IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.A-1751-MA of 2014
Date of Decision : January 16, 2015

Naresh Kumar
.....Applicant

VERSUS

Avinash Chawla and another
.....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Mr. Vinod S. Bhardwaj, Advocate.

T.P.S. MANN, J.

The applicant/complainant has filed the present application under Section 378(4) Cr.P.C. for the grant of special leave to appeal against the judgment dated 2.8.2014 passed by the Chief Judicial Magistrate, Hisar whereby both the respondents were acquitted of the charges under Section 420 read with Section 120-B IPC.

The facts, as stated in the complaint instituted by the applicant, were that he was Managing Director of Bhudhan Marketing Private Limited, Hisar. About a year ago, respondent Avinash Chawla approached him and stated that his family was having 1087 bighas of land in village Dungasara, District Guna, Madhya Pardesh, which they wanted to sell. The complainant held a meeting of the members of the Company, who liked the land. Before entering into agreement to sell, respondent Avinash Chawla talked to respondents Sushil Kumar Chawla as well as Shiv Kumar Chawla and Gulshan. Accordingly, aforementioned Avinash Chawla and another agreed to sell the land to the complainant at the rate of Rs.9,000/- per bigha and the sale deed was to be executed within 14 months. Avinash Chawla received an amount of Rs.17,50,000/- in the shape of cheque and on its basis executed sale deed of 55 bighas in favour of the Company of the complainant. The possession of the land was also handed over to the complainant.

The further case of the complainant was that prior to execution of agreement to sell, Avinash Chawla had received Rs.17,50,000/- by way of cheque and Rs.35,00,000/- in cash. Similarly, Sushil Kumar Chawla had received an amount of Rs.9,00,000/- and Rs.20,13,000/- by way of cheques. In the month of June, 2006, the complainant learnt that the accused persons had entered into an agreement to sell the above said land with another person. On this, the complainant visited Guna (Madhya Pradesh) and learnt that the accused persons had executed a registered sale deed regarding some land out of the above said land in favour of the other party, besides handing over the possession. Thus, the accused had committed fraud and cheating with the complainant and grabbed his money.

On the basis of preliminary evidence led by the complainant, both the respondents, alongwith Shiv Kumar Chawla and Gulshan, were summoned for offences punishable under Sections 420, 406, 467, 468, 471, 506 and 120-B IPC. Subsequently, Shiv Kumar Chawla died, whereas proceedings against Gulshan were dropped vide order dated 6.7.2013. On the basis of pre-charge evidence, both the respondents were charged for offences under

Section 420 read with Section 120-B IPC, to which they pleaded not guilty and claimed trial. In after-charge evidence, the complainant stated that he did not want to examine any witness. The respondents also made a joint statement that they did not want to cross-examine further any witness. The respondents, when examined under Section 313 Cr.P.C., denied the allegations. However, they did not examine any evidence in their defence.

Vide impugned order, the trial Court came to the conclusion that the complainant had failed to prove his case beyond shadow of reasonable doubt. Accordingly, both the respondents were acquitted of the charges against them.

We have heard learned counsel for the applicant and gone through the impugned judgment of acquittal.

In order to establish the charge of cheating, the complainant was required to prove that there was dishonest intention on the part of the respondents right from the beginning. However, there is not even an *iota* of evidence brought by the complainant on record in that regard. Similarly, because the respondents had delivered possession of the land to the complainant and not executed the sale deed in respect thereof, is no ground to hold that the intention of the respondents was either fraudulent or dishonest from the beginning. At the most, the complainant's allegations may make out a case of breach of contract and, therefore, he would have the remedy of filing civil suit for specific performance. The dispute between the parties being purely of civil nature, the criminal proceedings against the respondents were not maintainable.

While dealing with the case in hand, the trial Court referred to the judgments of the Hon'ble Supreme Court in Hridaya Ranjan Prasad Verma Vs. State of Bihar, 2000(3) JT (SC) 604 and Murari Lal Gupta Vs. Gopi Singh (2005) 13 Supreme Court Cases 699. It has been held in the said two judgments that mere failure to keep up promise subsequently did not show that the accused had fraudulent or dishonest intention at the time of its making. Further, in the event of the accused failing to honour the agreement to sell, it would not amount to an act of cheating on his part and, therefore, no case for prosecution under Section 420 IPC was made out.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal.

The application is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(SHEKHER DHAWAN)
JUDGE

January 16, 2015
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