

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

**CRA No.AS-159 of 2015 (O&M)  
Date of decision: August 02, 2018**

Kanta Devi

...Appellant

Versus

Banarsi Dass and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Munish Gupta, Advocate  
for the appellant.

Mr.Nitin Rathee, Advocate  
for the respondents.

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**INDERJIT SINGH, J.**

The present appeal has been filed by the appellant against the impugned judgment dated 31.03.2015 passed by learned Judicial Magistrate Ist Class, Mohindergarh, vide which the accused-respondents were acquitted.

The brief facts of the case as noted down in the judgment passed by learned JMIC, Mohindergarh, are as under:-

*“2. Brief and relevant facts of the case of complainant are that she is resident of above mentioned address. Accused agreed to sale the land comprised in khewat no. 1067 khatoni no. 1438 mustitil and killa no. 209//11/1 total land measuring 7 kanal 8 marla and another land comprised in khewat no. 1075 khatoni no. 1466 mustitil and killa no. 209//12/1 total land measuring 7 kanal 2 marla to the extent of 2 kanal 2 marla. Total land measuring 9 kanal 10 marla as per jamabandi 2004-05 for sale consideration of Rs. 504690/-. In this regard an agreement to sell dated 04.11.2009 executed by accused no. 1*

*in favour of complainant qua 9 kanal 10 marla and received an amount of Rs. 50,000/- as earnest money. It was decided that remaining sale consideration amount Rs. 454690/- to be paid at the time of execution of sale deed. Sale deed was to be executed on 15.03.2010. It was agreed that in case accused failed to execute the registry the sale deed within the stipulated period. Then complainant in that eventually all expenses of registration of sale deed would be borne by accused and he would also bear the expenses of litigation. It was also agreed that in case of sale deed not get executed by complainant earnest money would be forfeited on dated 15.03.2010. On dated 15.03.2010 complainant visited the office of Sub-Registrar Mahendergarh alongwith balance sale consideration and other expenses but accused did not come there from morning to evening. Thereafter, complainant got marked her presence by way of swearing an affidavit and got it attested from Executive Magistrate Mahendergarh. Accused had failed to perform his part of contract. Complainant is always ready and willing to perform her part of contract and till today complainant is ready to perform her part of contract. Complainant served legal notice to accused no.1. Accused no.1 willfully refused to take the notice. Accused no. 1 had borrowed the amount from bank but he did not repay the loan amount, therefore, accused no.1 has not fulfill all the terms and conditions of contract. Accused no.2 is daughter in law of accused no.1. Accused no.3 is family member of accused no.1 and 2. Accused no.4 is numberdar of village. Accused no.2 to 4 also had knowledge about the agreement to sell dated 11.04.2009. After that accused no. 1 executed sale deed in favour of accused no.2 regarding the 9 kanal 10 marla land. On dated 26.03.2010 vide sale deed no. 3525 accused no.1 executed the sale deed in favour of accused no.2. Accused no.3 and 4 put their signatures on sale deed. Accused no.1 executed the sale deed in favour of accused no.2 fraudulently. In this regard also on dated 31.03.2010 complainant has filed a suit for specific performance in Civil Court titled as Kanta Vs. Banarsi Dass which is still pending in the Court. Later on accused persons also threatened the complainant to kill. Hence, the present complaint.”*

Finding prima facie case, accused were charge-sheeted under Sections 420, 506 and 120-B IPC, to which, they pleaded not guilty and claimed trial.

At the close of complainant evidence, the accused were examined under Section 313 Cr.P.C. and they were confronted with the

evidence. They denied all the incriminating evidence against them and pleaded their innocence. In defence, accused examined DW-1 Tribhuwan, record -keeper, DW-2 Devender, RC, DW-3 Sanjay Narula, DW-4 Inderpal Singh and DW-5 Vinod Kumar @ Banarsi Dass.

Learned JMIC, Mohindergarh, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 31.03.2015.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal was filed. Leave was granted to file the appeal.

Notice of motion was issued and learned counsel for the respondents appeared and contested the appeal.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that simple case of the complainant is that he entered into agreement to sell dated 04.11.2009 with accused No.1 Banarsi Dass qua land measuring 9 kanal 10 marla and amount of ₹50,000/- was given as earnest money and it was decided that remaining sale consideration amount of ₹4,54,690/- will be paid at the time of execution of sale deed, which was to be executed on 15.03.2010. As per the allegations, accused No.1, executed the sale deed in favour of his daughter-in-law accused No.2 Bimla Devi.

The perusal of the record shows that firstly, there is nothing on the record to show the accused have intention to cheat the complainant from the very beginning. If it would have been, then the accused might have

earnest money till the date of execution of sale deed. The accused have not mortgaged the property or obtained the loan on the property nor alienated the same till the date fixed for execution of sale deed. The sale deed was executed by accused No.1 in favour of accused No.2 after 15 days of expiry of target date, fixed for execution of sale deed, as per agreement to sell. Therefore, offence under Sections 420 and 120-B IPC are not proved.

Furthermore, the complainant has filed a civil suit for specific performance and the Civil Court has dismissed that suit by holding that complainant was not ready and willing to execute the sale deed, as argued at the time of arguments. Otherwise also, this case is of civil nature.

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. The findings have been given by correctly appreciating the evidence in right perspective.

In view of the above discussion, I find that the impugned judgment dated 31.03.2015 passed by learned JMIC, Mohindergarh, is correct, as per law and evidence and does not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

**August 02, 2018**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

**Yes**  
**No**