

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

CRR No.1163 of 2016 (O&M)
Decided on:-01.06.2016.

Rajinder

.....Petitioner.

Versus

State of Haryana and another

.....Respondents.

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

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *Whether to be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. R.S. Cheema, Senior Advocate with
Mr. P.R. Yadav, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Deepinder Singh, Advocate
for the complainant.

HARI PAL VERMA, J.

Petitioner has filed the present revision petition against judgment dated 29.2.2016 passed by learned Additional Sessions Judge, Gurgaon, whereby his appeal against the judgment dated 17.3.2015 convicting him for the commission of an offence punishable under Section 420 IPC and order dated 18.3.2015 sentencing him rigorous imprisonment for 3 years and to pay fine of Rs.10,000/-, was dismissed with modification in order of sentence.

Briefly stated, FIR No.18 dated 9.2.2010 under Sections 420, 467, 468 and 471 IPC was registered at Police Station Badshahpur, District

Gurgaon against the petitioner on the basis of complaint made by complainant Om Parkash. It is the case of the prosecution that the petitioner was known to the complainant. The complainant expressed his desire to purchase one and a half acre land in Khewat No.1309, Khata No.1428, Rectangle No.156, situated within the revenue estate of Badshahpur. The land was projected to be owned by the petitioner. Accordingly, the petitioner-accused offered his land and projected himself as owner of one and a half acre land in Rectangle No.156, Killa No.9/1, 9/2, 10, 21, 22, 20/2 and 21/2, situated in Village Badshahpur, Tehsil and District Gurgaon.

Believing the petitioner-accused to be owner of said land, the complainant entered into an agreement to purchase the land at the rate of Rs.1,50,00,000/- per acre. Accordingly, the petitioner-accused received Rs.25 lacs from the complainant as an earnest money, out of which Rs.15 lacs were received in cash, whereas remaining Rs.10 lacs were received through cheque No.976931 dated 19.7.2006. The agreement dated 19.7.2006 was also entered between the parties and was duly signed by the parties i.e. the complainant, the petitioner-accused and the witnesses. The sale deed was agreed to be executed on or before 19.9.2006 on receipt of balance sale consideration.

It is the case of the complainant that he wanted to purchase the land in Rectangle No.156, the details of which find mentioned in the agreement. However, the petitioner-accused kept on delaying the matter regarding execution of the sale deed on one pretext or the other. In this process, the complainant came to know that the petitioner-accused is owner

only to the extent of 2 Kanals land so far as Rectangle No.156 is concerned. The petitioner-accused has received Rs.25 lacs from the complainant and prepared forged documents in order to cheat him. The petitioner-accused projected himself to be owner of 12 Kanal 10 Marlas land in Rectangle No.156, inducing the complainant dishonestly and succeeding in extracting an amount of Rs.25 lacs from him and in this manner, had executed a false agreement showing total land in Rectangle No.156, but without there being so.

Since the petitioner-accused was not owner of the land as reflected in the agreement, the complainant requested him to return Rs.25 lacs which he had received from the complainant as an earnest money. However, the petitioner-accused avoided the execution of the sale deed/ payment of earnest money on one pretext or the other and finally refused to return the amount. The complainant approached the authorities and ultimately was constrained to move a complaint, as provided under section 156(3) Cr.P.C., on the basis of which the FIR in question was registered.

After completion of investigation, the Challan as provided under Section 173 Cr.P.C. was presented in the Court. Copy of Challan as envisaged under section of 207 Cr.P.C. was supplied to the accused free of cost. Considering a prima-facie case against the accused, he was charge-sheeted under Sections 420, 467, 468 and 471 IPC. The charge was read over and explained to the petitioner-accused, to which he pleaded not guilty and rather claimed trial.

After framing of charge, the prosecution led its evidence and in support of its case, examined as many as 11 witnesses, namely, PW1

complainant Om Parkash, PW2 Tala Ram, PW3 ASI Subhash Chand, PW4 EASI Jitender Singh, PW5 Partap Singh, PW6 Laxman Singh, PW7 Constable Sanjay Kumar, PW8 Inspector Sanjay Kumar, PW9 Constable Siri Kishan, PW10 Lal Saheb Mishra and PW11 Harshvardhan. Thereafter, learned APP for the State tendered the FSL report Ex.PA and the specimen signatures Ex.PA/1 to Ex.PA/4 and closed the prosecution evidence.

After completion of prosecution evidence, statement of the petitioner-accused was recorded under Section 313 Cr.P.C. wherein all the incriminating evidence against him was put to him. In his defence evidence, the accused has examined two witnesses, namely, DW1 Rampal, Patwari and DW2 Ashok Kumar, ARC and his defence evidence was closed by order of the Court.

PW1-complainant Om Parkash has deposed as per prosecution version and successfully proved agreement dated 19.7.2006 Ex.PW1/A, complaint Ex.PW1/B, recovery memo Ex.PW1/C and also placed on record copy of cheque No.976931 as Mark-P1. The other witnesses, namely, PW2 Tala Ram proved recovery memo Ex.PW1/C whereas PW3 ASI Subhash Chand proved his endorsement Ex.PA, recovery memos Ex.PB, Ex.PW1/C and Ex.PC as well as specimen signatures Ex.PA/1 to Ex.PA/4. Similarly, PW6 Laxman Singh proved his report Ex.PW6/A and Jamabandis Ex.PW6/B to Ex.PW6/D. PW10 Lal Saheb Mishra, Supervisor brought the summoned record pertaining to account No.53510083867 in the name of complainant Om Parkash and statement of account for the period from 22.6.2006 to 20.2.2009 Ex.PW10/A and deposed that at point Mark-F there

is entry dated 25.7.2006 vide which Rs.10 lacs were withdrawn from the said account.

On the basis of evidence so adduced by the prosecution, the trial Court acquitted the petitioner-accused from charge under Sections 467, 468 and 471 IPC by holding that no offence is made out against him under these sections. However, as regard question of commission of offence of cheating punishable under Section 420 IPC, since the complainant as PW1 and Tala Ram as PW2 have proved execution of agreement dated 19.7.2006 Ex.PW1/A and further handwriting expert PW11 Harshvardhan has proved signatures of the accused on the said agreement, coupled with the fact that Rs.10 lacs were paid by the complainant to the petitioner-accused by way of cheque debited from account of the complainant on 25.7.2006, the petitioner-accused was held guilty for the commission of this offence.

Learned trial Court has observed that the execution of agreement Ex.PW1/A between the complainant and the accused and the payment of Rs.10 lacs through cheque No.976931 has duly been proved. As per the agreement Ex.PW1/A, the complainant entered into agreement with the accused with respect to land measuring 12 Kanal 10 Marla falling in Rectangle No.156, Killa No.9/1, 9/2, 10, 21/1, 22, 20/2 and 21/2, situated in village Badshahpur, Tehsil and District Gurgaon. Moreover, it is the petitioner-accused, who himself has placed on record Jamabandis for the year 2005-06 Ex.DW1/A showing therein that the accused had approximately 7 Kanals 8 Marlas land in the aforesaid Killa numbers. In this manner, the petitioner-accused deceived the complainant by making

misrepresentation that he is having 12 Kanal 10 Marla land in the aforesaid Killa numbers and thereby dishonestly induced the complainant to deliver the sale consideration to the accused. Thus, the petitioner succeeded in cheating the complainant. The petitioner was held guilty for committing an offence under Section 420 IPC by the trial Court vide judgment dated 17.3.2015 and was sentenced for the period indicated in the opening para.

Against the judgment of conviction dated 17.3.2015 and order of sentence dated 18.3.2015, the petitioner preferred an appeal taking various grounds including the fact that the petitioner is having more than 15 Kanal land at the same site. As per agreement to sell, he has contracted to sell 12 Kanal 10 Marla land to the complainant, thus he owned more land than agreed in the agreement dated 19.07.2006. Further, the agreement was executed on 19.7.2006 whereas the FIR was registered on 9.2.2010 which is abnormally delayed. The complainant is a property dealer and booked the property of the petitioner-accused and had intentionally left the name of the purchaser blank in the said agreement. Since the complainant was not able to file suit for recovery being barred by limitation, he has taken recourse of filing a complaint under Section 156(3) Cr.P.C. leading to registration of the case. It was pleaded that the complainant is merely making an excuse regarding insufficient land in Rectangle No.156. Had he been aggrieved with the agreement, he could have filed a civil suit for cancellation of the agreement and could have also filed the suit for recovery, but by not adhering to the aforesaid remedies, the very process of initiation of criminal proceedings is bad in law.

Whereas the prosecution assisted with the complainant has pleaded that the petitioner-accused has obtained an amount of Rs.25 lacs from the complainant on the pretext of selling his land measuring 12 Kanal 10 Marla in Rectangle No.156 knowing it well that the accused was not owner of the said land in the Rectangle No.156. It has further been contended that the petitioner-accused has obtained the said amount from the complainant by deceiving him and, therefore, the trial Court has rightly convicted the petitioner.

Considering the rival contentions of the parties and finding no infirmity with the judgment of conviction and order of sentence, learned Additional Sessions Judge, Gurgaon dismissed the appeal, however, reduced the sentence from 3 years to one and a half years vide judgment dated 29.02.2016.

Still aggrieved with the aforesaid judgments of learned Courts below, the petitioner-accused has preferred the present revision petition.

On March 21, 2016, when the case was listed for motion hearing, this Court while issuing the notice of motion had passed the following order:

“Learned counsel for the petitioner contends that an agreement to sell was entered between the petitioner and complainant Om Parkash on 19.7.2006. As per the said agreement, the sale deed was required to be executed on or before 19.9.2006, but the respondent-complainant has failed to adhere the said agreement and it is after more than three years, the complainant filed a complaint on 5.2.2010, on the basis of which the FIR No.18 dated 9.2.2010 under Sections 420, 467, 468 and 471 IPC was registered against the petitioner at Police Station Badshahpur, District Gurgaon.

Learned counsel for the petitioner further contends that in these circumstances, the breach, if any, was on the part of the complainant himself and the conviction of the petitioner by the trial Court and affirmed by the appellate Court is contrary to the aforesaid facts.

Notice of motion for 27.4.2016.”

Vide subsequent order dated 27.4.2016 of this Court, complainant Om Parkash was also ordered to be impleaded as respondent No.2.

Mr. R.S. Cheema, learned senior counsel for the petitioner has argued that from the bare perusal of the contents of the FIR as well as statements of the parties, it can safely be argued that ingredients of Section 420 IPC are not made out in the case. Further, the complainant has raised his grievances after a lapse of more than 3 years which is sufficient to non-suit the complainant. The petitioner and the complainant are incidentally residents of the same village and, therefore, it cannot be believed that the complainant was not aware with the location/dimension of the land. He has given enough stress to his argument that no case of cheating as provided under Section 420 IPC is made out as the very ingredient of dishonest inducement on the part of the petitioner-accused is not established, rather badly missing. He has submitted that in the agreement dated 19.7.2006 Ex.PW1/A, land measuring 12 Kanals 10 Marlas falling in Rectangle No.156, Killa No.9/1, 9/2, 10, 21/1, 22, 20/2 and 21/2, situated in village Badshahpur, Tehsil and District Gurgaon was mentioned. It had never been disputed that the petitioner was owner in possession of land in Rectangle No.156 to the extent of 6 Kanals 14.5 Marla as per Ex.DW1/A. The petitioner was owner in possession of land in Rectangle No.156 to the

extent of 1 Kanal 18 Marla as reflected in his share. He argued that the petitioner is owner to the extent of 10 Kanal 10 Marla land as per the revenue record i.e. Ex.DW1/A in Rectangle No.155 which is adjacent to the land as agreed upon between the parties. The land of Rectangle No. 155 is of equal quality.

He has further argued that the Courts below have failed to consider the evidence in correct legal perspective and have, rather, relied upon agreement to sell which was blank document pertaining to description of the land and the name of complainant has been added at a later stage. There is no reference to the Jamabandi and no investigation has been conducted by the investigating officer as to who fulfilled the Killa numbers and other columns in the agreement to sell. He referred to statement of PW11 Dr. Harshvardhan, Assistant Director, FSL, Madhuban, Karnal who has admitted that tint of ink used in Hindi writing reading as “Om Parkash...Gurgaon” is different from rest of the document containing Marking Q2. Therefore, there is interpolation in the writing which creates serious doubts about the genuineness of the agreement. The complainant was a property dealer and, therefore, it cannot be said that he did not check the revenue record before entering into the agreement with the petitioner. The agreement was executed between the parties on 19.7.2006 and last date for execution of the sale deed was fixed as 19.9.2006, but till date, no action was taken by the complainant on the said agreement. As such, on 19.9.2006, the very contract had come to an end and, rather, the earnest money deemed to have been forfeited as the document was no longer a document in the eyes of law. Even the limitation to file suit for specific

performance or recovery was 3 years and on 19.9.2009 the document in question has also become time barred.

Learned senior counsel for the petitioner has further referred to the statement of complainant Om Parkash as PW1 wherein he has stated that he has seen the land of the accused before the execution of agreement to sell. So, once the complainant has seen the land and the petitioner is owner of the land not only in Rectangle No.156, rather in adjacent land in Rectangle No.155, it cannot be said that the petitioner is guilty for offence under Section 420 IPC.

On the other hand, Mr. Deepinder Singh, learned counsel for respondent No.2-complainant has argued that once it is established that the petitioner is not owner in possession of the land as referred in the agreement, it leads to a clear conclusion that in the specific Rectangle No. 156, the accused made misrepresentation and in this manner, he had dishonestly induced the complainant to part with money without there being a agreed land.

Learned State counsel has also vehemently argued that it is the admitted case of the parties that the petitioner was not owner in possession of the land as referred in agreement dated 19.7.2006 i.e. land measuring 12 Kanal 10 Marla falling in Rectangle No.156, Killa No.9/1, 9/2, 10, 21/1, 22, 20/2 and 21/2, situated in village Badshahpur, Tehsil and District Gurgaon. Therefore, the petitioner had no right to enter into an agreement with the complainant. The petitioner was aware of the fact that he was not owner of the land referred in the agreement and, therefore, he could not have entered into an agreement. Once he has entered into an agreement

despite not being owner of the land, offence under Section 420 IPC is clearly attracted.

I have heard learned counsel for the parties and perused the record.

Section 420 IPC is reproduced 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.”

It is not in dispute that at the time of execution of agreement dated 19.7.2006 Ex.PW1/A, Rs.25 lacs were received by the petitioner-accused from the complainant as earnest money which include Rs.15 lacs in cash and Rs.10 lacs by way of cheque. The cheque was duly encashed in favour of the petitioner. The last date for execution of the sale deed was fixed as 19.9.2006 and at the same time, it was clearly mentioned in the agreement that it would be at the discretion of the complainant to get the sale deed executed either in his name or anybody else. The complainant would be at liberty to nominate his person to get the sale deed executed. Therefore, plea of the counsel for the petitioner that name of the complainant was inserted/added at a later stage is of no consequence, more particularly, when there is clear scope for inclusion of name of any person,

of course at the behest of the complainant. Therefore, the plea of the petitioner that it was in different ink is totally inconsequential.

The petitioner has failed to satisfy this Court or failed to adduce any substantial evidence that the petitioner-accused was competent to enter into the agreement to sell dated 19.7.2016 being exclusive owner of the land.

It would also be relevant to mention here that the scope of revisional jurisdiction is vested with limited powers. Hon'ble Supreme court in ***Johar and others versus M/s Mangal Prasad and another, 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, has observed as under :-

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under Section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revisional application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

Though the scope of interference in revisional jurisdiction is very limited, still this Court has given an offer to learned senior counsel for the petitioner to have recourse to the mediation proceedings as the complainant was made to part with an amount of Rs.25 lacs, at the time of execution of agreement. However, to the very surprise of this Court, learned counsel for the petitioner was very categorical and was quite reluctant to the offer regarding mediation proceedings. The receipt of

Rs.25 lacs by the petitioner has never been disputed by the petitioner in the whole proceedings.

It is not in dispute that the petitioner has already accepted Rs.25 lacs from the complainant as earnest money and it is also fully established that he is not owner of the land as referred in agreement dated 19.7.2006 Ex.PW1/A. Therefore, plea of the petitioner that ingredients of Section 420 IPC are not made out, cannot be accepted. Petitioner had dishonestly induced the complainant to enter into an agreement, without there being in exclusive ownership of the land agreed to be sold between the parties.

This Court cannot ignore the fact that though learned trial Court has sentenced the petitioner-accused for rigorous imprisonment for three years and to pay a fine of Rs.10,000/-, learned appellate Court has reduced his sentence to the period of one and a half year. Thus, much relief has already been granted to the petitioner by learned appellate Court, while reducing the sentence.

Accordingly, judgment dated 17.3.2015 passed by learned Magistrate as well as judgment dated 29.2.2016 passed by learned Additional Sessions Judge, Gurgaon are affirmed and the present revision petition, being devoid of any merit, is dismissed.

June 01, 2016
Yag Dutt/Vijay Asija

(HARI PAL VERMA)
JUDGE