establish any illegality or perversity in the judgments passed by the Courts below.

16. Consequently, the present petition is hereby dismissed.

07.11.2024

Yogesh

**(KARAMJIT SINGH)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**