

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-28106 of 2015 (O&M)
Date of Decision: October 08, 2015

Suresh Chand

...Petitioner

VERSUS

Varun Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sharad Aggarwal, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 08.08.2014 passed by learned Judicial Magistrate Ist Class, Karnal whereby the complaint filed by the petitioner under Sections 406, 420, 506 and 34 IPC was dismissed, as well as judgment dated 24.03.2015 passed by learned Addl. Sessions Judge, Karnal, whereby revision against the order dated 08.08.2014 was dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that Suresh Chand filed a complaint against Varun Kumar, Kapil, M/s Vishal Foods, Driver and owner of truck bearing registration No.HR-55B-1299, under Sections 406, 420, 506 and 34 IPC. As per the allegations, on 15.03.2012, accused No.1

and 2 came in the premises of the complainant and furnished an order for supplying 270 bags of rice to M/s Vishal Foods, Karnal. They got loaded the consignment in truck bearing registration No.HR-55B-1299 and promised to make the payment within 3-4 days. The complainant having faith in the accused, delivered the consignment and prepared invoice having the total value of ₹3,10,441/-. As per the complainant, accused No.1 and 2 told the complainant that they will make the payment of consignment on 15.04.2012 as one accident has occurred in the family of accused No.3. Again, accused No.1 and 2 told the complainant that due to marriage function, the payment of consignment will be made on 15.05.2012. When the complainant contacted accused No.3 for payment, it is told to complainant that it has not received any consignment. The truck bearing registration No.HR-55B-1299 never came in its premises along with consignment. The complainant asked accused No.1 and 2 for the payment and non-delivery of rice in the premises of accused No.3 and they refused to pay and rather gave threats.

Learned JMIC, Karnal vide order dated 08.08.2014, discussed the law point by stating that offence under Section 406 is not made out. Secondly, the Court also discussed that offence under Section 420 IPC is also not made out as there is nothing in the complaint that from the very beginning the intention of the accused was to cheat the complainant. The Court further held that both these offences under Sections 406 and 420 IPC are ante thesis as the offence of 'Cheating' presupposes dishonest intention of the accused

at the time of committing the act complained of, while in the offence of 'Criminal breach of trust' the intention of the accused is not dishonest at the time of entrustment of the property to him and it is the subsequent dishonest misappropriation of the entrusted property which constitutes the essence of the offence.

From the perusal of the order passed by learned JMIC, Karnal and the judgment dated 24.03.2015 passed in revision by learned Addl. Sessions Judge, Karnal, I find that no illegality has been committed by the Courts below nor there is anything from which it can be held that passing of the impugned order and judgment amount to miscarriage of justice.

In view of the above discussion, I find that the impugned order and judgment passed by the Courts below are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

October 08, 2015
Vgulati

(INDERJIT SINGH)
JUDGE