

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 181 of 2014 (O&M)

Date of decision : 29.11.2017

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Gurjant Singh

.....Petitioner

vs.

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: None for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab

Mr. Mohd. Yousaf, Advocate for respondent No.2.

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H. S. Madaan, J. (Oral)

Accused Gurnam Singh and his wife Amarjit Kaur, after being tried by Judicial Magistrate Ist Class, Zira, vide judgment and order dated 22.11.2011, only Gurnam Singh was convicted under Section 420 IPC and was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days, whereas his wife and co-accused Amarjit Kaur, was acquitted of the charge framed against her.

Gurnam Singh preferred an appeal before the Court of Sessions, which was accepted by the Additional Sessions Judge, Ferozepur, vide its judgment dated 13.11.2013 and he was also acquitted of the charge framed against him. The complainant felt aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was given to the State, as well as to the accused - Gurnam Singh, arrayed as respondent No.2.

Briefly stated, facts of the case as per prosecution version are that criminal machinery in this case was set into motion by Gurjant Singh s/o Sohan Singh, who in his statement got recorded by ASI Kuldeep Singh, had stated that they are three brothers; that complainant and his brother Balwinder Singh had agreed to purchase a plot measuring 10 marlas, from accused Gurnam Singh s/o Tara Singh, for a sum of Rs. 9 lacs and Rs.8 lacs were paid to him at the time of agreement dated 19.1.2001, in the presence of Baj Singh s/o Kessar Singh, Gurcharan Singh s/o Pala Singh and Dayal Singh s/o Fateh Singh; that the final date for execution and registration of sale deed was fixed as 18.3.2012, as per recital of the agreement possession of the land had been delivered on that very day. However, on the date fixed for execution of the sale deed, accused did not come present to execute the sale deed in favour of the complainant and his brother, though complainant alongwith his witness remained present in the office of Sub-Registrar, Makhu and got their presence marked. Later on it transpired that accused had already sold that piece of land to his brother and thereafter to his wife. In that way accused Gurnam Singh had cheated the complainant and committed a fraud; that Beant

Kaur wife of accused Gurnam Singh had failed a false suit against the complainant; that the complainant came to know that prior to that agreement accused Gurnam Singh had also executed an agreement dated 8.7.2000 in favour of his brother Lakhbir Singh s/o Tara Singh for land measuring 10/196, 5 marlas killa No. 8/2, (1-16) 9 (8-0) situated in village Bulloke, agreeing to execute the sale deed in favour of Lakhbir Singh on 15.7.2011, but actually did not do so.

On the basis of such statement of Gurjant Singh, formal FIR was recorded. The case was investigated. Accused were arrested in this case.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Illaqa Magistrate.

On presentation of challan in the Court, copies of documents relied upon therein were supplied to the accused free of cost, as provided under Section 207 Cr.P.C. Then finding a prima facie case, charge for offences under Sections 420, 467 IPC was framed against both the accused, to which they pleaded not guilty and claimed trial.

During the course of evidence, the prosecution examined PW-1 Bakshish Singh, PW-2 Mehal Singh, PW-3 HC Rattan Singh, PW-4 ASI Jaswinder Singh, PW-5 HC Kulwant Singh, PW-6 Gurjant Singh, PW-7 Gurcharan Singh, PW-8 Sohan Singh, PW-8 Resham Singh, PW-9 Lakhbir Singh, PW-10 Avtar Singh, PW-11 HC Rajwant Kaur and PW-12 Harjinder Singh. With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations pleading false implication. During their defence evidence, the accused examined DW-1 Inspector Ranjit Singh and thereafter closed their defence evidence.

After hearing arguments, the trial Magistrate, convicted and sentenced accused Gurnam Singh for offence under Section 420 IPC, whereas his wife and co-accused Amarjit Kaur was acquitted. On an appeal having been filed, learned Additional Sessions Judge, Ferozepur, had accepted the appeal. The reasoning given by him for arriving at this inference is given in paragraphs 13 and 14 of the judgment. For ready reference, the same are reproduced hereunder:-

“13. The main allegations against the appellant/accused are that Gurnam Singh has cheated the complainant Gurjant Singh on 19.2.2001 by way of entering into an agreement to sell duly executed on 19.2.2001 and on 8.7.2000 in connivance with each other. When he had already executed one another agreement dated 8.7.2000 in favour of Lakhbir Singh in this way he cheated him for not execute the sale deed in his favour as per the agreement to sell executed by him in favour of the complainant. But as per the reliance RCR (Crimina1) 2006 (1) page 162 of Honorable Punjab and Haryana High Court case

titled as “Munish Goyal Versus State of Punjab” wherein it has been held that seller received earnest money. He neither executed the sale deed nor returning the earnest money. No offence of cheating or breach of trust made out. FIR did not disclose that accused harboured a dishonest intention at the inception of the transaction or in any manner committed an offence of criminal breach of trust. For a person to cheat, dishonest intention must arise at the inception of the transaction. FIR quashed. It is a civil dispute.

14. Similarly, the ingredients of an offence of cheating are:

(i) There should be fraudulent or dishonest inducement of as person and by deceiving him.

(ii)(a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property,

(b) The person to deceive should be intentionally induced to do or omit to do anything which he should not do or omit, if he were not so deceived and

(iii) In case covered by (ii) (b) the act of omission should be one which causes or is likely to cause damage or harm to the person induced. in body, mind, reputation or property.”

I have heard learned counsel for the parties besides going through the record.

I find that there is no illegality or infirmity with the impugned judgment passed by the Additional Sessions Judge, Ferozepur, which might have called for interference by this Court, while exercising revisional jurisdiction. It is well settled that revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge or that the conclusion arrived at by the Courts below is perverse. This is not a case here. The judgment passed by the Additional Sessions Judge, Ferozepur, is well reasoned one, based upon proper appraisal and appreciation of evidence. It cannot be said to have been passed in violation of settled principles of criminal jurisprudence, rather the revision petition is found to be without any merit and is dismissed accordingly.

(H.S. Madaan)
Judge

29.11.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No