

104.

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

CRM-A-191-MA-2015

Date of decision:26.11.2018

OM PARKASH

... Applicant

versus

STATE OF HARYANA & ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Raman Chawla, Advocate,
for the applicant.

HARI PAL VERMA, J. (Oral)

The applicant-Om Parkash, who is the complainant, has preferred the present application to leave against the order dated 27.11.2014 passed by learned Judicial Magistrate Ist Class, Hissar, whereby his complaint filed under Section 420 IPC was dismissed.

The brief facts of the complaint are that in the month of January, 2008, Rambir, respondent No.2-accused (hereinafter referred to as "accused") along with one Mahender Singh, Property dealer, came to the house of the complainant-Om Parkash and told the complainant about selling of his (accused's) land measuring 33 kanals and 5 marlas. The complainant agreed to purchase the said land for a total sale consideration of Rs.20,78,500/-. Accordingly, on 01.02.2008, a sale deed bearing No.11936 was executed in the office of Sub-Registrar, Hisar in favour of complainant's wife, namely, Geeta Devi. Said property dealer Mahender also put his

signature as a witness to the sale deed. The complainant paid the entire sale consideration, in the presence of one Mange Ram son of Nathu Ram, to the accused-Rambir who had assured the complainant that there is no litigation or stay order regarding the land in question in any court. Thereafter, in the month of September, 2008, police from Civil Lines, Hisar came to the house of complainant to arrest his wife Geeta Devi as an FIR No.255 dated 16.05.2008 under Sections 420/ 467/ 468/471/472 IPC, Police Station Civil Lines was registered against her for the purchase of this land. The complainant enquired and came to know that on the day of registration of sale deed, a civil suit regarding the aforesaid land was pending in the court of learned Civil Judge, Hisar. After getting anticipatory bail of Geeta Devi, the complainant along with property dealer-Mahender Kumar and Mange Ram went before Rambir and inquired about the cheating of Rs.20,78,500/-, to which, the accused told that he had intentionally and dishonestly cheated the complainant. Hence, the complaint was filed.

After appreciating the evidence on record, the trial Court vide judgment dated 27.11.2014 dismissed the complaint and acquitted the accused of the charges framed against him by extending the benefit of doubt.

Aggrieved against the aforesaid judgment dated 27.11.2014, the complainant has preferred the present application for leave to appeal.

Learned counsel for the applicant has argued that the accused was very well aware about the pendency of a civil suit at the time of selling the land. Therefore, the court below has erred in giving him the benefit of doubt. The trial Court has not considered the true and material facts while acquitting the accused. The ground taken that the summons issued to the

CW1 had produced the entire record when he was examined in the case.

Heard.

The complainant had purchased the land measuring 33 kanals 5 marlas from the accused-Rambir for a total sale consideration of Rs.20,78,500/- vide sale deed dated 01.02.2008 in the name of his wife Geeta Devi. Since a civil suit was pending when the sale deed was executed, an FIR was registered against the complainant's wife Geeta Devi. The allegation against the accused is that he has concealed the fact regarding pendency of litigation over the disputed property.

Before the trial Court, the defence taken by the accused is that he has not played any fraud upon the complainant or his wife or that he has not concealed any material fact regarding the pendency of civil litigation. He executed the sale deed in favour of complainant's wife on the basis of his title which he derived from his vendor. The trial Court vide judgment dated 27.11.2014 acquitted the accused of the charges framed against him by observing that there is not a single piece of evidence on the case file to show that the accused had notice of the pending litigation over the disputed property when he entered into an agreement with the complainant. In the civil suit, which was instituted on 08.01.2007 and decided on 07.03.2013, the accused was defendant No.3, but there is nothing on record to show that the accused had appeared in the civil suit prior to execution of sale deed. He was neither summoned nor any order was passed in the civil suit prior to execution of sale deed. Hence, prior knowledge of the pendency of civil suit regarding the disputed property was not proved and accordingly, the accused was acquitted. Moreover, in the statement of the Ahalmad, no such evidence

civil suit at the time of execution of the sale deed dated 01.02.2008.

In view of above, this Court does not find any cause for interference.

Dismissed.

(HARI PAL VERMA)
JUDGE

26.11.2018

sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No