

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

**Criminal Misc. No.A-798-MA of 2014 (O&M)
Date of Decision: 29.01.2016**

Virender Singh

...Applicant (s)

Versus

Gurnam Singh

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

- 1. Whether reporters of local newspapers may be allowed to see judgment?*
- 2. To be referred to reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present:- Mr. Raj Kapoor Malik, Advocate
for the applicant.

HARI PAL VERMA J.(Oral)

CRM-16086-2014:

This is an application under Section 5 of the Limitation Act for condonation of delay of 14 days in filing the present application under Section 378(4) Cr.PC. for leave to appeal against the judgment dated 13.2.2014 passed by Judicial Magistrate, Ist Class, Kaithal.

For the reasons mentioned in the application which is supported by an affidavit of the applicant, delay of 14 days in filing this application under Section 378(4) Cr.PC. is condoned.

The application is disposed of.

Criminal Misc. No.A-798-MA of 2014:

The instant application has been moved the applicant-complainant under Section 378(4) of the Code of Civil Procedure for grant of leave to appeal against judgment of acquittal dated 13.2.2014 passed by Judicial Magistrate, Ist Class, Kaithal, whereby the complaint filed by the applicant-complainant under Sections 406, 420, 467, 468, 471, 120-B IPC has been dismissed and the respondent-accused has been acquitted of the charges levelled against him.

Briefly stated, the applicant-complainant filed a complaint under Sections 406, 420, 467, 468, 471, 120-B IPC claiming himself to be owner of agricultural land measuring 8 kanal representing 160/2187th share out of total land measuring 109 kanal 7 marlas comprised in khewat No.166 by virtue of mutation No.2507 dated 16.2.2006 situated in Patti Dogar, Tehsil and District Kaithal. It has been alleged in the complaint that the respondent-accused, entered into an agreement to sell dated 5.5.2008 with the applicant-complainant for the sale of aforesaid land for a consideration of Rs.10 lacs and received Rs.8,25,000/- in cash in the presence of witnesses being the earnest money and executed a separate receipt pursuant thereto on the same day i.e. 5.5.2008. The sale was agreed to be executed on or before 5.10.2008 in favour of the complainant. It was also agreed that the respondent-accused shall not mortgage or sell the suit land to any other person and in case, the respondent-accused do such act, he

shall be liable for committing fraud. However, the date of execution and registration of the agreement to sell i.e. 5.10.2008 being Sunday, the complainant reached the office of Sub Registrar, Kaithal on 6.10.2008 along with balance sale consideration and requisite stamp fee and other expenses for execution and registration of sale deed, as per the agreement. But the respondent-accused did not turn up in the office of Sub Registrar, Kaithal to perform his part of the contract, though the applicant-complainant got his presence marked by way of sworn affidavit on 6.10.2008. On 7.10.2008, the applicant-complainant approached the respondent-accused and made a request to perform his part of the contract, but he started prolonging the matter on one pretext or the other. On 24.8.2009, the applicant came to know about sale of 5 kanal 0 marla land out of the total land measuring 109 kanals 7 marlas by the respondent-accused in favour of Smt. Harbajan Kaur, accused no.2 in the complaint, despite the fact that the respondent-accused had already executed the agreement to sell dated 5.5.2008 with the applicant-complainant in respect of land measuring 8 kanal and the respondent-accused had the possession of only 9 kanal of land. The applicant-complainant got shocked and applied for certified copy of the sale deed and approached both the accused and made a request to declare the new sale deed dated 11.11.2008 bearing No.4888/1 to be null and void and to get the sale deed of

the suit land executed and registered in favour of the complainant.

Learned trial Court while considering the evidence led by the applicant-complainant, including the document Ex.PB, Ex.P-1, Ex.P-2, Ex.P-3 and after examining the witnesses CW-1 to CW-5 in the pre-charge evidence, chargesheeted the respondent-accused Gurnam Singh for commission of offence punishable under Section 420 IPC on 29.8.2013. After framing of charge, the trial Court examined CW-1 Sunita Rani, CW-2 Naseeb Singh and CW-3 Vipin Taneja. The statement of the accused under Section 313 CrPC was recorded on 20.1.2014, wherein all the incriminating evidence was put to him, which was denied by him and he claimed innocence. Since the applicant-complainant failed to establish his case, learned trial Court vide judgment dated 13.2.2014 acquitted the accused of the charges levelled against him, observing that the applicant-complainant has failed to prove charges levelled against him beyond reasonable doubt and thereby, dismissed the complaint.

I have heard learned counsel for the applicant and perused the impugned judgment.

It is admitted case of the parties that on the basis of agreement to sell dated 5.5.2008, the applicant-complainant had also filed a civil suit i.e. Civil Suit No.407 of 2009 titled as *Virender Singh v. Gurnam Singh etc.* for possession by way of specific performance of agreement to sell dated 5.5.2008 and the said suit

was dismissed. The applicant-complainant even preferred first appeal against the aforesaid order passed by the civil Court, as provided under Section 96 CPC and the same was also dismissed, though it has been informed by learned counsel for the applicant-complainant that no regular second appeal has been filed. The facts narrated in the complaint shows that the matter in dispute is clearly civil in nature and in such like facts and circumstances, the findings recorded by the Civil Court are more or less binding upon the criminal Court. Therefore, the trial Court, while considering the documents Ex.PB copy of judgment dated 13.2.2013 passed by the Civil Court, Ex.P-1 copy of agreement dated 5.5.2008, Ex.P-2 copy of receipt dated 5.5.2008 and Ex.P-3 copy of sale deed No.4888/1, has rightly dismissed the complaint filed by the applicant-complainant. Even otherwise also, initially, the complaint was filed against two accused, however, after recording the preliminary evidence and perusing report of the police under Section 202 CrPC, only accused no.1-respondent was summoned under Section 420 IPC.

Learned trial Court restricted the controversy involved in the case as to whether on 5.5.2008, the accused who claimed himself to be owner of land measuring 8 kanal representing 160/2187th share out of total land measuring 109 kanal 7 marlas comprised in khewat No.166 by virtue of mutation No.2507 dated 16.2.2006 had entered into any agreement with the complainant to sell the sale of said land for a consideration of

Rs.10 lacs and received Rs.8,25,000/- in cash as earnest money, but on 11.11.2008, the respondent-accused executed a sale deed bearing No.488/1 in favour of Smt. Harbhajan Kaur in order to cheat the applicant-complainant or not.

In order to prove the guilt of the respondent-accused under Section 420 IPC and to prove the dishonest intention of the respondent-accused from the very inception, learned trial Court has duly appreciated the evidence led by the complainant. Execution of sale deed Ex.CW-1/A in favour of Smt. Harbhajan Kaur, accused no.2, by the respondent-accused was duly proved by CW-1 and CW-2. Complainant Virender and CW-4 Vipin Taneja, Deed Writer and eyewitness to the agreement to sell Nasib Singh proved the execution of agreement to sell dated 5.5.2008 as Ex.CW-4/A and also proved the receipt of Rs.8,25,000/- by the respondent-accused as Ex.CW-1/B. From the perusal of aforesaid evidence, it transpires that the respondent-accused received Rs.8,25,000/- from the complainant on 5.5.2008. However, as per the testimony of CW-3 Vipin Taneja, Deed Writer, the respondent-accused received Rs.1,75,000/- from the applicant-complainant. It has also come on record that that one more agreement dated 6.5.2007 was executed between the parties regarding the same land and after canceling the same, another agreement i.e. agreement dated 5.5.2008 was executed between the parties, but this fact of has not been mentioned in the complaint or even in the civil suit filed by the applicant-

complainant against the respondent-accused for specific performance of agreement to sell dated 5.5.2008 and in this way, the complainant is totally silent about the alleged agreement to sell dated 6.5.2007.

In order to prove the guilt of the respondent-accused under Section 420 IPC, his fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction and mere non-execution of any agreement do not constitute the offence of cheating. Section 420 IPC reads as under:-

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

On the basis of evidence led by the applicant-complainant, it is clearly established that he has failed to prove dishonest intention of the respondent-accused from the very beginning for execution of the agreement to sell dated 5.5.2008. Rather, it is the complainant who has failed to disclose that he had entered into another agreement prior to the agreement dated 5.5.2008. Moreover, on the same set of facts, the applicant-

complainant has availed the remedy of Civil Suit for specific performance of agreement to sell dated 5.5.2008, wherein the controversy involved has adequately been dealt with by the Civil Court and ultimately the civil suit was dismissed vide judgment dated 13.2.2013.

Therefore, no interference is warranted in the impugned judgment dated 13.2.2014 passed by learned Judicial Magistrate Ist Class, Kaithal.

The present application is dismissed.

January 29, 2016
AK

(HARI PAL VERMA)
JUDGE