

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR 878-2015 (O&M)
Date of decision: 13.11.2017

Satya Prakash Baghel

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.S.K.Tripathi, Advocate for the petitioner
Mr.R.K.Makkad, Deputy Advocate General, Haryana
Mr.Shiv Kumar, Advocate for the respondent no.2

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Heard.

Lower Court file perused.

The present revision petition is against the judgment dated 7.2.2015, passed by the learned Additional Sessions Judge, Faridabad, affirming the judgment of conviction dated 24.7.2013 and order of sentence dated 26.7.2013 passed by Learned Judicial Magistrate 1st Class, Faridabad, vide which, the petitioner was conviction under Section 138 of Negotiable Instruments Act, 1881 and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.3,30,000/- to the complainant as compensation. In default of payment of fine, the accused/ petitioner was to undergo further rigorous imprisonment for one month.

The facts of the case are that the accused had entered into an agreement to sell dated 24.1.2009 with the complainant to sell a portion of

plot measuring 50 square yards. He has received Rs.3 lakhs as earnest money out of the total sale consideration of Rs.8 lakhs. The sale deed was to be executed on or before 22.1.2010, after receiving the balance payment of Rs.5 lakhs. However, the date was extended to 22.3.2010, on which, date the accused did not appear to execute the sale deed. Consequently, the complainant issued a legal notice on 21.6.2011. After receipt of the legal notice, the accused contacted the complainant and issued a post dated cheque bearing no.548324 dated 1.7.2011 for Rs.3 lakhs drawn on Indian Overseas Bank, Faridabad to return the earnest money. The said cheque when presented to the bank was dishonoured for want of sufficient funds.

Learned counsel for the petitioner has argued that the agreement was not proved. First page of the agreement is not signed. It is the stand of the accused that the accused petitioner was having property dealing business with the son of the complainant and the cheque was given as a security. Further reference has been made to the statement of Notary Public, wherein he has stated that the agreement was not entered in the Register. Reference has also been made to the cross-examination of the complainant, wherein she has stated that no agreement was executed.

I am of the view that the evidence has to be read as a whole. The entire case of the complainant is that agreement of sale was executed and Rs.3 lakhs were handed over to the accused/ petitioner as earnest money. Accused failed to execute the sale deed on the date fixed and in response to the legal notice, he handed over a post dated cheque to refund the said earnest money. It was for this reason that probably, the complainant did not file the suit for specific performance. Minor discrepancies here and there are to be ignored. The prosecution case is

corroborated on all the material particulars. Defence of the accused was discarded by both the Courts below and it was done rightly. Since there is no proof of business of present petitioner with the son of the complainant and in the agreement itself the earnest money is mentioned, the mere fact that the counsel has filled in the cheque, hardly matters.

It being so, I do not find any illegality of infirmity in the findings of both the Courts below. Consequently, the present revision petition is dismissed.

Petitioner who is on bail be re-arrested to undergo the remaining part of sentence.

13.11.2017*gk***(Kuldip Singh)****Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

No