

In the High Court of Punjab and Haryana at Chandigarh

CRR No.2441 of 2013 (O&M)
Date of decision: November 2, 2017

Santosh and others

.....Petitioners

Versus

Rajesh

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.R.N.Lohan, Advocate for the petitioners.
Mr.U.K.Agnihotri, Advocate for the respondent

ARVIND SINGH SANGWAN, J.

Petitioners have filed the present petition under Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) praying for setting aside the judgment dated 2.7.2013 passed by the revisional Court, vide which the order of discharge dated 22.1.2013 passed by the trial Court, was set aside and the matter was remanded back to the trial Court for decision afresh.

Brief facts of the case are that the respondent-complainant-Rajesh filed a criminal complaint under Sections 420, 467, 468, 471,120-B, 506 read with Section 34 of the Indian Penal Code, 1860 ('IPC' for short) before the trial Court with the allegations that the accused persons have entered into an agreement to sell their share of land measuring 980 sq.

Yard @ ₹55,00,000/- per acre. As per the agreement to sell dated 20.5.2008, they received an amount of ₹10,22,727/- from the complainant as full and final settlement of sale consideration in the presence of attesting witnesses and also delivered the possession of the land at the spot. A separate receipt was also executed in this regard and it was agreed that the accused persons will get the sale deed registered after decision of the suit pending between them and some other persons. It was also undertaken by the accused that if any defect is found in their title regarding the land in dispute, they will be liable and responsible for the same. Despite the readiness and willingness on the part of the complainant, the accused persons have failed to execute the sale deed and rather they have hatched a conspiracy by not disclosing that they were not the owners of the land in dispute as they had transferred their share in favour of their real brother Agdi son of Har Lal by way of release deed dated 15.11.2005 and ,as such, committed fraud with the complainant.

The trial Court, sought the police report under Section 202 Cr.P.C and, on receiving the report dated 2.2.2009, the petitioners-accused persons were summoned by the trial Court vide order dated 8.6.2009 to face the trial under Section 420 IPC.

Later on, in the pre-charge evidence, the complainant-Rajesh appeared as CW1 and examined one Jitender as CW2 and Nirmal CW3. He also produced on record certified copy of the release deed Exhibit C1, agreement to sell, Mark C1 and Jamabandi for the year 2001-2002, Mark C2 and, thereafter, the pre-charge evidence was closed by the Court order on 24.12.2012. During the pendency of the complaint, complainant-Rajesh

died and his brother Narender was impleaded as his legal heir vide order dated 30.7.2012.

The trial Court, on appreciation of the pre-charge evidence, came to a conclusion that the evidence worth framing charge against the accused person under Section 420 IPC has not come on record and discharged the accused vide impugned judgment dated 22.1.2013. The trial Court, while discharging the accused held that the complainant has failed to prove the agreement to sell dated 20.5.2008 by examining the attesting witness and has further failed to prove the receipt vide which the amount was paid to the accused person. It was also held that the complainant has failed to prove his financial capability to pay the amount and held that no offence is made out warranting charge-sheet the accused persons. It was also held that the dispute seems more of civil nature. Thereafter, the respondent-complainant filed a revision before the revisional Court and, vide impugned judgment dated 2.7.2013, while allowing this revision petition, the lower appellate Court has remanded the case back to the trial Court. The operative part of the judgment reads as under:-

"After giving my considerable thoughts to the submissions so made by both the sides and going through the material on trial Court record, I am of the considered view that the impugned order being not sustainable in the eye of law is liable to be set aside and the revision is liable to be accepted for the reasons to follow:-

Trial court record shows that in precharge evidence the complainant stepped himself in the witness box as CW1 and also examined Jitender CW2 and Narender CW3 in support of his averments made in the complaint. From reassessment of their statements, it is manifestly clear that they have fully

supported the averments made by the complainant In his complaint. There is nothing to discard their testimonies. The findings of the learned trial court that the complainant could not produce any bank account to prove payment of Rs. 55,00,000/- to the respondents-accused is totally against the facts,because as per averments In the complaint the complainant had paid only Rs. 10,22,727/- to the respondents-accused and not Rs. 55,00, 000/-. More so, from the impugned agreement to sell mark C1= MarkA,it is quite evident that the respondents-accused had received an amount of Rs10,22,727/- from the deceased complainant on 22 05 02008. It also stands proved from certified copy Ex. C1 of the release deed that the respondents-accused had transferred the land of their brother Agdi. In this way, it stands fully established that the respondents-accused cheated the deceased complainant by entering into an agreement to sell their share in the land which had already been transferred by them in favour of their brother and by receiving the amount of entire sale consideration.

The learned trial court had also sought police report under Section 202 Cr. P.C which was received and is part of its record. The police during enquiry had recorded statements of Chander Singh, Om Parkash, Rajesh Ashok Kumar, Ajit Singh, Document Writer and Mahesh Kumar Stamp Vender. A perusal of the report and the statements of aforesaid persons reveal that the respondents-accused cheated the deceased complainant by entering into an agreement and receiving an amount of Rs.10,22,727/- from him In respect of sale of their share which had already been transferred by them in favour of their brother.

12. The contention of the learned counsel for the respondents-accused that the revisionist-complainant did not examine Chander Singh and Om Parkash in support of his averments and thus failed to substantiate its allegations is completely devoid of any merit, because a perusal of the trial court record

shows that he had deposited diet money of the aforesaid witnesses in the court and the summons were served upon them for 20.02.2012 which was declared a holiday and thereafter summons were never issued to them .

There can be no dispute with the proposition of law that the offence of forgery can only be committed in relation to the original documents and not with respect to the copies thereof as held in *Budh Ram Versus State of Haryana* 2010 (2) RCR (Criminal) 352 (P&H). No doubt in this case ,the original agreement to sell has not been brought in evidence and only its copies have been produced, but from a perusal of the statement of deceased complainant Rajesh, it stands established the original agreement was lying at his house. Since the complainant is no more ,therefore, his brother Narender who is defending the present case on his behalf can be asked by the learned trial court to produce the original agreement.

The oral as well as documentary evidence on trial court record is sufficient to frame charge under Section 420 and 506 IPC against the respondents-accused and as held in Amit Kapoor Versus Ramesh Chander and another(supra), the court at the initial stage of framing of charge is concerned not with proof but with strong suspicion that the accused has committed an offence which if put to trial could prove him guilty. At this stage, there is nothing on record compatible with the innocence of respondents-accused.

In view of the discussion above,the impugned order is set aside and the revision is allowed. The learned trial court is directed to give at least two opportunities to the complainant to examine his witnesses namely Chander Singh and Om Parkash whose diet money was deposited in the court and then to frame charge under Sections 420 and 506 IPC against the respondents-accused and to proceed further with the trial in accordance with law. To appear before the trial court on 06.07.2013. Trial court record be sent back with a copy of this judgment. Revision file be consigned to the record room

after due compliance.”.

Learned counsel for the petitioners has submitted that the trial Court has rightly held that the agreement to sell is not proved and the document which is only marked cannot be read in evidence. It is further submitted that even the receipt has not been proved and no attesting witness is examined by the complainant. It is also submitted that the dispute relates to agreement to sell and the respondent has a civil right to recover the amount of ₹10,22,727/- paid to the petitioners-accused persons.

In reply, learned counsel for the complainant has stated that it has come in the statement of the complainant, who appeared as CW1 and witnesses CW2 and CW3 that the amount of ₹10,22,727/- has been paid by the complainant in pursuance to the agreement to sell and possession was delivered. However, later on, it came to the notice of the complainant that prior to this agreement to sell, the complainant has transferred their share of land in favour of their brother by way of release deed dated 15.11.2005 as such the clear intention of the accused persons to cheat the complainant has come on record. It is also submitted that the trial Court, while acquitting has wrongly noticed that the complainant has paid ₹55,00,000/-, whereas, ₹10,22,727/- was paid and, therefore, the finding of the trial Court that the complainant could not prove his financial capability to pay ₹55,00,000/- is erroneous as this much amount was never paid.

Learned counsel for the respondent-complainant has further stated that a perusal of the report submitted by the Police under Section 202 Cr.P.C. also shows that the Police, after recording the statements of the witnesses of the complainant, has opined that the accused persons have

cheated the complainant and, while discharging accused persons, the trial Court has not taken into consideration the report under Section 202 Cr.P.C. However, in fact, no reasoning has been given for discarding the report. It is also submitted that the trial Court, while closing the evidence of the complainant, has not taken into consideration that the complainant has deposited the diet money of two witnesses, namely, Chander Singh and Om Parkash, who were served for 20.2.2012 for appearance but it was declared a Court holiday and, thereafter, the trial Court did not resort to re-summon these witnesses and procured their presence for the purpose of recording their statements and, therefore, the revisional Court has rightly remanded the case back.

After hearing the learned counsel for the petitioners, I find no illegality in the impugned judgment dated 2.7.2013 passed by the revisional Court.

It has come on record that when the case was fixed for prosecution evidence, the complainant has summoned the two witnesses Chander Singh and Om Parkash, who were duly served on 2.2.2012, when it was declared a holiday and the trial Court never summoned these witnesses again. It has also come on record by way of release deed dated 5.11.2015, the accused have already transferred their share of land in favour of their brother Agdi and, therefore, they were not owners of the land on the date of agreement to sell dated 20.5.2008 and they wrongly induced the complainant to part away the amount of ₹10,22,727/- as full and final settlement of the land qua which they were not the owners. The trial Court has assigned no reason for forming a different opinion or dissenting the

report under Section 202 Cr.P.C submitted by the Police.

In view of the observations made above, I find no merit in the present criminal revision and the same is, accordingly, dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

November 2, 2017
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No