

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

236

CRR-1173-2018 (O&M)

Date of Decision:13.08.2018

Kuldeep Singh Malhotra

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Mr. APS Luna, Advocate,
for the petitioner.**

Mr. Surinder Pal Singh Tinna, Addl. A.G., Punjab.

**Mr. Padamkant Dwivedi, Advocate,
for respondent No.2-complainant.**

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition against the judgment dated 20.03.2018 passed by learned Additional Sessions Judge, SAS Nagar Mohali, whereby his appeal against the judgment of conviction and order of sentence dated 19.05.2017 passed by learned Judicial Magistrate 1st Class, SAS Nagar, Mohali, was dismissed.

Briefly stated, an FIR No. 47 dated 23.04.2013, u/s 406, 420 IPC, P.S. Phase-8, SAS Nagar, Mohali was registered against the petitioner-accused on the allegations that on 14.08.2011, he (petitioner) contacted respondent No.2-complainant to sell his house while stating that he is having 20% share in house No. 2403, sector 35-C, Chandigarh and the same is without any encumbrances and that the original documents are lying with

his friend. At that time, Gurpeet Singh was also present. The deal was struck for Rs.1,02,00,000/-, out of which, a sum of Rs.20,00,000/-was paid as earnest money and an agreement dated 17.08.2011 was executed between the parties. Sale deed was agreed to be executed on or before 31.12.2011. But, the accused (petitioner) failed to show original documents to complainant and put off the execution of sale deed on one pretext or the other. Later on, it transpired that the said house was mortgaged with IDBI Bank. In this manner, the accused misrepresented the facts and misappropriated the amount of complainant.

After completion of investigation, challan against the accused was prepared and presented in the Court. Copies of documents were supplied to accused free of cost as envisaged under section 207 Cr.P.C. Finding a prima-facie case, the accused was charge sheeted under Section 406 and 420 IPC, to which he pleaded not guilty and claimed trial.

During the trial, the prosecution examined PW-1 Aunjay Nath complainant, PW-2 Gurpreet Singh, PW-3 Inspector Pritam Singh, PW-4 Satpal-Stamp Vendor, PW-5 ASI Narinder Singh-the investigating officer and PW-6 Harjit Singh from IDBI Bank, Chandigarh.

The petitioner in his statement recorded under Section 313 Cr.PC, denied all the incriminating evidence and refuted all the charges. He pleaded false implication and innocence.

The Learned Judicial Magistrate 1st Class, SAS Nagar, Mohali vide judgment dated 19.05.2017, held the petitioner guilty for the offence punishable u/s 420 IPC and vide separate order of even date sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment

of 5 days. However, he was acquitted of the charge framed under Section 406 IPC.

Feeling aggrieved against the judgment of trial Court, the petitioner preferred an appeal before the Court of sessions, however, vide judgment dated 20.03.2018 passed by learned Additional Sessions Judge, SAS Nagar Mohali, the same was dismissed.

It is in the aforesaid circumstances, the petitioner has filed in the present revision petition challenging the verdict of the courts below.

When the petition was listed before this Court on 01.08.2018, this Court has passed the following order:-

“Learned counsel for the petitioner has handed over a draft amounting to Rs.25 lacs in favour of the complainant. A photocopy of the same has been produced in Court today. Learned counsel further states that in view of the draft amount, not only the present revision petition is liable to be decided/disposed of rather, the decree passed by the Civil Court whereby the complainant decree holder has filed the execution, would stand satisfied.

On joint request of learned counsel for the parties, the matter is referred to the Mediation & Conciliation Centre of this Court and parties are directed to appear thereon 03.08.2018.

List on 13.08.2018.”

Pursuant to the aforesaid order, the parties have appeared before the Mediation & Conciliation Centre of this Court, where a settlement/compromise dated 03.08.2018 has been arrived at between them.

Learned counsel for the petitioner states that in view of the compromise so arrived at between the parties and having recourse to the provisions of Section 320(6) Cr.P.C. the matter in dispute is liable to be compounded. He further states that the petitioner has paid the entire amount

as per settlement/compromise. Accordingly he be acquitted of the charges framed against him.

Learned counsel for respondent No.2-complainant admits the factum of settlement/compromise entered into between the parties before the Mediation Centre of this Court. He also submits that he has no objection in case the present revision petition is disposed of or the petitioner is acquitted of charges framed against him.

I have heard learned counsel for the parties.

Admittedly, the offence under Section 420 IPC is compoundable by the person cheated, though with the permission of the Court. Relevant extract of Section 320(2) Cr.P.C. and Section 320(6) Cr.P.C. reads as under:-

“320. Compounding of offences:-

- (1) xxx xxx xxx
- (2) *The offences punishable under the sections of the Indian Penal (45 of 1860) Code specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:-*

Offence	Section of Indian Penal Code applicable	Person by whom offence may be compounded
<i>Cheating and dishonestly inducing delivery of property or the making, alternation or destruction of a valuable security.</i>	420	<i>The person cheated.</i>

- (3) to (5) xxx xxx xxx
- (6) *A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.”*

The terms of settlement arrived at between the parties vide settlement deed/compromise dated 03.08.2018, before the Mediation and Conciliation Centre of this Court reads as under:-

- “1. That the First Party has paid a sum of Rs.25,00,000/- (Rupees Twenty Five lakhs only) in the Hon'ble High Court on 01.08.2018 by way of Demand Draft No. 500209 dated 31.07.2018 issued by ICICI Bank, Chandigarh which was accepted by the Second Party as full and final settlement for all the claims against the First Party subject to clearance of the said demand draft.*
- 2. That the Second Party shall have no objection in case the above mentioned revision petition i.e. CRR-1173-2018 is allowed by the Hon'ble High Court on the basis of this compromise arrived at between the parties.*
- 3. That the Second Party will not press or pursue the Execution, if any, of the Decree passed by the Civil Court in Civil Suit No. 8171 of 17.03.2012-13 decided on 29.10.2015 by the Court of Civil Judge (Jr. Divn.) Chandigarh against the First Party at any stage in view of the present compromise.*
- 4. That the present compromise has been effected into voluntarily, without any force, pressure or undue coercion.*
- 5. That in view of the present settlement both the parties have agreed not to file any other case against each other in future in any competent Court of law with regard to the dispute in question and has further agreed to withdraw all other cases pending in any Court after the fulfillment of the conditions as agreed between the parties as mentioned above.*
- 6. That by signing the present settlement both the parties hereto state that they have no further claims against each other as of now since they have amicably settled the dispute.*
- 7. That both the parties have understood and read the agreement and the contents thereto and they are also made to understand the contents of present settlement in vernacular language as well and thereafter have put their signatures on the present settlement.*
- 8. That it has been further agreed between the parties that in*

case of necessity, both the parties shall be free to present the copy of the above compromise before any authority or Court if the same is required to witness the execution of the compromise or to settle any pending controversy between the parties.”

In view of the admitted position that the matter has been compromised between the parties and having recourse to the provisions of Section 320(6) Cr.P.C., the present petition is allowed; judgment of conviction and order of sentence dated 19.05.2017 passed by learned Judicial Magistrate 1st Class, SAS Nagar, Mohali in case No. RT87/27.1.14/2015, CIS No.CHI/39/2014 as well as judgment dated 20.03.2018 passed in Criminal Appeal No. 39 of 15.07.2017 by learned Addl. Sessions Judge, SAS Nagar Mohali, affirming the conviction of petitioner-accused, are set aside and the petitioner is acquitted of the charges framed against him.

August 13, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No