

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

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Date of decision: 02.02.2015

CRM M 16836 of 2014

Indro Devi

..... Petitioner

Versus

Chief Administrator, HUDA and another

.....Respondents

CRM M 16837 of 2014

Saroj

.....Petitioner

Versus

Chief Administrator, HUDA and another

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Arvind Kundu, Advocate
for the petitioners

Mr. Arvind Seth, Advocate
for the respondents

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

Rekha Mittal, J.

This order shall dispose of aforesaid petitions as these involve identical questions of law and facts for adjudication. However, for the sake of convenience, the facts are being taken from CRM M 16836 of 2014.

Counsel for the petitioner contends that the petitioner applied

for allotment of a residential plot to Haryana Urban Development Authority (in short, 'HUDA') in Sector 32, Karnal vide application No. 54498 under 'reserved category' known as HPKIA (Dependents of Officers/officials of Haryana Police Killed in Action/Encounter) and the booking remained open from 06.01.2011 to 07.03.2011. The petitioner also submitted application for allotment of a residential plot in Sector 6, Rohtak and the booking thereof commenced from 04.11.2010 and the closing date was 04.01.2011. The draw of lots for allotment of residential plots in Sector 32, Karnal was conducted in the month of August 2011 and the petitioner was successful in the draw and plot No. 1579 (8 marlas) was earmarked for the petitioner. The draw of lots in respect of allotment of residential plots in Sector 6, Rohtak was held in the month of October/November 2011 and the petitioner was successful in the said draw and as a consequence, plot No. 352 (8 marlas) was earmarked for her. The Estate Officer, HUDA-respondent No. 2 issued allotment letter dated 15.05.2012 vide memo.Z0004/E0016/UE026/Galot/0000000595 to the petitioner in respect of residential plot in Sector 32, Karnal and the petitioner submitted an affidavit and the relevant documents on 12.06.2012 as per terms and conditions of the allotment. It is argued that the petitioner is an illiterate lady and when she came to know that under 'reserved category', she is not eligible for more than one residential plot, second plot bearing No. 352 in Sector 6, Rohtak allotted subsequently was surrendered vide application dated 11.10.2013 and original 'C' form was returned vide diary No. 11607 dated 14.10.2013. The said allotment at Rohtak was made subject to decision of Special Leave Petition No. 14620 of 2010 pending in Hon'ble the Supreme Court.

Counsel would submit that at the time of submission of applications for

allotment of residential plots at Karnal and Rohtak, the petitioner was not sure if she would be successful in draw of lots to be conducted by the concerned authorities. It is further argued that as the petitioner is illiterate who lost her husband while working with the Haryana Police, she was not aware that she was eligible for allotment of only one residential plot under 'reserved category'. The moment she came to know that she was eligible for one residential plot only, the petitioner immediately approached the Estate Officer, HUDA, Rohtak and submitted an application to surrender allotment made in her favour in Sector 6, Rohtak. It is further argued that to constitute offence of cheating defined under Section 415 of the Indian Penal Code (in short, 'IPC') punishable under Section 420 IPC, the prosecution is obliged to prove that the accused had a dishonest intention since inception of the transaction. It is further argued that keeping in view the facts and circumstances of the present case, there is no material on record suggestive of the fact that the petitioner had at any stage intention to commit cheating/fraud, therefore, the criminal proceedings against her are liable to be quashed.

Counsel for the respondents, on the contrary, would submit that the petitioner had a deceitful intention since inception of the transaction which can be inferred from the attending circumstances that after becoming successful in draw of lots both at Karnal and Rohtak, she never informed the authorities that she is eligible to get only one plot. It is further argued that the present FIR was registered against her on 10.10.2013, she, immediately, submitted application dated 11.10.2013 to surrender allotment made by the Estate Officer, HUDA, Rohtak. It is further argued that

disputed questions of fact are not amenable to adjudication in proceedings

under Section 482 Cr.P.C and the same may be left to be decided by the trial Court on the basis of evidence to be adduced by the parties.

I have heard counsel for the parties and perused the records.

The allegations set up in the petition makes it apparent that the petitioner submitted applications for allotment of residential plots in Sector 32, Karnal and Sector 6, Rohtak under 'reserved category' known as HPKIA. The application for allotment of residential plot at Rohtak was submitted between 04.11.2010 to 04.01.2011 and the application for allotment in Sector 32, Karnal was submitted during the period from 06.01.2011 to 07.03.2011. The draw of lots in respect of allotment in Karnal was held in August 2011 and the petitioner came out to be successful and plot measuring 8 marlas was earmarked for her. The draw of lots for allotment of residential plot at Rohtak was made in October/November 2011 and unfortunately, the petitioner was again successful in said draw. She was issued allotment letters in respect of aforesaid allotments on 15.05.2012 and 21.05.2012 at Karnal and Rohtak, respectively. She submitted the affidavit and other relevant documents on 12.06.2012 in compliance with the terms and conditions of allotment at Karnal. In the affidavit furnished by her, she concealed the factum of allotment in her favour at Rohtak. A relevant extract from affidavit dated 12.06.2012 submitted by the petitioner reads as follows:-

“1. xx xx

2. xx xx

3. *That I have not been allotted at any time anywhere any time in Haryana, a plot or land out of Haryana Government servant's quota or D.Q.*

or any other reserved category in my life time.”

Much stress has been laid by counsel for the petitioner that one of the essential ingredients of offence of cheating that the petitioner had a dishonest intention at inception of the transaction is missing, therefore, no offence under Section 420 IPC is made and thus, the criminal proceedings are liable to be quashed.

In order to constitute offence punishable under section 420 IPC, the complainant has to prove the essential ingredients of offence of cheating defined in Section 415 IPC and those ingredients are extracted hereunder:-

- “i) deception of a person either by making a false or misleading representation or by other action or omission;*
- ii) fraudulently or dishonestly inducing any person to delivery any property; or*
- iii) To consent that person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.”*

There cannot be a dispute about the settled position of law that intention of a person can be gathered from the attending circumstances as it is not possible to lead direct evidence to prove the same. The plea of the petitioner that she being illiterate did not have knowledge that she was entitled to one allotment in ‘reserved category’ can at best be a plea in defence, may be raised during trial. The defence plea of an accused cannot be permitted to be raised much less accepted while adjudicating claim of the accused for quashing of the criminal proceedings.

Keeping in view the facts on record, I find myself unable to

accept submissions of the petitioner that she did not have dishonest intention at any time much less at the inception of the transaction, therefore, no prima facie offence punishable under section 420 IPC is made out against her. I would hasten to add that even plea of the petitioner in regard to her ignorance that she could get only one residential plot under 'reserved category' gets doubtful in view of the fact that immediately after the criminal case was registered against her on 10.10.2013, she submitted an application on 11.10.2013 to surrender the allotment in her favour by the Estate Officer, HUDA, Rohtak. It further appears to the Court that since the matter with regard to multiple allotments came to light during hearing of a petition by this Court, the HUDA lodged FIRs against the allottees who got allotments in violation of the terms and conditions of the allotment policy issued by the State of Haryana.

In view of what has been discussed hereinabove, finding no merit, the petitions fail and accordingly dismissed leaving the parties to bear their own costs.

Photocopy of the order be placed on the connected file.

(Rekha Mittal)
Judge

02.02.2015
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