

Neutral Citation No. - 2025:AHC:133118

Reserved on 17.07.2025

Delivered on 06.08.2025

Court No. - 82

Case :- CRIMINAL REVISION No. - 1079 of 2021

Revisionist :- Banarsidass

Opposite Party :- State of U.P.

Counsel for Revisionist :- Gulrez Khan, Javed Husain Khan, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. From the record, it reflects notice has already been served to opposite party no.2. Despite service of notice, none appeared on his behalf to oppose the instant criminal revision.

2. Heard Shri Javed Husain Khan, learned counsel for the revisionist and Shri Ajeet Madhesiya, learned Brief Holder for the State-respondent.

3. The present Criminal Revision under Section 397/401 Cr.P.C. has been filed to set aside the Judgment and Order dated 25.03.2021 passed by Additional District & Sessions Judge, Moradabad in Criminal Appeal No.81 of 2018 (Banarasidass Vs. State of U.P.) as well as judgement and order dated 03.12.2018 passed by Chief Judicial Magistrate, Moradabad in Criminal Case No.14937 of 2016.

Brief facts of the case:-

4. FIR of the present case was lodged by opposite party no.2 against the revisionist with the allegation that he entered into an agreement (oral agreement) with the revisionist for the purpose to purchase a plot and in this regard, he also got approved the loan from I.C.I.C.I. Bank and I.C.I.C.I. Bank also issued a cheque of Rs.11,88,000/- in favour of the revisionist and on 23.05.2008 opposite party no.2 also purchased stamps of Rs.1,74,300/- and got prepared sale-deed and on the same day when revisionist came to *Kutchehary* then opposite party no.2 gave him Rs.3,96,000/- in cash and he also signed the sale-deed but when opposite party no.2 asked him for allotment letter before execution of the sale-deed then revisionist informed him that the same has been misplaced and when opposite party no.2 verified about the plot in question then found that earlier revisionist had taken a loan on the plot in question from I.C.I.C.I. Bank and therefore, revisionist cheated him.

5. After registration of the FIR, investigation was conducted and after investigation, charge-sheet was filed against the revisionist under Sections 420, 406 I.P.C. and after submission of the charge-sheet, trial was commenced and during trial, prosecution examined six witnesses and after recording the evidence of prosecution witnesses, the statement of the revisionist was recorded under Section 313 Cr.P.C. and afterthat D.W.-1 Devendra Raj Yadav was examined and after considering the entire evidence available on record, vide order dated 03.12.2018

court concerned although acquitted the revisionist for offence under Section 406 I.P.C. but convicted him for offence under Section 420 I.P.C. and sentenced him three years rigorous imprisonment with fine of Rs.2,000/- and in default of fine additional punishment of three months.

6. Being aggrieved with the conviction order dated 03.12.2018, revisionist preferred criminal appeal before Sessions Judge but learned Sessions Judge dismissed his appeal vide order dated 25.03.2021. Hence, revisionist Banarsidass has approached this Court by way of filing the present revision.

Argument advanced by learned counsel for the revisionist:-

7. Learned counsel for revisionist submitted that the findings recorded by trial court while convicting the revisionist are against law and perverse and trial court wrongly convicted the revisionist for offence under Section 420 I.P.C. and even appellate court failed to appreciate this fact and wrongly dismissed the appeal filed by him and therefore, both the impugned judgments and orders dated 03.12.2018 passed by trial court and 25.03.2021 passed by appellate court are illegal and are liable to be set aside.

8. He further submitted that from the statement of P.W.-1 i.e. opposite party no.2 (informant), it reflects that according to him, revisionist cheated him, as he on the basis of verbal agreement agreed to purchase a plot from the revisionist for Rs.15,84,000/- and thereafter, opposite party no.2 got approved loan of Rs.11,88,000/- for the plot in question from I.C.I.C.I. Bank and thereafter

I.C.I.C.I. Bank issued a cheque of Rs.11,88,000/- in favour of revisionist, which was handed over by opposite party no.2 to him and on 23.05.2008 opposite party no.2 also purchased stamps of Rs.1,74,300/- and when revisionist came to *Kutchehary* then he gave him Rs.3,96,000/- in cash to him and thus, he paid entire amount of Rs.15,84,000/- for the plot in question but even after that on 23.05.2008 sale-deed could not be executed and subsequently it was revealed to opposite party no.2 that revisionist earlier had taken loan over the property in question from the I.C.I.C.I. Bank but from the statement of P.W.-5 Ankur, who was the employee of I.C.I.C.I. Bank, it reflects, however, revisionist took the loan over the property in question from the bank but bank neither passed any loan to opposite party no.2 with regard to property in question nor any cheque was ever issued in favour of the revisionist with regard to the property in question. He further submitted, therefore from the statement of P.W.-5, it is apparent that bank never issued cheque of Rs.11,88,000/- in the name of revisionist after approving the loan to the opposite party no.2 as stated by opposite party no.2 in his statement recorded before trial court and therefore, no question could arise for opposite party no.2 to give cheque of Rs.11,88,000/- to the revisionist.

9. He further submits, as per opposite party no.2, he agreed to buy the property for Rs.15,84,000/- from the revisionist and out of above total amount, Rs.11,88,000/- was given by him to revisionist through cheque and

remaining Rs.3,96,000/- was given by him as cash but as cheque of Rs.11,88,000/- was never issued by the bank, therefore, there was absolutely no occasion for revisionist to receive Rs.3,96,000/- cash as remaining amount out of total amount of Rs.15,84,000/-. Therefore, statements of opposite party no.2 and other witnesses are apparently false.

10. He further submitted that both the court below failed to consider above aspects and revisionist has been wrongly convicted for offence under Section 420 I.P.C.

11. He further submitted that even as per prosecution, as by playing fraud revisionist received Rs.3,96,000/- from the opposite party no.2 therefore, he committed offence under Section 420 I.P.C. but even there is no admissible evidence that revisionist received Rs.3,96,000/- from opposite party no.2 as according to the prosecution, entire money was given to the revisionist in cash.

12. He further submitted that entire prosecution story of giving cash is based on testimony of P.W.-1, P.W.-2 (father of opposite party no.2) and P.W.-3, who was known to P.W.-1 and therefore, they are interested witnesses.

13. He further submitted that actually prosecution miserably failed to prove its case beyond reasonable doubt against the revisionist but in spite of that, trial court convicted him for offence under Section 420 I.P.C. and appellate court also failed to properly appreciate the evidence thus, conviction order passed by the trial court dated 03.12.2018 and order dated 25.03.2021 passed by appellate court are illegal and therefore, both the orders

are liable to be set aside and revisionist should be acquitted from the charge under Section 420 I.P.C.

Submission advanced on behalf of the State:-

14. Per contra; learned Brief Holder appeared on behalf of the State submitted that power of revisional court is very limited and revisional court cannot appreciate the evidence on record, like appellate court and as after considering the entire material available on record, trial court convicted the revisionist for offence under Section 420 I.P.C. and thereafter his appeal has also been dismissed by the appellate court, therefore, in the instant revision this court should not disturb the concurrent finding of facts recorded by both the courts.

15. He further submitted that even from the material available on record including the statements of the witnesses, it reflects that prosecution successfully proved its case against the revisionist beyond reasonable doubt and after perusing the entire material available on record, trial court arrived at the conclusion that revisionist committed offence under Section 420 I.P.C. and convicted him for offence under Section 420 I.P.C. and thereafter, appellate court also did not find any illegality in the order passed by trial court, therefore instant revision filed by the revisionist is devoid of merit and is liable to be dismissed.

16. He however could not dispute the fact that if finding recorded by the trial court is perverse and appellate court also failed to consider this fact in appeal filed by the revisionist then in revision this Court can interfere. However, he further submitted that from the record, it

could not be reflected that finding recorded by the trial court was perverse and was against the evidence available on record.

Analysis:-

17. I have heard both the parties and perused the record of the case.

18. This Court finds merit in the submission advanced by learned Brief Holder for the State that in revision this Court cannot appreciate the evidence available on record like appellate court and power of this Court in revisional jurisdiction is limited and this Court can interfere only if findings recorded by the trial court are perverse and against the record and appellate court also failed to notice this fact, therefore, in the instant revision it is to be seen, whether while convicting the revisionist finding of the trial court was perverse and against the record and learned appellate court also failed to consider this fact.

19. From the record, it reflects that during trial prosecution produced six witnesses and out of six witnesses, three witnesses i.e. P.W.-1 (O.P. No.2), P.W.-2 and P.W.-3 were the witnesses of facts and according to them, revisionist agreed to sell a plot to opposite party no.2 for Rs.15,84,000/- and thereafter opposite party no.2 got approved the loan of Rs.11,88,000/- from I.C.I.C.I. Bank for the property in question and thereafter I.C.I.C.I. Bank issued a cheque of Rs.11,88,000/- in favour of revisionist and revisionist although received the above cheque and remaining amount of Rs.3,96,000/- from opposite party no.2 but subsequently opposite party no.2

came to know that revisionist had taken loan over the property from I.C.I.C.I. Bank and therefore, cheated him. Trial court however accepted the statements of these witnesses and convicted the revisionist for offence under Section 420 I.P.C. but it reflects, trial court failed to consider the fact that P.W.-5 Ankur, the bank employee, in his statement categorically stated that no loan could ever be approved in favour of the opposite party no.2 with regard to the property in question and bank never issued any cheque of Rs.11,88,000/- in favour of the revisionist and therefore, no question could arise for opposite party no.2 to give cheque of Rs.11,88,000/- to the revisionist and therefore, there was absolutely no occasion for revisionist to accept the alleged remaining amount of Rs.3,96,000/- in cash. Thus, finding recorded by trial court was perverse. The appellate court also failed to consider this fact.

20. Further, except the oral testimonies of P.W.-1 (O.P. No.2), P.W.-2 and P.W.-3, there is no other evidence that revisionist received Rs.3,96,000/- in cash from the opposite party no.2 and in view of the statement of P.W.-5 Ankur, the bank employee, their testimonies do not appear to be truthful, therefore, finding of conviction recorded by the trial court against the revisionist was perverse. While deciding the appeal of the revisionist, appellate court also did not consider above facts and therefore committed illegality.

21. Therefore, from the discussion made above, in view of this Court, both the impugned orders passed by trial court and appellate court are illegal and are unsustainable.

22. Accordingly, both the impugned judgments and orders dated 03.12.2018 passed by trial court and 25.03.2021 passed by appellate court are hereby set aside and revisionist is acquitted of charge for offence under Section 420 I.P.C.

23. This criminal revision is **allowed**.

24. Revisionist is on bail. He need not surrender.

25. Let certified copy of this order/judgment and original record of the court concerned be transmitted forthwith for necessary action. Bail bonds of the revisionist are cancelled and the sureties are discharged.

Order Date :- 06.08.2025/Zafar