

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 3758 of 2014
Date of decision: 15.1.2015**

Baldev Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. V.K.Gupta, Advocate
for the petitioner.

SABINA, J.

Respondent No. 2 had faced the trial qua commission of offence punishable under Section 420 of the Indian Penal Code, 1860 ('IPC' for short) in FIR No. 316 dated 23.11.2006, registered at Police Station City Faridkot. Trial Court vide judgment/order dated 5.10.2012 ordered the conviction and sentence of the petitioner under Section 420 IPC. In an appeal filed by respondent No. 2, the Appellate Court ordered the acquittal of respondent No. 2 vide order dated 4.6.2014. Hence, the present petition by the petitioner-complainant.

Prosecution story, in brief, is that respondent No. 2 had executed agreement to sell dated 7.2.2000 in favour of complainant Baldev Singh qua land measuring 16 kanals. The sale deed was to be executed on 15.6.2001. However, later the date for execution of the sale deed was extended to 15.6.2003. Later, complainant came to know that the land in question had already been sold by respondent No. 2 to Gulzar Singh vide sale deed dated 6.6.1997.

Accused admitted his signatures on the agreement to sell but took the plea that he had signed on blank stamp papers for security purposes.

Learned Appellate Court, while ordering acquittal of respondent No. 2 has held as under:-

“In this regard, it is pertinent to mention here that, the complainant Baldev Singh, while cross examination, himself admitted, about there being business dealings with the accused, which fact, itself puts the court, on guard and cautions the court, to appraise the evidence, in the backdrop of there being business dealings between the two. Further more, the complainant had filed a civil suit, for recovery of earnest money with interest from the accused. Copies of the judgment and decree sheet, passed in the said civil suit have been proved as Ex. DX and Ex. DX/1. Perusal of the said judgment reveals that, though said civil suit was filed, for the recovery of Rs. 4,25,000, but, however, on the basis of the receipt Ex. DA, after deducting Rs. 1,50,000/- having already paid by Gursewak Singh to Baldev Singh, from the earnest money of Rs. 2,40,000/- the civil court concluded that, only the amount of Rs. 90,000/- is required, to be recovered from Gursewak Singh and the suit of the plaintiff Baldev Singh was decreed to this extent, along with interest. Further, from the evidence, it is evident that, the first appeal was filed, which was accepted and the same was further challenged before the Hon'ble High Court in second appeal and the copy of the interim order,

passed by the Hon'ble High Court, has been proved as Ex. DY and the said appeal is still pending. Also, it is pertinent to mention here that, Baldev Singh complainant has also admitted in his cross examination, about the receipt Ex. DA, having been produced in the civil suit, copy whereof is Ex. D1. Only after filing of the civil suit, the criminal proceedings were initiated.

No doubt, civil and criminal proceedings can go parallel, but, however, in the civil suit filed by the complainant Baldev Singh, there is no mention of dishonest intention, on the part of the accused Gursewak Singh. Even though, the execution of the agreement is established, the court is required, to take into consideration, the material circumstances, to make assessment of the existence of dishonest intention. In this regard, it is pertinent to mention that, the sale deed, which was executed by the accused, in favour of one Gulzar Singh, has been proved as Ex. PW8/A and perusal of the same reveals that, there is mention of the possession having been handed over to the purchaser. In the light of such recital in the sale deed, also now it is important, to make reference, to the agreement to sell in question Ex. PW4/A, which also contain the recital of the possession, having been handed over to the complainant Baldev Singh, at the time of execution of the agreement to sell between the parties. How it can be so, when at the time of execution of the sale deed dated 6.6.1997, possession has already been given to the purchaser.

Further more, it is pertinent to mention here that, the proposed sale was, for a sum of Rs. 2,80,000/- and at the time of execution of the agreement to sell in question, major portion of the consideration amount to the extent of Rs. 2,40,000/- had been paid by the complainant Baldev Singh to the accused Gursewak Singh. If it be so, then the question arises, what was the reason, for seeking extension of the stipulated date, for execution of the sale deed and that too, for such a long time. At first instance, it was extended from 15.6.2001 to 29.6.2001 and then from 29.6.2001 to 15.6.2013, which was long extension, so given. What made the parties, to agree, for such a long extension, regarding the same, nothing as such, is coming on the record. Considering the aforesaid circumstances, when there is contradictory version, coming forth, regarding the recitals of the possession and also considering the non explanation of the circumstances, relating to the extension of the stipulated date of execution of the sale deed, the same creates doubt, about the genuineness of the agreement to sell in question. In these circumstances, the genuineness of the transaction is not established, to be beyond shadow of doubt. Rather, all the aforesaid circumstances, strengthen the defence plea, about the document in question, to be only a security document, in the backdrop of the complainant, having business dealings with the accused. In order to secure verdict of conviction for the accused, it was incumbent upon the prosecution, to establish the guilt of the accused,

beyond shadow of reasonable doubt. However, tested on such touchstone, when, we go through the evidence, the proposed sale, by way of the agreement to sell Ex. PW4/A is rendered doubtful and precisely, on this account, the existence of dishonest intention, on the part of the accused, at the time of entering into agreement to sell is also rendered doubtful.”

The reasons given by the Appellate Court while ordering acquittal of respondent No. 2 are sound reasons.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

January 15, 2015

Gurpreet