

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM No. M-33783 of 2011

Date of Decision:-4.2.2015

Deegh Ram

...Petitioner

Vs.

Shoe Narain @ Sheo Narain

...Respondent

CORAM: HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR

Present:- Mr.Ajay Jain, Advocate for the petitioner.

Mehinder Singh Sullar, J. (Oral)

The epitome of the facts and material, culminating in the commencement, relevant for deciding the instant petition to quash the impugned order dated 10.2.2009 of trial court & judgment dated 9.9.2011 of revisional Court and emanating from the record, is that, respondent-accused Shoe Narain alias Sheo Narain was the owner of land in question. He agreed to sell the same for a total consideration of Rs.5 lacs to petitioner-complainant Deegh Ram son of Hari Singh (for brevity "the complainant"). Having received an amount of Rs.2,50,000/- as earnest money, an agreement to sell dated 20.6.2002 (Ex.PW3/A) was executed in his (complainant) favour by the respondent-accused. The sale deed was agreed to be executed/registered on or before 15.5.2003. The complainant claimed that respondent became dishonest, did not execute the pointed sale deed and sold the land in question, through the medium of sale deeds dated 23.6.2003 and 27.5.2004 to subsequent vendees Shri Bhagwan, Shish Ram, Umed and Raj Niwas sons of Sultan Singh. Consequently, the complainant filed the civil suit for specific performance of indicated agreement to sell, which was stated to be still pending in the trial Court.

2. Leveling a variety of allegations and narrating the sequence of events, in all, according to the complainant that respondent and his other co-accused have hatched a criminal conspiracy, cheated him and did not execute the sale deeds, in pursuance of the agreement to sell dated 20.6.2002. In the background of these allegations, the complainant instituted the private criminal complaint against the respondent and his other co-accused (subsequent vendees), for the commission of offences punishable u/ss 406, 420, 467, 468, 120-B and 506 IPC in the trial court in the manner depicted here-in-above.

3. Having completed all the codal formalities, the trial Court dismissed the complaint and discharged the accused, by way of impugned order dated 10.2.2009. Similarly, first revision petition filed by the complainant was dismissed as well, by means of impugned judgment dated 9.9.2011 by the revisional Court.

4. Sequelly, the petitioner-complainant still did not feel satisfied and preferred the present 2nd revision petition to quash the impugned order/judgment of Courts below (which is otherwise legally barred) in the garb of petition u/s 482 Cr.PC. That is how I am seized of the matter.

5. Ex facie, the arguments of learned counsel that since the respondent-accused did not execute the sale deeds in favour of complainant and cheated him, so, the Courts below committed a legal error to discharge the accused, are not only devoid of merit but misplaced as well.

6. Having heard the learned counsel for the petitioner, having gone through the record with his valuable help and after bestowal of thoughts over the entire matter, to my mind, as there is no merit, therefore, the instant petition deserves to be dismissed, for the reasons mentioned

here-in-below.

7. What cannot possibly be disputed here is that it is now well recognized principle of law that if the dispute is purely of civil nature, then the parallel criminal proceedings, with respect to the same subject matter, are not legally permissible. This matter is no more res integra and is now well settled. An identical question came to be decided in case Indian Oil Corporation v. NEPC India Ltd. & Others (2006)6 SCC 736, wherein having considered the similar matter, the Hon'ble Supreme Court cautioned about a growing tendency of the people to convert purely civil disputes into criminal cases and hence noticed the prevalent impression that since the civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors, so, the people have started to settle civil disputes and claims, which do not involve any criminal offence, by applying the pressure through criminal prosecution. It was observed that "such effort should be deprecated and discouraged. The same view was taken by the Hon'ble Apex Court in case Inder Mohan Goswami & Another v. State of Uttaranchal & Others [2007 (4) LAW HERALD (SC) 3288] : 2008(1) SCC(CrI.) 259 wherein it was held that the veracity of the facts alleged by the complainant can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction and if the dispute in question is purely of a civil nature, in that eventuality, the initiation of criminal proceedings by the complainant against the accused is clearly an abuse of process of the Court.

8. Again, the Hon'ble Apex court in case Md Ibrahim & Ors. v. State of Bihar & Anr. 2009(4) RCR (Criminal) 369 has ruled that there is growing tendency of complainants attempting to give the cloak of a criminal

offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment, criminal courts should ensure that proceedings before it are not used for settling score or to pressurize parties to settle civil disputes.

9. Sequely, the same very view was again reiterated by Hon'ble Supreme Court in case Joseph Salvaraja v. State of Gujarat and others [2011 (5) LAW HERALD (SC) 3792] : (2011) 3 SCC(Cr1.) 23, in which, it was held as under:-

“In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in Devendra v. State of U.P., (2009) 7 SCC 495, in which, it was held (para 27) that a distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.”

10. Such thus being the legal position and material on record, now the short and significant question, though important, which invites an immediate attention of this court and arises for determination in the present petition is, as to whether in case the dispute is purely of civil nature, the criminal prosecution can continue against the accused with respect to the same subject matter or not ?

11. Having regard to the contentions of learned counsel for the petitioner, to me, the answer must obviously be in the negative.

12. As is evident from the record that the respondent-accused was the owner of land in dispute. He agreed to sell the same for a total consideration of Rs.5 lacs to complainant. Having received an amount of Rs.2,50,000/- as earnest money, an agreement to sell dated 20.6.2002 was executed in his (complainant) favour by the respondent-accused. The sale deed was to be executed on or before 15.5.2003, in pursuance of the indicated agreement to sell. According to complainant that respondent became dishonest, did not execute the pointed sale deed and sold the land in question, through the medium of sale deeds dated 23.6.2003 and 27.5.2004 to the subsequent vendees. It is not a matter of dispute that the respondent-accused has subsequently sold the suit property, much after the relevant date, to execute the sale deed to subsequent vendees. So, the question of any dishonest intention or cheating did not arise at all in this relevant direction. Thus, the essential ingredient/element of cheating are lacking in the instant case. Moreover, the petitioner has already filed a civil suit for specific performance of agreement to sell dated 20.6.2002, which is stated to be still pending in the trial Court.

13. As indicated here-in-above, in the present case, the dispute between the parties is purely of civil nature and parties are already before the civil Court in the wake of civil suit filed by the petitioner for specific performance of pointed agreement to sell. Therefore, to my mind, the criminal prosecution cannot legally be maintained against the respondent-accused. Otherwise, it will amount to misuse of process of law, which is not legally permissible in this relevant connection. Hence, the ratio of law laid down in the aforesaid judgments “mutatis mutandis” is applicable to the facts of the instant case & is the complete answer to the problem in hand

and the contrary submissions of counsel for complainant “stricto sensu” deserve to be and are hereby repelled under the present set of circumstances.

14. Likewise, there is yet another aspect of the matter, which can be viewed entirely from a different angle. The trial Court has discharged the accused, vide impugned order dated 10.2.2009, which, in substance, is as under (paras 14 to 17) :-

“14. However, in this case, it is admitted by the complainant when stepped into witness box as PW9 that on 15.05.2003, the target date of agreement to sell Ex.PW3/A. The accused had executed another Sale Deed, in his favour and they remained present in the office of Sub Registrar. On 15.05.03, he executed the Sale Deed of 14 kanals falling in killa No.14 and 15/1 for a consideration of Rs.4,40,000/-. It is also admitted by the complainant that another agreement to sell arrived between the complainant and the accused on 26.05.03 was got cancelled on 03.08.03 and the entire earnest money of Rs.3,00,000/- was returned by the accused. Had there was any deception played by the accused, then the Complainant would not have entered into another agreement to sell on 28.05.03.

*15. Furthermore when the accused was present in the office of Sub Registrar on 15.05.03, he would have even executed the Sale Deed for this alleged agreement to sell. Since the accused had executed the Sale Deed qua earlier agreement to sell and even returned the amount of earnest money of the subsequent agreement to sell clearly shows that accused never played any deception nor was having dishonest intention at the time of making promise. Therefore, in view of ratio particularly in **Suresh's: S.W.Palaitkar and Haridaya Ranjan (Supra)** the offence under Section 420 of IPC is not made out. The Act on the part of accused is mere failure to keep up his promise culpable intention right at the beginning cannot be presumed.*

*16. Moreover, keeping in view the ratio of law in case of **M.Cheuviah (supra)** shows that present case is clear case of non performance of the contract on the part of accused with regard to agreement to sell. Moreover, mere breach of contract cannot give rise to Criminal prosecution for cheating. Moreover, in this case, the Complainant has not alleged single word that the accused was having fraudulent or dishonest intention at the time of making of compromise i.e. agreement to sell dated 20.06.2002, thus, there are not sufficient material on record to frame charge against the accused.*

17. It is well settled that under the provisions of Section 245 of Cr.PC the charge is to be framed if the evidence so led by the Complainant is sufficient to hold him guilty, if no other evidence is led by the accused. However, keeping in view that in this case, Complainant himself admitted the execution of another Sale Deed on 15.05.2003 and cancellation of another agreement to sell arrived subsequently, therefore, there is no dishonest or fraudulent intention on the part of the accused. The only remedy for the

Complainant is to seek specific performance of the agreement to sell. Hence, there are not sufficient material on record to frame charge against the accused. Consequently, the accused is discharged and the Complaint stands dismissed. Bail bonds and surety bonds of accused stand discharged. File be consigned to the record room."

15. Not only that, the order of trial Court was upheld by the revisional Court, vide impugned judgment dated 9.9.2011. Meaning thereby, the trial Court & revisional Court have examined the matter in right perspective and have correctly discharged the accused. The learned counsel for petitioner did not point out any material/ground, muchless cogent, so as to warrant any interference in the concurrent findings contained in the impugned order/judgment of both the Courts below. Such order/judgment, containing valid reasons, cannot possibly be interfered in exercise of very limited jurisdiction of this Court, in the present 2nd revision petition (which is otherwise legally barred under section 397(3) Cr.PC), in the garb of petition under section 482 Cr.PC, unless and until, the same are illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner, so, the impugned order & judgment of Courts below deserve to be and are hereby maintained in the obtaining circumstances of the case.

16. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the petitioner.

17. In the light of aforesaid reasons, as there is no merit, therefore, the instant petition is hereby dismissed as such with costs.

4.2.2015
AS

(Mehinder Singh Sullar)
Judge

Whether to be referred to reporter ? Yes/No