

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1551-MA of 2014.
Date of decision: 15.07.2015.

Sohan Singh

.... Applicant/Appellant

Versus

Gurlabh Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Mr. H.S. Gill, Senior Advocate with
Mr. Vivek Goel, Advocate for the applicant/appellant.

PARAMJEET SINGH, J. (ORAL)

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 12.08.2014 passed by learned Judicial Magistrate Ist Class, Kurukshetra whereby complaint filed by applicant under Sections 420, 406, 467, 468, 471, 120-B of the Indian Penal Code has been dismissed and respondents have been acquitted of the charge framed against them.

Brief facts of the case are that a complaint was filed by the applicant-complainant under Sections 420, 406, 467, 468, 471, 120-B of the Indian Penal Code alleging that he is resident of Udham Singh Colony, Shahabad Markanda, District Kurukshetra and is law abiding citizen of India. The accused no.1 Gurdeep Singh, who was earlier

resident of village Dhakala, Tehsil Thanesar District Kurukshetra and was also owner of agricultural land at village Dhakala and had sold his agricultural land measuring 40 kanals to the complainant vide sale deed executed on 12.4.2002 for a consideration of ₹13,20,000/- and 39 kanals 2 marlas vide sale deed dated 22.5.2002 for a consideration of ₹12,96,000/- and received the entire sale consideration of both the sale deeds and thereafter handed over the possession of the land which was earlier in exclusive possession of accused No.1 to the complainant. The above mentioned land was the part of bigger khewat having total area of 1822 kanals 11 marlas and was having only one approach from North-West corner of khasra no.20. Earlier both the accused were having constant dispute for using the western portion of the khasra No.10 as path in order to approach the land, which was initially in cultivating possession of the accused No.1. In order to settle the dispute between the accused, the accused No.1 had purchased one half share of land measuring 1 kanal 4 marlas i.e. 24/479 share of total land measuring 23 kanals 19 marlas comprised in khewat No. 9 min/10, khatoni No.55, rect. No.30, khasra no.20(7-19), 21(8-0) khatoni No.52 min rect. No.34, khasra No.1(8-0), vide jamabandi for the year 1995-96 situated at village Dhakala Tehsil Thanesar District Kurukshetra from the accused No.2 vide sale deed No. 686/1 dated 21.7.1998. It was specifically recited in the sale deed that the above said portion jointly purchased by the accused No.1 and Jaspal Singh, Jasdev Singh sons of Gurlabh Singh would be used as a path and no person would be having any right to dismantle the same. To further facilitate the cultivation of the land the accused No.1 also purchased land measuring 2 kanals 1 marla being 41/36458 share of total land measuring 1822 kanals 18 marlas comprised in khewat No. 9 min/10,

total kittas 325 out of land comprised in khatoni No.53/51, rect. No.30, khasra No.22(8-0), and rect. No.34, khasra No.2(8-0), 9(8-0), 12(8-0), 19(8-0), vide jamabandi for the year 1995-96 situated at Village Dhakala, Tehsil Shahabad, District Kurukshetra from accused No.2 vide registered sale deed dated 21.7.1998. The accused No.1 after executing the sale deed dated 12.4.2002 and 22.5.2002 referred to above in favour of the complainant, agreed to sell the land measuring 2 kanals 1 marla detailed in para no.6 of the complaint which the accused no.1 purchased from the accused no. 2 vide sale deed dated 21.7.1998, in favour of the complainant and an agreement to sell this effect was duly executed on 3.10.2002. The entire sale consideration amounting to ₹68,000/- was received by the accused No. 1 from the complainant. The possession of the land was also delivered to the complainant at the time of execution of the agreement. It is specifically recited in the agreement to sell dated 3.10.2002 that the possession of the area measuring 26 feet x 429 feet on the Southern side of khasra nos.1 and 2 of Rect. No. 34 has been handed over to the complainant at spot. In the agreement to sell dated 3.10.2002, it is specifically mentioned that the accused No.1 will execute the sale deed in favour of the complainant qua the land measuring 2 kanals 1 marla after getting the mutation sanctioned in favour of accused No. 1. After purchase of the land by the complainant on 12.4.2002, 22.5.2002 and 3.10.2002 the accused no.2 had started harassing the complainant and had tried to dismantle the path and thereafter the complainant along with accused No.1 had filed a Civil Suit No. 482/03 on 11.9.2003, against the accused No. 2 regarding this land restraining him for alienating the above said land and also from dispossessing the complainant from the above mentioned land 2 kanals 1 marla. The

complainant along with accused No.1 Gurdeep Singh had also filed a Civil Suit No. 391/2 on 25.10.2002 against Gurlabh Singh, Jasdev Singh and Jaspal Singh restraining him from dismantling the path. Both the above said Civil Suits were pending in the court of Shri N.K. Singhal, Learned Civil Judge. In Civil Suit No. 483/03 the accused No.1 Gurdeep Singh had filed the suit along with Sohan Singh complainant against Gurlabh Singh. In the Civil Suit accused No.1 had written in the plaint that the accused no.1 had purchased 2 kanals 1 marla being 41/36458 share of total land measuring 1822 kanals 18 marlas comprised in No. 9 min/10, total kittas 325 out of land comprised in khatoni No. 53/51, rect No. 30, khasra No. 22(8-0) and rect. No. 34, khasra No. 2(8-0), 9 (8-0), 12(8-0), 19(8-0) vide jamabandi for the year 1995-1996 situated at village Dhakala, Tehsil Thanesar District Kurukshetra from the accused No. 2 vide registered sale deed dated 21.7.1998 and thereafter vide agreement dated 3.10.2002 the accused No.1 had entered into an agreement with the complainant and transferred/sold the above said land to the complainant for a consideration of ₹68,000/- and received the entire sale consideration and possession of the above said land was handed over to the complainant. The mutation of the above said land was not sanctioned in favour of accused No. 1 regarding the sale deed dated 21.7.1998 which was purchased by accused No. 1 from accused No. 2. In the agreement to sell dated 3.10.2002 it is specifically mentioned that accused No. 1 will execute the sale deed in favour of the complainant after getting the mutation sanctioned in his favour qua this land. Accused No. 2 had contested Civil Suit No. 483/03 filed by the complainant along with accused No. 1 and both the accused had full knowledge of the above said agreement to sell and in the said suit the learned trial court had passed the order

dated 21.4.2005 wherein both the parties were directed to maintain status quo and thereafter accused No. 1 along with the complainant had filed a civil appeal against the said order on 23.4.2005 and the same was decided on 23.2.2007 by learned Additional District Judge, Kurukshetra. The complainant had come to know that mutation had been sanctioned in favour of the accused No. 1 vide mutation No. 967. It was in the full knowledge of both the accused that accused No.1 had agreed to sell the above said land measuring 2 kanals 1 marla to the complainant vide agreement to sell dated 3.10.2002 and had received the entire sale consideration of ₹68,000/- and had handed over the possession of the above said land to the complainant and the complainant is in physical possession of above said land and in order to cheat both the accused had hatched a conspiracy and accused no.1 had sold the above said land to accused No. 2 on 14.8.2007 for a fictitious consideration of ₹1,54,000/- despite the fact that the accused No. 1 had no right, title or interest in the above said land. It is written in the sale deed dated 14.8.2007 that accused No.1 is the owner in possession of the above said land measuring 2 kanals 1 marla whereas in fact, accused no.1 had handed over the possession of above said land to the complainant on 3.10.2002 and this fact is in the knowledge of both the accused. Thus, the accused has committed offences punishable under sections 420, 406, 467, 468, 471 and 120-B of the Indian Penal Code. Hence, present complainant was filed.

On the basis of preliminary evidence, accused was ordered to be summoned to face trial for the commission of offence punishable under Section 420 IPC.

It is worthwhile to mention here that accused Gurdeep Singh had expired during the pre-charge evidence and proceedings

against him were dropped on 29.10.2011.

Witnesses were recalled in pre-charge evidence. Taking into account pre-charge evidence the learned trial Court come to the conclusion that prima-facie case under Section 420 IPC was made out against accused Gurlabh Singh and accordingly, he was charge-sheeted on 08.08.2013, to which, he pleaded 'not guilty' and claimed trial.

Statement of accused under Section 313 Cr.P.C. was recorded wherein he pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted the accused from the charge framed against him, vide impugned judgment dated 12.08.2014. Hence, this application for grant of leave to appeal.

I have heard learned counsel for the applicant and gone through the impugned judgment.

The trial Court, after appreciating the evidence on record, observed as under:-

"7. Firstly for the sake of convenience provisions of Section 420 of the Indian Penal Code is reproduced as under:-

"420 Cheating and dishonestly inducing delivery of property :- whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

As per provisions of aforesaid quoted sections, the ingredients required to constitute the offence of

cheating are :-

- (i) there should be fraudulent or dishonest inducement of a person by deceiving him;*
- (ii) (a) the person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property; or*
- (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and*
- (ii) in cases covered by (ii) (b) the act or omission should be one which cause or is likely to cause damage or harm to the person induced in body, mind reputation or property."*

Firstly, in order to attract the provisions of Section 420 of the Indian Penal Code the guilty intent, at the time of making the promise is an essential ingredient thereto. Subsequent failure to fulfill the promise by itself would not attract the provisions of Section 420 of the Indian Penal Code. Secondly mens rea is one of the essential ingredients of the offence of cheating under Section 420 of the Indian Penal Code. The mere failure to deliver in breach of an agreement would not amount to cheating but of course is liable to only a civil action for breach of contract.

8. In the present case, the complainant has alleged that accused no.1 sold the land i.e. 2 Kanals 1 marla to him on 3.10.2002 which was purchased by accused No.1 from accused No.2 vide registered sale deed dated 21.07.1998. On 14.8.2007, accused no.1 sold the said land to accused No.2 for total sale consideration of ₹1,54,000/- despite the fact that accused no.1 had already handed over the possession of the above said land to the complainant on 3.10.2002 and this fact was in the knowledge of both the parties. As already stated above, if the accused is to be made liable under section 420, the malafide intention has to be proved since the inception. It is accused no.1 namely Gurdeep Singh who firstly sold the land in question to the complainant and then again sold the same land to accused No.2 namely Gurlabh Singh on 14.8.2007. It would be worth mentioning that accused No.1 Gurdeep died and

proceedings against him was dropped on 29.10.2011. The question of guilt of accused No.2 is concerned, the complainant in his cross examination has stated that when he purchased the land from accused No.1, after purchasing accused No.2 Gurlabh Singh unnecessarily started harassing him and thereafter, the complainant as well as accused No.1 filed a civil suit against accused No.2. Moreover, it has already been admitted by the complainant that various civil suits are already pending under consideration between the complainant and the accused. As per the evidence led by complainant, there is nothing to show that accused no.2 was already aware that accused No.1 already sold the property in question to the complainant before selling it to him. In criminal cases, the guilt of accused has to be proved beyond reasonable doubt but the complainant has not been able to prove the dishonest intention of accused No.2 regarding the alleged sale deed.

9. In the present case, there is not even a breach of contract on the part of accused Gurlabh Singh. If there is any breach of an agreement that is only on the part of accused No.1 Gurdeep Singh who has already died. Further the complainant has failed to lead any substantial evidence to prove the guilt of accused No.2 under section 420 of IPC. Thus, I have no hesitation to say that prosecution/complainant has miserably failed to prove charge under section 420 IPC by way of coherent deposition of testimonies beyond shadow of reasonable doubt.

10. Thus, in the totality circumstances of the facts discussed above, I have come to the conclusion that complainant/prosecution has miserably failed to prove the guilt against accused beyond shadow of reasonable doubt. Hence, by giving benefit of doubt, accused No.2 Gurlabh Singh is acquitted from the charge levelled against him. His bail bond and surety bonds are discharged. File after due compliance be consigned to the record room."

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr. vs. State of Karnataka*** 2014(2) RCR (Criminal) 507 has held as under:

“10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, “the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh v. State; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, “the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu v. State; [AIR 1954 SC 1], Madan Mohan Singh v. State of U.P.; [AIR 1954 SC 637], Atley v. State of U.P.; [AIR 1955 SC 807], Aher Raja Khima v. State of Saurashtra; [AIR 1956 SC 217], Balbir Singh v. State of Punjab; [AIR 1957 SC 216], M.G. Agarwal v. State of Maharashtra; [AIR 1963 SC 200], Noor Khan v. State of

Rajasthan; [AIR 1964 SC 286], Khedu Mohton v. State of Bihar; [(1970) 2 SCC 450], Shivaji Sahabrao Bobade v. State of Maharashtra; [(1973) 2 SCC 793], Lekha Yadav v. State of Bihar; [(1973) 2 SCC 424], Khem Karan v. State of U.P.; [(1974) 4 SCC 603], Bishan Singh v. State of Punjab; [(1974) 3 SCC 288], Umedbhai Jadavbhai v. State of Gujarat; [(1978) 1 SCC 228], K. Gopal Reddy v. State of A.P. ; [(1979) 1 SCC 355], Tota Singh v. State of Punjab [1987(2) R.C.R.(Criminal) 35: (1987) 2 SCC 529], Ram Kumar v. State of Haryana; [1994(3) R.C.R. (Criminal) 631 : 1995 Supp (1) SCC 248], Madan Lal v. State of J&K; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], Sambasivan v. State of Kerala; [1998(2) R.C.R. (Criminal) 693 : (1998) 5 SCC 412], Bhagwan Singh v. State of M.P.; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], Harijana Thirupala v. Public Prosecutor, High Court of A.P.; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], C. Antony v. K. G. Raghavan Nair; [2002(4) R.C.R.(Criminal) 750 : (2003) 1 SCC 1], State of Karnataka v. K. Gopalakrishna; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], State of Goa v. Sanjay Thakran; [2007(2) R.C.R.(Criminal) 458 : (2007) 3 SCC 755] and Chandrappa v. State of Karnataka; [2007(2) R.C.R. (Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact

recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

Learned counsel for the applicant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

As such, application for leave to appeal is dismissed on merit.

July 15, 2015.
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(PARAMJEET SINGH)
JUDGE