

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

(i)

CRR No.4348 of 2015 (O&M)

Manjit Singh alias Mani

...Petitioner

VERSUS

State of Punjab

...Respondent

(ii)

CRR No.2065 of 2016 (O&M)

Raminder Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

Date of Decision: February 23, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.S.Chahal, Advocate
for the petitioner (in CRR No.4348 of 2015).

Mr.Chanchal K. Singla, Advocate
for the petitioner (in CRR No.2065 of 2016).

Mr.Deep Singh, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned two connected revisions as the same have been arisen from same impugned judgment.

The above-mentioned revision petitions have been filed by petitioners against respondents State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 14.10.2011 passed by learned Judicial Magistrate First Class, Dhuri, vide which the petitioners

were convicted and sentenced to undergo rigorous imprisonment for a

period of six months and to pay a fine of ₹1000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of twenty days each under Section 120-B IPC and further to undergo rigorous imprisonment for a period of three years and to pay fine of ₹10,000/- and in default of payment, to undergo rigorous imprisonment for a period of six months each under Section 420 read with Section 34 IPC and also challenging the judgment dated 01.09.2015 passed by learned Addl. Sessions Judge, Sangrur, vide which the appeal filed by petitioners was dismissed but the petitioners were acquitted of the charge under Section 34 IPC. Both the sentences were ordered to run concurrently.

Notice of motion was issued and learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

From the record, I find that the challan was presented against petitioners in case FIR No.94 dated 26.11.2008. The brief facts of the case as noted down in the judgment passed by learned JMIC, Dhuri, are as under:-

“2. In brief, the prosecution story is that on 26.11.2008, an application No.3056/VP dated 26.11.2008 was received from the office of SSP Barnala through HC Avtar Singh 599. It was alleged in the application for taking action against Manjit Singh and Raminder Singh sons of Harnam Singh for cheting the complainant Amar Singh. It was alleged that the complainant is resident of Ludhiana and he had entered into an agreement to sell on 07.11.2007 for purchasing the land measuring 40 bighas 2 biswas 5 biswansies at village Mahamdpur and sum of Rs.35,00,000/- was paid by him to the accused persons as earnest money. The date for registration of sale deed was fixed as 16.07.2008 and on 16.07.2008 the complainant remained present before the Sub-Registrar and also got executed an affidavit No.1677 dated 16.07.2008 to show his presence but the above named accused did not come

to execute the sale deed. Thereafter the complainant requested the accused persons for the registration of the sale deed but they started threatening to the accused that they will not get the sale deed registered and also told him that they had already agreed to sell the same property to some other person. Upon enquiry by the complainant it was revealed that the accused persons have earlier agreed to sell the same property to Jagdev Singh son of Lal Singh and a case in this regard was pending before the Civil Court as such, accused persons cheated the complainant and have obtained sum of Rs.35,00,000/- from him. The complainant has agreed to purchase the property after selling his own land and he being an old aged person, cannot take any risk. The accused persons had also agreed to sell the land of their brother Santokh Singh and had agreed that they will get the sale deed registered in his favour. Hence this application for registration of an FIR under Section 420 of the Indian Penal Code. The above said application was sent to SHO, Police Station Sherpur to make an enquiry and ultimately after an enquiry, the FIR under Sections 420, 406 and 120-B of the Indian Penal Code against the accused persons was registered. The accused were arrested and later on admitted to bail. Necessary documents were taken into possession. Statements of witnesses were recorded and after completion of the investigation, challan against the accused was presented before the Court.”

On presentation of challan, charges were framed under Sections 420 and 120-B IPC against the petitioners, to which they pleaded not guilty and claimed trial.

In support of its case prosecution examined PW-1 Pritam Singh, PW-2 Kulwinder Singh, PW-3 Jagdish Lal, PW-4 Amar Singh, PW-5 Darbara Singh, PW-6 Harminder Singh, PW-7 Raj Kumar, PW-8 Mukesh Kumar Gupta, PW-9 Jagdev Singh and PW-10 Kulwant Rai.

Learned JMIC, Dhuri, after appreciating the evidence, convicted and sentenced the petitioners as stated above. An appeal was filed by the petitioners and the same was dismissed by learned Addl. Sessions Judge, Sangrur, vide judgment dated 01.09.2015, however, the petitioners were acquitted of the charge under Section 34 IPC.

Aggrieved from the above-said judgments, present revision petitions have been filed.

At the time of arguments, nothing has been argued to show that how the concurrent findings given by the Courts below are perverse or against the evidence or law. Nothing has been pointed out which material evidence has been misread or which material evidence has not been considered by the Courts below. This is a revision petition and this Court is not to re-appreciate the evidence like Court of an appeal. The perusal of the impugned judgments shows that the findings have been given after appreciating and re-appreciating the evidence correctly and in right perspective.

From the evidence on record, I find that agreement to sell dated 07.11.2007 has been executed of the land more than 35 bigahs @ ₹2,39,000/- per bigha. It is in the statement of complainant Amar Singh, who appeared as PW-4, that ₹35 lakhs as earnest money has been paid and the agreement to sell has been duly witnessed by Jagdish Lal and Kulwinder Singh. As per the evidence, the sale deed was to be executed on 30.05.2008. It is also in the evidence that date for execution of the sale deed has been extended on 11.07.2008 but the accused did not come to the Sub-Registrar's office to execute the sale deed. When PW-4 Amar Singh made an enquiry, he came to know that the land in question has already been sold to another person vide separate agreement to sell and accused has already received earnest money from that person. The copy of the agreement Ex.P5 and copy of affidavit have been proved by the complainant. The petitioners have already entered into agreement to sell

with one Jagdev Singh, who has already filed the civil suit and injunction

was ordered by the Civil Court. Said Jagdev Singh has also appeared as PW-11 and has supported this fact that there was an agreement to sell of land measuring 40 bighas and has proved the agreement Ex.PW11/A, on the basis of which, civil suit was filed.

Entering into agreement to sell with the complainant by the accused persons when they have already entered into agreement to sell the land with one Jagdev Singh and have already received the earnest money from him, and the fact that suit has already been filed when this agreement to sell was executed, shows the intention and conspiracy of the petitioners to cheat the complainant. It is not simply a case of breach of agreement. Therefore, in no way, it can be held that the dispute is of civil nature. The agreement to sell has been duly proved by PW-2 Kulwinder Singh, who also deposed regarding the payment of earnest money. PW-3 Jagdish Lal has also been examined and he also corroborated the case of the prosecution. The stamp paper of the agreement is duly proved by PW-8 Mukesh Kumar Gupta. The Reader of Naib Tehsildar has been examined as PW-5.

Both the Courts below have held that at the time of entering into the agreement with present complainant, the accused had already entered into agreement with one Jagdev Singh and their intention from the beginning was to cheat the complainant and the fact that they had already entered into agreement with one Jagdev Singh has not been disclosed to the complainant.

In view of the above discussion, I find that the findings have been given by both the Courts below by appreciating the evidence in right perspective. These findings are as per evidence and law. In no way, the

judgments can be held as perverse or illegal. Therefore, the impugned

judgments of conviction passed by both the Courts below are upheld.

However, as the revision petitioners are suffering from long protracted criminal proceedings since 2008 i.e. for the last more than 8 years, and in view of the facts and circumstances of the present case, the sentence imposed upon the revision petitioners is reduced and they are directed to undergo rigorous imprisonment for a period of one year instead of three years under Section 420 IPC. However, other sentence, sentence of fine and in default thereof, shall remain the same.

With the above-said modification in the sentence, both the revision petitions are dismissed.

As petitioner Raminder Singh has not surrendered so far after the dismissal of the appeal, therefore, the trial Court is directed to take necessary steps for the arrest of petitioner Raminder Singh at the earliest.

As petitioner Manjit Singh alias Mani is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

As regarding CRM No.994 of 2016 filed by petitioner Manjit Singh alias Mani, the same is allowed. The sentences awarded to the petitioner Manjit Singh alias Mani in case FIR No.94 dated 26.11.2008 registered at Police Station Sherpur and case FIR No.386 dated 26.09.2001, registered at Police Station Division No.1, Ludhiana, are ordered to run concurrently.

February 23, 2017

Vgulati

Whether speaking/reasoned

Whether reportable

(INDERJIT SINGH)

JUDGE

Yes

No