

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRR-3983-2014

Date of decision : 20.01.2015

Naval Kishore

... Petitioner

Versus

Kamal Kishore and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.B.S.Aulakh, Advocate
for the petitioner.

REKHA MITTAL, J.

The present petition has been directed against the judgment dated 21.08.2014 passed by the Additional Sessions Judge (A), Fast Track Court, Amritsar whereby the appeal preferred against the judgment dated 09.09.2011 passed by the Additional Chief Judicial Magistrate, Amritsar vide which the trial Court acquitted the accused has been dismissed and the findings recorded by the trial Court are affirmed.

The petitioner lodged FIR No. 363 dated 19.12.2012 in Police Station Sadar Amritsar for offence punishable under Section 406 of the Indian Penal Code (in short 'IPC') on the allegations that his brother Kamal Kishore Chopra sold area measuring 1156.39 square yards in excess of his share before partition of the joint land measuring 4 kanals. The trial Court appears to have framed charge for commission of offence punishable under Section 420 IPC but the respondent-accused was acquitted of the offence charged against him. The judgment passed by the trial Court was challenged in appeal before the Court of Sessions by the State but the same did not find

favour with the appellate Court and as a result, the appeal was dismissed and the findings recorded by the trial Court were affirmed.

Still feeling dissatisfied, the matter has been carried in revision before this Court.

Counsel for the petitioner contends that as the accused has sold more land than that of his share through various sale deeds executed in favour of vendees, purchaser of different areas, the accused is guilty of committing offence of cheating punishable under Section 420 IPC. It is further submitted that both the Courts below have committed a serious error rather illegality in holding in favour of the accused.

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

A plain reading of the facts and evidence on record would make it evident that the accused sold an area measuring 1155.88 square yards, about 155.88 square yards excess of his share in the joint land of the complainant and the accused. It is not the plea of the complainant that the accused impersonated himself in place of the complainant for executing the sale deed in favour of the persons who purchased the land.

The precise question for adjudication is that if a person claiming himself to be owner of some property sells another's property in favour of a third party, whether the owner can lodge the criminal proceedings for commission of offence of cheating defined in Section 415 IPC and punishable under Section 420 thereof.

The issue is no longer res integra in view of judgment of the Hon'ble Supreme Court of India ***Md.Ibrahim & Ors. Vs. State of Bihar & Anr. 2009(4) RCR (Criminal) 369.*** The Hon'ble Supreme Court on a

detailed consideration of the essential ingredients of offence of cheating defined in Section 415 IPC has recorded its conclusions that if a person sells a property knowing that it does not belong to him and thereby defrauds the person who purchased the property, the person defrauded that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

In the case at hand, the complaint has not been made by the purchaser but the same has been made by a co-owner. It is not the case of the complainant that the accused made a false or misleading representation to him nor is it his case that he offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he was not so deceived.

In this view of the matter, I am of the considered opinion that essential ingredients of the offence of cheating defined in Section 415 IPC are missing in the instant case, therefore, no fault can be found in the concurrent findings recorded by the courts below holding that the prosecution has failed to prove culpability of the accused for the charged offence punishable under Section 420 IPC.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed in limine.

(REKHA MITTAL)
JUDGE

January 20, 2015.

DK