

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

CRM-M No.5604 of 2010 (O&M)

Decided on: 29.09.2017

Harjit Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sanjiv Gupta, Advocate
for the petitioner.

Ms. Simranjit Kaur, AAG, Punjab.

Mr. Ishwar Pal Singh, Advocate
for respondents No.2, 5 to 8 and 10.

Mr. Atul Jain, Advocate for respondent No.3.

ARVIND SINGH SANGWAN J. (Oral)

Challenge in this petition is to the orders dated 06.05.2009 (Annexure P2) passed by the trial Court dismissing the complaint filed by the petitioner as well as the order dated 19.11.2009 (Annexure P4) passed by the Revisional Court dismissing the revision filed by the petitioner.

Brief facts of the case as set up in the order passed by the trial Court (Annexure P2) are as under:-

“The accused persons i.e. accused Nos.1 to 7 agreed to sell their land measuring 19 kanals 16 marlas out of 631 kanals 13 marlas and 11 kanals 16 marlas situated in village Kalwa, Tehsil and District Patiala to the complainant vide agreement to sell dated 16.01.2005 for a consideration of Rs.11,50,000/- per acre and by virtue of the said agreement to sell Rs.2 lacs were given as

consideration and the date 31.12.2005 was fixed for execution of the sale deed. It is further submitted that as it was conveyed by accused Nos.2, 4 to 6 and 8 that they have purchased 200 kanals of land out of 631 kanals 13 marlas and 11 kanals 16 marlas situated at village Kalwa by virtue of the agreement dated 23.08.2004 and they have the right to further sell the said land to the persons of their choice, the said accused agreed to sell their land measuring 200 kanals out of the said land to the complainant vide agreement to sell dated 16.01.2005 for a consideration of Rs.11,50,000/- per acre and by virtue of the agreement the complainant paid Rs.23,00,000/- as consideration and Rs.75,00,000/- was agreed to be paid to the said accused before 15.05.2005 by the complainant and it was further agreed that an amount of Rs.50,00,000/- was to be paid to the accused by the complainant before 20.12.2005 and the accused shall get the sale deeds registered of the purchase land from the original owners and further it was agreed that the balance consideration shall be paid up to 30.04.2006 and up to that date the complainant would pay the entire consideration. It is further, pleaded that in view of the above stated agreements to sell, the accused No.1 to 8 could only get the sale deeds registered of the land measuring 52 kanals 0 marlas after receiving an amount of Rs.88,00,000/- by getting executed four sale deeds and failed to get the sale deeds of the entire land from the original owners, which was agreed to be purchased by the complainant. In fact, the accused Nos.1 to 8 had deceived the complainant by executing the agreement to sell of the land of which they were not the owners. It is also pertinent to mention that the accused No.1 to 8 had not disclosed that they had dispute with the original qua the land abutting the main Baran Daun Kalan Road and it was also not disclosed that

the original owners were demanding extra rate of the land of the land which was abutting Baran-Daun Kalan Road. The accused in fact had connived with each other and by not disclosing the true facts to the complainant executed and prepared agreement to sell and received valuable amount from the complainant as consideration amount only to cause wrongful gain to them and wrongful loss to the complainant and thus have committed the offence under Section 420/467/468/471/34 IPC, it is further submitted that if the accused disclosed about their dispute with regard to threat of land abutting the main Baran Daun Road, the complainant must not have agreed to purchase the land from the accused No.1 to 8. Accused No.1 to 8 admitted that they have committed fraud with the complainant and as they failed to get the sale deeds registered of the total land, they agreed to pay back Rs.1,57,50,000/- to the complainant vide agreement dated 20.01.2006 and the accused No.9 was instrumental in getting the said agreement effected. It is further pleaded that the accused even failed to get said agreement implemented in toto.”

In support of the complaint, the petitioner himself appeared as CW1 and tendered the certified copy of the *jamabandi* as Ex.C1, photocopy of original agreements dated 16.01.2005 as Ex.C2 and Ex.C3, photocopies of 04 sale deeds as Ex.C4 to Ex.C7, photocopy of agreement as Ex.C8 and sale deeds as Ex.C9 to Ex.C11.

Except the solitary statement of the complainant, no other witness was examined and no revenue official was also examined in support of the averments made in the complaint regarding the title of the land in dispute. Accordingly, the trial Court vide order dated 06.05.2009, dismissed the complaint with the observations that the

matter is of civil nature and no offence is made out in the complaint.

Feeling aggrieved, the petitioner filed the revision before the Revisional Court and the same was also dismissed vide order dated 19.11.2009. The operative part of the judgment is reproduced as under:-

“5. I have heard the learned counsel for the revision petitioner/complainant and have gone through the record of the case very carefully.

6. It was argued by the learned counsel for the revision petitioner that the order under revision is illegal. He further argued that the revision petitioner filed a complaint against the respondents/accused under Sections 420, 467, 471, 468, 471 34 IPC on the grounds that accused No.1 to 7 agreed to sell their land measuring 19 kanals 16 marlas out of 631 kanal 13 marlas and 11 kanals 16 marlas vide agreement dated 16.1.2005 and the date of execution of the sale deed was fixed for 31.12.2004. He further argued that accused Nos.2, 4 to 6 and 8 agreed to sell land measuring 200 K and 11K-16M by virtue of agreement dated 16.1.2005 and the date for sale was fixed as 30.4.2006. At the time of execution of the agreement to sell dated 16.1.2005 the accused conveyed that they have purchased the said land vide agreement to sell dated 23.8.2004 from its owners and they shall get the sale deed registered from them and the accused deceived the complainant by agreeing to sell the land of which they were not the owners. Even they have not disclosed that they had dispute with the original owners qua the land abutting the main Baran-Daun road and they were demanding extra rate of the land. The accused failed to get the sale deed registered in toto and they have further agreed vide agreement dated 20.1.2006 to pay Rs.1,57,50,000/- and agreed to get the sale deed registered of the land in their name of the land, which was sold to

them. The accused have deceived by agreeing to pay back the said amount and failed to honour the said agreement and proclaimed that the said agreement was executed only to avoid criminal liability. The lower court has wrongly observed that the matter is of civil nature and that civil and criminal proceedings are separate and independent proceedings. He further argued that the accused had fraudulent and dishonest intention at the very beginning and cited 2004(1) CrI.CC 308 and 2003(3) CrI. CC 586.

7. After hearing rival contentions, I am of the view that the contention of the learned counsel for the revision petitioner has no force. The perusal of the allegations of the complaint clearly shows that the matter in dispute is of civil nature and the lower court has rightly observed the same. So, there was no ground to proceed against the accused.

8. So, the learned trial Court rightly passed the order under revision dismissing the complaint of the revisionist. There is no ground to interfere in the order under revision. So, the revision is dismissed. Trial court file be sent back at once. This file be consigned to the record room.”

Counsel for the petitioner, at the very outset, has stated that in pursuance to the agreement to sell dated 16.01.2005, no suit for specific performance was filed. It is argued that since the accused persons had a defective title, they could not execute the sale deed in favour of the petitioner and, therefore, the offence of cheating as defined under Section 420 IPC is made out. It is also submitted that the petitioner has made payment of huge amounts in pursuance to the agreement to sell which has not been returned by the respondents/accused persons and, therefore, with this intention they

have mis-utilized the amount and, thus, are liable to be prosecuted.

On the other hand, counsel for the respondents have submitted that the trial Court as well as the Revisional Court has rightly dismissed the complaint, in accordance with law.

After hearing counsel for the parties, I find no force in the present petition. Admittedly, no suit for specific performance was filed in pursuance to the agreement to sell to show that the petitioner was ready and willing to perform his part of the contract. Secondly, no document has been placed on record to show that before filing of the complaint, the petitioner has ever approached the respondents by way of issuing a notice to perform their part of the agreement. Hence, it is apparent that the petitioner himself never wanted to get the sale deed registered.

In the absence of any evidence of any revenue official to corroborate the version of the petitioner/complainant that the accused did not possess the valid title, it cannot be said that the respondents have committed any offence. Moreover, it is not stated in the complaint that at the time of execution of the agreement to sell dated 16.01.2005, the respondents/accused persons have misrepresented the petitioner with regard to their title rather the averments made in the complaint show that it was agreed that the respondents/accused persons will purchase the land as they have entered into an agreement to purchase 200 kanals of land as per the agreement dated 23.08.2004. A perusal of the complaint further show that the accused have already purchased 52 kanals of land and, therefore, they were otherwise competent to sell 18 kanals 16 marlas of land which was agreed to be sold to the

petitioner/complainant. In view of same, no offence under Section 420 IPC is made out. Both the Courts below have rightly dismissed the complaint and I find no illegality or perversity in the impugned orders passed by the Courts below.

The present petition is accordingly dismissed. However, it will be open for the petitioner to avail his alternative remedy with regard to his civil rights, in accordance with law.

(ARVIND SINGH SANGWAN)
JUDGE

29.09.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No