

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

**CRR No. 2994 of 2015 (O&M)
DECIDED ON: May 30, 2016**

DHARMBIR

....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Virender Singh Punia, Advocate,
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

Mr. A.S. Virk, Advocate,
for respondents No. 2 and 3.

1. Whether Reporters of local papers 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? (✓)

JASPAL SINGH, J.

Challenge in this revision petition is to judgment dated May 18, 2015 passed by Sessions Judge, Bhiwani in Criminal Appeal No. 59 of 2013 whereby well reasoned judgment of acquittal dated February 07, 2013 passed by Sub Divisional Judicial Magistrate, Charkhi Dadri has been set aside and respondent-petitioner has been convicted under Section 420 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹5000/- and in default thereof, he further sentenced to undergo rigorous imprisonment for a period of three months.

2. The facts giving rise to the instant petition are that complaint under Section 156 (3) Cr.P.C. was moved before the Id. Magistrate by complainants Shri Om and Ramesh Kumar alleging that accused persons was owner of 9 acres and 6 marla land situated at village Ladawa, Sub Tehsil Badhra and they had agreed to sell the said land to the complainants for a sum of ₹2,42,000/- per acre and executed an agreement to sell dated January 07, 2006 and date of execution of the sale deed has been fixed for July 05, 2006. On July 03, 2006, July 05, 2006 and July 07, 2006, complainants mark their presence in Sub Tehsil, Badhra, however, accused persons failed to get sale deed registered in favour of the complainants and now complainants have come to know that accused persons had already sold this land to other persons vide sale deed No. 1551, dated December 16, 2005 for ₹50,000/- to Rameshwar and Satbir sons of Jai Lal to the extent of ½ share and to Rajbir and Jagdish sons of Sher Singh and Jaibir and Dharampal sons of Jai Lal. Thus, all of them are guilty of commission of an offence punishable under Sections 420, 467, 468, 469, 470, 471 and 34 IPC.

3. On the basis of allegation, present FIR was registered. Investigation was conducted and accused Dharambir and Ranbir were arrested in this case. Statements of witnesses under Section 161 Cr.P.C. were recorded. After completion of all formalities, challan was presented in the Court of Illaqa Magistrate.

4. Finding a prima facie case, charges under Sections 420, 467, 468 and 471 IPC was framed against accused to which they pleaded not guilty and claimed trial.

5. In order to prove guilt of accused, prosecution examined as

many as 6 witnesses namely PW1 Shri Mahender Singh Yadav, Notary Public, PW-2 Ramesh Kumar (complainant), PW3 Shri Om (complainant, PW4 ASI Randhir Singh, PW5 Laxmi Narain, PW6 Inspector Ramotar, PW7 Dharambir, retired Sub Inspector and PW8 Hari Ram, retired Inspector. Thereafter, evidence of prosecution was closed by order of the Court.

6. When the incriminating circumstances, appearing in prosecution evidence were put to the accused for eliciting his explanation as required under Section 313 Cr.P.C., he denied the allegations of the prosecution and pleaded false implication. However, no evidence was led by him in his defence.

7. After hearing the parties and appraisal of material evidence produced before the trial court, petitioner as well as his co-accused was acquitted of the charges framed against them but the first revisional court reversed the judgment of acquittal and has convicted the petitioner as well as his co-accused under Section 420 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of 3 years and fine to the tune of ₹5000/- each and in default of fine, to further undergo rigorous imprisonment for a period of three months.

8. Disheartened with the judgment of conviction and order of sentence dated May 18, 2015 passed by revisional court, petitioner-respondent No.1 preferred the instant petition.

9. While assailing the judgment of conviction and order of sentence dated May 18, 2015, it has been argued with vehemence by learned counsel for the petitioner that it is an undisputed fact that petitioner was acquitted by

the ld. trial court, thus, there was a double presumption of innocence in his favour. Moreover, the dispute is purely of civil nature and the petitioner was rightly acquitted of the charges by the ld. trial court. Learned counsel for the petitioner further argued that the complainants had entered into an agreement to purchase the land after scrutinizing the revenue record and if there was any defect in the title of the vendors, they could not enter into an agreement. Moreover, civil and criminal proceedings cannot proceed simultaneously so petitioner could not be prosecuted for criminal offence.

10. It is next argued by learned counsel for the petitioner that the complainants did not bring on record original agreement to sell to establish that they had paid a sum of ₹3,60,000/- to the petitioner as earnest money. Even prior to the alleged agreement of sale with the complainants on January 07, 2006, they had already sold the land vide sale deed dated December 16, 2005. When the original agreement to sell has not been placed and proved on record in accordance with the Evidence Act, the petitioner cannot be fastened with any liability and the only recourse available with respondents-complainants is that they can prefer a civil suit for the recovery of amount in question.

11. While concluding his arguments, it has been submitted by learned counsel for the petitioner that the conviction and sentence of the petitioner by the Sessions Judge, Bhiwani is not legally sustainable in the eyes of law and is liable to set aside by way of acceptance of instant petition. Resultantly, the petitioner is entitled to the benefit of doubt.

12. On the other hand, learned State counsel as well as learned counsel appearing on behalf of respondents No.2 and 3 have supported the

impugned judgment dated May 18, 2015 passed by Sessions Judge, Bhiwani.

13. This Court has given an anxious thought to the submissions made by learned counsel for the parties and has scrutinized the impugned judgments of acquittal as well as that of conviction available on file but the submissions made by learned counsel for the petitioner do not find favour to this Court.

14. As far as the contention regarding non-production of original agreement of sale deed dated January 07, 2006 put forth by learned counsel for the petitioner is concerned, here, it would be pertinent to mention that the complainants preferred a civil suit for specific performance on the basis of agreement of sale dated January 07, 2006 and the original agreement was placed and proved on the file of civil suit. It is not the case of the petitioner that the original agreement of sale has not seen the light of the day. The trial court has simply given the benefit of doubt to the petitioner on the ground that the photocopies of the documents have been annexed with the criminal case. The original agreement of sale was well within the reach of the Court and the record of the civil suit should have been summoned by the ld. trial court for its perusal. Another view taken by the trial court while acquitting the petitioner is that the prosecution has failed to prove on record that the petitioner had dishonest intention from the very beginning to defraud the complainants and that the complainants had agreed to purchase the land after scrutinizing the revenue record as well as verifying the revenue record before entering into an agreement of sale and payment of ₹3,60,000/- as earnest money.

15. As far as the dishonest intention of the petitioner at the very inception of the agreement of sale is concerned, it stands reflected from the testimony of the complainants as well as that of the agreement of sale. The petitioner has sold away the property subject matter of the agreement to sell dated January 07, 2006 much prior to its execution i.e. on December 15, 2005. Meaning thereby, the petitioner was no more the owner of the suit land which has been agreed to be sold by him to the complainants. This fact is itself sufficient to prove the dishonest intention of the petitioner at the very inception of the agreement of sale. Here, it would also be pertinent to mention that civil as well as criminal proceedings can proceed simultaneously.

16. In the case in hand, filing of civil suit for specific performance of agreement to sell dated January 07, 2006 does not in any way debar the complainants, who are the victims, to initiate criminal proceedings against the petitioner, especially, in the circumstances that the petitioner was no more the owner of the property on the day he entered into an agreement of sale dated January 07, 2006 and made the complainants to part with a sum of ₹3,60,000/- out of the total sale consideration settled in between them. Moreover, intention is a thing which is to be inferred or gathered from the facts and circumstances of the case in hand.

17. In the instant case as narrated above, the petitioner was well aware that he is no more the owner of the property in suit after he sold away the same to some other persons on December 15, 2005. Moreover, during the course of arguments, learned counsel for the petitioner could not point out any legal flaw in the impugned judgment of conviction and order of

sentence, which otherwise can be termed to be absolutely in accordance with evidence available on file and settled cannons of law. Cheating and forgery in the modern days is increasing day-by-day just to quench the lust of a person to have a pecuniary gain which in turn provides comfort to his life and status and this lust of greediness is required to be curbed with heavy hands. The judgment of acquittal has been rightly reversed by Id. Sessions Judge, Bhiwani while disposing of the criminal appeal, as the Id. Magistrate appears to have fallen in error while recording the acquittal of the petitioner just on flimsy ground.

18. Accordingly, instant petition so far as the conviction of petitioner is concerned stands dismissed. However, this Court is of the considered view that the sentence awarded by Id. Sessions Judge, Bhiwani is on higher side. Undoubtedly, petitioner is facing the agony of protracted trial for the last more than 9 years beside that he is first offender. There is no other case of similar nature qua the petitioner either pending or disposed of. Moreover, the civil proceedings have already been initiated by the complainants on the basis of agreement of sale dated January 07, 2006. Thus, this Court is of the considered view that the imposition of sentence to undergo rigorous imprisonment for 3 years is not commensurate with the offence complained of against the petitioner. Accordingly, the same deserves to be modified.

19. Taking into consideration the aforesaid aspect of the case, the petition is dismissed whereby the conviction of the petitioner under Section 420/34 IPC is affirmed but with modification in the quantum of sentence, which stands reduced to rigorous imprisonment for 1 year from rigorous

imprisonment for three years but with no change in the fine clause.

20. With the aforesaid modification in the quantum of sentence, the petition stands dismissed.

CRM-26409-2015

In view of the order passed in main petition, the application for suspension of sentence is dismissed as having become infructuous.

May 30, 2016
sonika

(JASPAL SINGH)
JUDGE