

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28892-2015

Date of decision: 26.03.2018

Partibha

... Petitioner

Vs.

Subhash and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. N.C. Kinra, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 03.02.2014 (Annexure P-2) passed by the trial Court in criminal complaint No.92 of 19.10.2009/RBT case No.167/08.06.2011 under Sections 420, 467, 468, 471, 195/34 of the Indian Penal Code (for short 'IPC'), vide which the trial Court has dismissed the complaint as well as the order dated 21.11.2015 (Annexure P-3), vide which the revision petition filed by the petitioner was also dismissed by the revisional Court.

Brief facts of the case are that the petitioner-complainant filed a complaint under Sections 420, 467, 468, 471, 195/34 IPC with the allegations that she is a Sanskrit Teacher in Govt. School. Accused No.1 Subhash is serving as Head Constable in Haryana Police and is posted in Police Lines,

Rohtak. It is further stated that children of the petitioner-complainant and respondents-accused, who are husband and wife, are studying in the same school and class, therefore, both the family members developed acquaintance and enjoyed confidential and close relations. Accused No.1 Subhash is in the habit of minting money and dealing in property business and manages govt. job on receiving the payment from unemployed youth. It is further stated in the complaint that the complainant has executed an agreement to sell for the purchase of two plots situated on Chamarian Road, Rohtak through one Sh. Krishan Hooda from one Sh. Bhoop Singh resident of Vijay Nagar, Rohtak in the month of December, 2014. The complainant paid an amount of Rs.10,000/- to Sh. Krishan Hooda as token money. Thereafter, agreement was scribed through Sh. Umesh Sharma and an amount of Rs.80,000/- including the token money, already paid by the complainant, was considered as earnest money. In the meantime, accused persons, who are husband and wife, enjoying the fiduciary relationship with the complainant, stated in May, 2007 that they have settled with the seller Sh. Bhoop Singh for execution of the sale deed of aforesaid two plots and on such representation, the complainant handed over an amount of Rs.3.20 lacs as full and final consideration of the aforesaid two plots and also handed over the agreement to sell and receipts to accused Subhash.

Thereafter, the complainant on 31.12.2007 paid Rs.20,000/- as charges for registration of the sale deed and another amount of Rs.1.00 lac was also paid on 15.06.2007. It is further stated in the complaint that the complainant introduced one Smt. Shakuntla, a lady Teacher in Govt. School, Bhagwatipur and accused represented her that he will manage a job of ANM for her daughter-in-law Smt. Mukesh on payment of Rs.1.50 lacs and she paid the

same. When the accused failed to manage the job, complainant went to his house on 02.10.2009, then accused No.1 sprinkled petrol on his house and raised a hue and cry that the complainant had attempted to put his house on fire. It is thus stated that the accused, by taking Rs.1.50 lacs from Smt. Shakuntla, has cheated her.

The complainant in her evidence, examined CW1 Shakuntla, who deposed on the lines of the complaint, CW2 Geeta, who stated that she had given Rs.20,000/- to the complainant by cheque and complainant herself appeared as CW3.

The trial Court, on appreciation of the evidence, held that since summoning of an accused person, in a criminal case is a serious matter and as per the evidence led by the complainant, no prima facie case is made out to summon the accused persons, therefore, dismissed the complaint vide impugned order dated 03.02.2014. Thereafter, the complainant preferred a revision petition before the Court of Sessions and same was also dismissed vide order dated 21.05.2015. The petitioner-complainant has challenged the impugned orders passed by the Courts below by way of filing the present petition.

Learned counsel for the petitioner submits that the petitioner, by leading oral evidence, has proved that an amount of Rs.1.50 lacs was given by CW1 Shakuntla to respondent No.1 for procuring a job of ANM for her daughter-in-law and the complainant also paid an amount of Rs.2.78 lacs for purchase of shop in Ekta Colony, Jhajjar Road, Rohtak, but the accused has misappropriated the money of the complainant and has cheated her. It is also argued that sufficient evidence was led before the trial Court for summoning the accused persons and the trial Court has not properly appreciated the evidence of

CW1 to CW5.

After hearing learned counsel for the petitioner, I find no merit in the present petition.

Both the Courts below have concurrently held that there is no document on record to show that the complainant got an agreement executed through Sh. Krishan Hooda from one Sh. Bhoop Singh and paid an amount of Rs.10,000/-. Neither the receipt nor any agreement was placed on record before the trial Court or that subsequently, the total amount of Rs.3.20 lacs was paid to Sh. Bhoop Singh as full and final consideration. Though it is stated in the complaint that the agreement was scribed by one Umesh Sharma, but he was never examined as a witness.

The Courts below have further recorded a finding that there is no evidence on record to prove that CW1 Shakuntla has paid Rs.1.50 lacs for procuring a job of ANM for her daughter-in-law, as no such document is produced on record. It is further held by the Courts below that respondent No.1 being Head Constable was not competent to provide a job of ANM, as alleged in the complaint and no evidence has been led by the complainant at any stage that she has approached the police authorities for registration of any case against the accused persons and even no DDR/FIR was lodged or placed on record.

In view of the above, I find no reason to interfere in the impugned orders passed by the trial Court as well as revisional Court, as the petitioner has failed to produce on record any documentary evidence to prove payment of any amount or to prove that before filing of the complaint, she has submitted any representation to the police, where accused No.1 Subhash is serving. No

DDR/FIR was lodged regarding cheating. The concurrent findings recorded by the Courts below are based on appreciation of the evidence led by the complainant and finding no illegality or irregularity in the impugned orders passed by the Courts below, present petition is dismissed.

26.03.2018
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No