

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

240

CRM-M-6989-2015

Decided on : 16.11.2017

*Ram Niwas**... Petitioner**Versus**Jagdish Parshad and another**.. Respondents***CORAM : HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN**

Present : Mr.J.P.Sharma, Advocate
for the petitioner.
Mr.Vikram Singh, Advocate
for the respondents.

Arvind Singh Sangwan, J. (Oral)

Prayer in this petition is for setting aside of the impugned judgment dated 14.11.2014 (Annexure P/2) passed by the revisional court vide which order dated 4.10.2013 passed by the trial court in criminal complaint No. RT 08 of 2011/2013 for summoning the respondent accused, was set aside.

Brief facts of the case are that the accused No.1 was in business to give money on interest and asked the complainant to purchase his land measuring 02 kanal 10 marlas to which, the complainant had shown his inability. Therefore, accused No.1 asked the complainant to get sale deed executed in his favour and to pay the amount on interest @ Rs.1/- per month per hundred. Accordingly, the complainant agreed to purchase the land for total consideration of Rs.3,75,000/- and fixed the date for execution of the sale deed on 6.6.2011. On 6.6.2011, both the complainant and accused No.1 were present in the office of Sub Registrar, Sub Tehsil, Kanina and the complainant purchased stamp

papers and got the sale deed drafted without payment of Rs.3,75,000/- and it was shown that this amount has already been paid at the house of accused No.1. Accused No.1 got the signatures of the complainant on pronote and receipt and the complainant put his signatures on the pronote and receipt with the hope that accused No.1 would prepare three pronotes and receipts of Rs.1,25,000/- each. Thereafter, accused No.1 refused to execute the sale deed and did not return the aforesaid pronotes and receipts.

It is further alleged that when the complainant told accused No.1 that he is going to lodge a complaint with the police, accused No.1 returned the aforesaid pronotes and receipts and thereafter, the complainant came to know that accused No.1 by playing a fraud executed the pronote and receipts of Rs.6 lacs dated 15.4.2011, of Rs.4 Lacs dated 20.5.2011 and third of Rs.2,50,000/- dated 2.6.2011 instead of Rs.1,25,000/- each for 3 pronotes in collusion with his brother accused No.2. With this allegation, the present complaint was filed.

In the preliminary evidence, the complainant examined Ram Kumar as CW1, Jayant @ Gokul as CW2, Prithvi Chand Sharma, Deed Writer as CW3 and the complainant himself has appeared in the witness box as CW4. Thereafter he tendered some documents and closed the preliminary evidence.

The trial court thereafter, vide order dated 4.10.2013 summoned respondents No.1 and 2. Against this order, they filed a revision petition before the court of sessions. Vide impugned order dated 14.11.2014, the revision petition was allowed and thereafter the present

petition has been filed.

The revisional court while passing the impugned order has made the following observation:-

- “11 After bestowing thoughtful consideration to the arguments, this court finds force in the contention of learned counsel for the petitioners.
- 12 It would not be out of place to mention here that in this case an enquiry under Section 202 Cr.P.C. was got conducted by the court and enquiry conducted by SHO, P.S.Kanina is on record and during enquiry statements of respectables were recorded. In statement of Jayant @ Gokal son of Jotram who has been examined by the complainant in preliminary evidence as CW2 on 29.08.2011 he has admitted that Jagdish the petitioner purchased the land from Ram Niwas and Ram Niwas had entered into an agreement to purchase that land from Jagdish and pronotes were filled up of the amount of sale consideration and those pronotes were filled up for a sum of Rs.12,50,000/- whereas agreed sale consideration was Rs.3,75,000/- and thus forgery was committed whereas in his statement made to the police by this witness during enquiry on 13.4.2013 he has mentioned that he did not know as to why he was cited as a witness and in his statement it has appeared that Ram Niwas had asked him to become a witness on the sale deed of 1 kanal 5 marla of land which he was purchasing and Ram Niwas called Jagdish on telephone and registry was not effected on that date. Pronotes were not filled up before him and he had no knowledge of filling up of pronotes and he had no knowledge about that incident. The statement of Jayant recorded during police enquiry speaks volumes that no cheating has been done by the petitioner.
- 13 Even in this case joint statement of respectables persons like Sarpanch of village Chelawas namely Ram Avtar, Raghbir Singh, one Sumer Singh Ex-Sarpanch, Mahabir son of Prabhati Lal, Ravinder son of Hamir Singh and Manoj Kumar son of Hamir Singh during inquiry was recorded wherein it had appeared that a case filed by Ram Niwas was wrong. The intention of Ram Niwas was not good and 1 kanal 5 marla of land of Jagdish was adjoining to the land of Ram Niwas and regarding the other land abutting road pronotes were filled up and those pronotes were returned by Jagdish to Ram Niwas and matter regarding that land had come before the Panchayat and it was agreed that the suit filed by Ram Niwas in the court at Mohindergarh would be withdrawn and Jagdish would execute the sale deed of 1 kanal 5 marla land which was adjoining the land of Ram Niwas and the suit which was filed by Ram Niwas in the year

2011 was withdrawn by him in the year 2012 on the basis of compromise. So, from the evidence placed on record fraudulent intention of the revisionists is not made out. Had any fraud been committed then Ram Niwas would not have entered into the compromise with Jagdish the petitioner and would not have withdrawn his civil suit pending in civil court at Mohindergarh and even sale deed of 1 kanal 5 marla of land abutting fields of complainant has already been got executed which further shows that no cheating has been done by Jagdish with Ram Niwas. Otherwise Ram Niwas would not have got sale deed of 1 kanal 5 marla of land adjoining to his land registered after institution of this complainant.

- 14 Furthermore, the complainant has admitted his signatures on three pronotes and as per Section 118 of the Negotiable Instruments Act, 1881, there is presumption in favour of holder that promissory note was made or drawn for consideration and from the evidence placed on record, it is not made out that it was obtained by Jagdish from Ram Niwas by any deceitful mode or by fraud. It is the version of revisionist that he purchased 2 kanal 10 marla of land from Ram Niwas and in the partition proceedings he receives 1 kanal 5 marla of land adjoining to the land of his land and 1 kanal 5 marla of land adjoining to road and land adjoining to the road and near to abadi was very costly and so sale consideration of that land was fixed at Rs.12,50,000/- and sale consideration of that land measuring 1 kanal 5 marla adjoining to the land of Ram Niwas was fixed at Rs.3,75,000/- but the deed writer committed mistake in scribing the sale deed and that is why sale deed could not be executed and if it was not so then complainant would not have purchased the land measuring 1 kanal 5 marla from Jagdish after filing of this complaint. Also if any guilty intention of Jagdish had been there then he would not have returned the pronotes.
- 15 No written agreement has been brought on record to show that Jagdish agreed to sell 2 kanal 10 marla of land for a consideration of Rs.3,75,000/-. Even no evidence has been brought on record by the complainant to show that collector rate of similarly situated lands measuring 2 kanal 10 marla was Rs.3,75,000/-. Even witness of complainant i.e. Jayant has not supported the case of complainant when he made statement before the enquiry officer during enquiry under Section 202 Cr.P.C. Even in the enquiry report it has appeared that the dispute was regarding the return of amount of stamps which were purchased at the time of execution of sale deed whose photocopy are already on record. The complainant when appeared as CW4 has admitted that stamp papers were not returned to him. There is no cogent and

positive evidence on the record to show that Jagdish had agreed to fill up an amount of Rs.1,25,000/- each in the three pronotes signed by the complainant. Even the enquiry report is against the complainant. Learned lower court has not considered the enquiry report in right perspective and has not given the detailed reasons. This court has failed to understand as to how learned lower court summoned accused No.1 under Section 419 IPC when it is not a case of cheating by impersonation and also there is no evidence of use of alleged forged documents i.e. pronotes as genuine. Rather these pronotes have been returned to the complainant. So, even Section 471 IPC is not attracted.

- 16 As soon as the pronote was signed by the complainant and was handed over to Jagdish then as per Section 14 of the Negotiable Instruments Act, 1881, Jagdish became the holder of the pronote and the instrument is said to have been negotiated. The indorsement is said to have been made in blank giving authority to the holder to fill it up with any amount and thus the pronote after signing was handed over by the complainant to Jagdish with his sweet will and free consent. There is nothing on record to show that the pronote was obtained by fraud.
- 17 So, in the wake of above discussion what to speak of prima facie case even no case is made out against accused No.1 and 2. Learned lower court has committed grave error in summoning accused No.1 and 2. The order is not legal and correct. So, the impugned order dated 04.10.2013 is set aside. Accordingly, the revision is accepted.”

It is submitted on behalf of the petitioner that there was an oral agreement between the petitioner and accused No.1 with regard to execution of the sale deed and the same was not adhered to by him. It is also submitted that on the basis of the preliminary evidence led by the petitioner, the trial court has summoned respondents finding prima facie case and it has come in the evidence of the prosecution witness that respondent No.1 instead of getting sale deed executed, fraudulently got the pronotes executed. It is also submitted that the enquiry conducted by the police under Section 202 Cr.P.C. was not properly appreciated.

On the other hand, learned counsel for the respondents has

argued that revisional court, on re-appreciation of evidence on record has found that prima facie, no case is made out to summon the petitioner to face trial.

After hearing learned counsel for the parties, I find no merit in the present revision petition. As per the case set up by the complainant, he had admitted his signatures on three pronotes and therefore, these are negotiable instrument within the purview of Section 14 read with Section 118 of the Negotiable Instruments Act, 1881, therefore, the petitioner-complainant cannot deny subsequently that these pronotes were in fact got executed by playing fraud. The case set up by the complainant that the accused No.1 has agreed to sell his 2 kanal 10 marla of land by fixing sale consideration of Rs.3,75,000/- is not proved on record as neither any agreement nor any sale deed, or any receipt of payment of amount was produced on record. The trial court, got an enquiry conducted by the police under Section 202 Cr.P.C. and as per this enquiry report, it is found that there is a dispute regarding return of amount of stamp paper which was purchased for purpose of execution of the sale deed and the amount was not returned by the accused person. This enquiry report shows that that the complainant has himself agreed to fillup the amount in these three pronotes. A persual of the summoning order passed by the trial court shows that the trial court has not taken into consideration this report under Section 202 Cr.P.C.

Learned counsel for the respondent has relied upon the judgment of Hon'ble Supreme Court in case 2012(4) RCR (Criminal) 689 wherein it has been held that once the court in the course of trial has

directed the police to conduct enquiry in the matter and submit its report under Section 202 Cr.P.C, later if the trial court do not rely upon the said report, it has to record a finding for disagreeing with such report and cannot ignore the report. This procedure was not followed by the trial court. The finding given in the enquiry report under Section 202 Cr.P.C. is that it is a civil dispute regarding refund of money of stamp paper also finds support from the fact that one of the witness of the petitioner namely, Jayant has not supported his version.

For the reasons stated above, I find no merit in the present petition and the same is dismissed.

[Arvind Singh Sangwan]
Judge

16.11.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No