

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.171 of 2016(O&M)
Date of decision: 29.04.2016

Randhir

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.K.C.Rajput, Advocate for the petitioner
Ms.Supriya Arora, AAG Haryana

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

Kuldip Singh, J.

This revision is directed against the judgment dated 10.12.2015, passed by learned Additional Sessions Judge, Rohtak, affirming the judgment of conviction dated 4.4.2015 and order of sentence dated 9.4.2015, passed by the learned Additional Chief Judicial Magistrate, Rohtak, vide which, the present petitioner was convicted under Section 420 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.20,000/-, in default thereof, to undergo further rigorous imprisonment for three months.

The facts of the case are that the present case was got registered on a complaint forwarded by the Magistrate under Section 156(3) Cr.P.C. to the police. Babu Ram Malik complainant stated in the complaint that he had entered into agreement to sell with Lakhmi Chand and Randhir Singh accused along with their brothers Mai Chand and Inder regarding land measuring 67 kanals 13 marlas on

23.4.2003. The land was agreed to be sold @ Rs.16,00,000/- per acre. Rs.12 lacs were paid as earnest money by the complainant. Sale deed was agreed to be executed on or before 22.7.2004. The possession of the land was delivered to the complainant on the date of the agreement i.e. 23.4.2003. According to the complainant, he made further payments as under:-

- (a) A sum of Rs.1,50,000/- was paid on 1.8.2003
- (b) A sum of Rs.1,00,000/- was paid on 1.11.2003
- (c) A sum of Rs.3,60,000/- was paid on 5.12.2004
- (d) A sum of Rs.35,00,000/- was paid on 3.9.2004

The date of execution of the sale deed was extended upto 3.3.2005. It was stipulated that if the complainant failed to get the sale deed executed upto the said date, then either earnest money will be forfeited or he will be entitled to get the agreement to sell enforced on payment of balance sale consideration from the transferer with current bank interest rate. Total sale consideration Rs.53,10,000/- was paid by the complainant to the above mentioned vendors. The vendors executed the sale deed No.91 dated 3.9.2004 on receipt of Rs.3,98,000/- in part performance of the agreement. Out of the said four vendors, Mai Chand and Inder executed sale deeds of their ½ share of 67 kanals 13 marlas in accordance with the agreement for sale on receiving their respective shares of the sale consideration. The accused/ present petitioner also sold their share of land 8 kanal 6 marlas in accordance with agreement on receipt of Rs.1,99,000/- on 3.9.2004. In this way, out of the total land measuring 67 kanals 13 marlas, 25 kanals 10 marlas is yet to be sold in favour of the

complainant by the accused Nos.1 and 2 on the payment of balance sale consideration of Rs.39,11,000/-. It is further alleged that complainant is ready and willing to make the balance payment. He requested the accused Nos.1 and 2 to execute the sale deed. But the accused refused to execute the sale deed and rather executed the sale deeds as under in favour of accused No.3 to 10 (in the said complaint):-

- (a) Sale deed No.2115/1 dated 27.1.2006 in respect of land measuring 13 marlas in favour of accused No.3.
- (b) Sale deed No.2116/1 dated 27.1.2006 in respect of land measuring 13 marlas in favour of accused No.4.
- (c) Sale deed No.2117/1 dated 27.1.2006 in respect of land measuring 7 marlas in favour of accused No.5.
- (d) Sale deed No.2207/1 dated 6.2.2006 in respect of land measuring 1 kanal 14 marlas (1000 sq. yds.) in favour of accused No.6.
- (e) Sale deed No.2208/1 dated 6.2.2006 in respect of land measuring 7 marlas in favour of accused No.7.
- (f) Sale deed No.2209/1 dated 6.2.2006 in respect of land measuring 7 marlas in favour of accused No.8.
- (g) Sale deed No.2282 dated 7.2.2006 in respect of land measuring 1 kanal 10 marlas (906 sq. yds.) in favour of accused No.8.
- (h) Sale deed No.2229/1 dated 7.2.2006 in respect of land measuring 1 kanal 10 marlas (906 sq. yds.) in favour of accused No.3.

After recording the evidence, the learned Additional Chief Judicial Magistrate, Rohtak held that the petitioner has violated the terms and conditions of the agreement and that without inquiring from the complainant as to whether he wants to get the sale deed executed in his favour, the accused executed the sale deed in favour of third person. Therefore, he was held guilty under Section 420 IPC and accordingly sentenced.

In the appeal, learned Additional Sessions Judge, Rohtak recorded similar findings to dismiss the appeal.

I have heard learned counsel for the parties and have also carefully gone through the file.

Cheating is defined in Section 415 IPC which is reproduced as under:-

415. Cheating.--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
Explanation.-A dishonest concealment of facts is a deception within the meaning of this section.

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. Of fraudulent deeds and dispositions of property.

The perusal of said section shows that in order to prove the offence of cheating, dishonest and fraudulent intention should be there from the very beginning. If at subsequent stage, one of the parties becomes dishonest for one or the other reason, it does not amount to criminal offence, though it may give rise to civil liability. In this case, civil suit is already pending between the parties. It is not a denying fact, as coming out from the complaint itself, that in the part performance of the agreement, possession of the entire land was delivered to the complainant. Even the sale deed regarding part of the land was executed. The last date of sale was 3.3.2005. The sale deeds were executed by accused in favour of the third person on 27.1.2006, 6.2.2006 and 7.2.2006 i.e. after the said date has elapsed. Therefore, it cannot be said that the accused/ present petitioner had the intention to cheat from the very beginning. In fact, I am of the view that the present complaint filed before the learned Magistrate, which was forwarded to the police under Section 156(3) Cr.P.C., was nothing but misuse of process of the Court. It is basically a civil dispute and should have been left to be decided by the civil Court. Unfortunately, the present petitioner did not approach this Court for quashing of the FIR. He faced the trial and ultimately convicted and sentenced, which was wrongly upheld by the first appellate Court.

In view of the matter, the impugned judgment dated 10.12.2015, passed by learned Additional Sessions Judge, Rohtak, affirming the judgment of conviction dated 4.4.2015 and order of sentence dated 9.4.2015, passed by the learned Additional Chief Judicial Magistrate, Rohtak are hereby set aside. The present petitioner stands acquitted of the charges framed against him. The petitioner is on bail. His bail bonds and surety bonds stand discharged.

Revision is accordingly allowed. Fine paid is ordered to be refunded to the petitioner.

29.04.2016
gk

(Kuldip Singh)
Judge