

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

**Criminal Misc. No.M-27654 of 2017
Date of Decision: 02.08.2017**

Ashok Kumar

...Petitioner(s)

Versus

State of Haryana & others

...Respondent(s)

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

Present:- Mr. Amar Ashok Pathak, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of order dated 6.6.2017 passed by learned Additional Sessions Judge, Sirsa, whereby criminal revision filed by him against judgment dated 13.6.2016 passed by Judicial Magistrate Ist Class, Dabwali was dismissed.

Briefly stated, petitioner-complainant had filed a complaint under Sections 420, 467, 468, 471, 506, 406 120-B read with Section 34 IPC against the respondents-accused, claiming therein that the petitioner, who is owner of M/s Goel Tiles Store, Kalanwali, used to purchase tiles and other equipments from the firms of the accused persons. The accused-firms used to send list of items with price list to the petitioner-complainant

and the petitioner used to place order of items required by it after making advance payment of the amount due in the bank account of the accused-firms. On 15.3.2015, the petitioner enquired from the respondents-accused regarding availability of certain items required by him, to which the respondents-accused acknowledged availability of the same on 16.3.2015. Accordingly, the petitioner placed the order and made payment to the respondents-accused. However, it came to the notice of the petitioner that the respondents-accused had sent the list of items of 8.3.2015 instead of 15.3.2015 and despite making entire payment, the respondents-accused did not supply the goods to the petitioner. On the aforesaid allegations, an FIR was registered, but as the police submitted closure report, the present complaint was filed.

During the course of investigation by the police, it was found that the commercial transactions were taking place between the petitioner and the accused persons for the last 5-6 years. Moreover, since C-Form deposited by the petitioner-firm was found doubtful by the Gujarat Commercial Tax Department, the accused-firm was asked to deposit penalty. Therefore, the accused firm retained the amount of Rs.3,80,000/- of the complainant. It was further found that the accused had filed appeal against the order of Gujarat Commercial Tax Department. The stock of the accused-firm was also checked and no variation was found between the period from 8.3.2015 to 15.3.2015. Therefore, the stock which was available on 8.3.2015 was still available on 15.3.2015 as well.

The broad allegation in the complaint is that the respondents-accused in connivance with each other have committed fraud, forgery and cheating with the petitioner-complainant.

In support of his complaint, the petitioner-complainant has led preliminary evidence and appeared himself as CW-1 and also examined Sham Sunder as CW-2 and Daljeet Singh, Officer of Oriental Bank of Commerce, Kalanwali as CW-3.

However, learned trial Court after hearing both the parties and appreciating the evidence on record, dismissed the complaint vide order dated 13.6.2016. It was found that the complainant has failed to show as to which document has been forged by the respondents-accused. The complainant has alleged that the respondents-accused had sent list of items on 15.3.2015, which was received on 16.3.2015, to place order to the respondents-accused, but the said list was of 8.3.2015 instead of 15.3.2015. However, the list placed on record by the complainant himself shows that it bears the date of 8.3.2015 itself and hence, it cannot be said that the respondents-accused have forged the said document.

Aggrieved against the order dated 13.6.2016 passed by the trial Court, the petitioner preferred revision petition, but the same was also dismissed by learned Additional Sessions Judge, Sirsa vide judgment dated 6.6.2017.

Still not satisfied, the petitioner has approached this Court by filing the present petition, challenging order dated 6.6.2017 passed by learned Additional Sessions Judge, Sirsa.

Learned counsel for the petitioner has argued that the Courts below have committed a serious error, holding that the subject matter of the present dispute is civil in nature, despite the fact that the accused had an intention to commit fraud upon the petitioner. The respondents-accused with an intention to cause wrongful loss to the petitioner, have sent the list of 8.3.2015 instead of 15.3.2015 and thereafter, despite receiving payment in advance, they did not supply the articles to the petitioner.

I have heard learned counsel for the petitioner and perused the impugned judgments.

Both the Courts below have recorded a concurrent finding of facts and therefore, no interference is called by this Court while proceeding under Section 482 CrPC.

Even otherwise, this Court finds that the dispute between the parties is purely civil in nature. The petitioner-complainant has alleged that the respondents-accused had sent a list of items on 15.3.2015, which was received on 16.3.2015, to place order to the respondents-accused, but the said list was of 8.3.2015 instead of 15.3.2015. However, the list placed on record by the complainant himself shows that it bears the date of 8.3.2015 itself and hence, it cannot be said that the respondents-accused have forged the said document. Moreover, for the same set of allegations, an FIR was also registered and the matter was thoroughly investigated and closure report was submitted, but in order to keep the litigation alive, the petitioner had filed the present complaint. However, in absence of any cogent evidence to support the allegations levelled by the petitioner, Courts below have found that the petitioner has miserably failed to establish his case.

Therefore, this Court finds that there is no illegality in the judgments passed by the Courts below.

Accordingly, the present petition is dismissed.

August 02, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?	Yes / No
Whether reportable?	Yes / No