

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 507 of 2013**

Riyaz Hussain S/o Late Yanus Aged About 45 Years R/o Hemu Nagar, P.S. Torwa
Bilaspur, Distt. Bilaspur C.G., Chhattisgarh

---- Petitioner

Versus

Moh. Afasar Khan S/o Late Karim Khan Aged About 61 Years R/o Rajendra
Nagar , Bilspur , Tahsil And Distt. Bilaspur C.G., Chhattisgarh

---- Respondent

For Applicant	:	Mr. Hemant Gupta, Advocate
For Non-applicant	:	Mr. Ravindra Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/04/2019

(1) The petitioner/complainant filed a complaint against the respondent for commission of offence under Section 420 of the Indian Penal Code. The learned Trial Magistrate by its order dated 18.01.2013 dismissed the complaint and refused to take cognizance against the respondent against which the complainant/petitioner herein filed a revision under Section 397 of the Cr.P.C. The Additional Sessions Judge by its impugned order dismissed the revision against which this petition under Section 482 of the Cr.P.C has been filed.

(2) Mr. Hemant Gupta, learned counsel for the petitioner/complainant would submit that both the Courts below are unjustified in rejecting the complaint and in not taking cognizance against the respondent under Section 420 of I.P.C, therefore, the order of both the Courts below be set aside and matter be remanded for taking cognizance and prosecuting the respondent for offence under Section 420 of the I.P.C.

(3) Mr. Ravindra Agrawal, learned counsel for the respondent would submit that it is a pure case of breach of contract, if any, and there is no intention to cheat the complainant by entering into agreement in favour of the complainant. As such complainant has rightly been dismissed by not taking cognizance by both the courts below as such, the petition under Section 482 of the Cr.P.C deserves to be dismissed.

(4) I have heard learned counsel for the parties and considered the rival submissions made hereinabove and also went through the record with utmost circumspection.

(5) It is not in dispute that the complainant and the respondent entered into agreement to sale on 21.10.2010, by which respondent agreed to sale his house in favour of the complainant for an amount of Rs. 27 lacs and obtained advance of Rs. 3 lacs but thereafter it is alleged that the sale deed was not executed by complainant leading to the filing of complaint. Both the courts below have held that it is a case of breach of agreement and there was no intention to cheat. A careful perusal of the agreement would show that the suit property was mortgaged with the bank and the respondent had agreed to obtain NOC from the bank as such the fact of mortgage was clearly disclosed at the time of execution of agreement to sale. If the respondent has not got the NOC from the bank and bank is not releasing the mortgage in favour of the respondent and the sale deed thereafter was not executed, it cannot be held that the respondent had any intention to cheat the complainant/petitioner herein.

(6) In the matter of ***Dalip Kaur and Ors. v. Jagnar Singh and another***¹, the Supreme Court has held that an offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an

1 (2009) 14 SCC 696 : (AIR 2009 SC 319)

offence of cheating.

(7) In the instant case, both the courts below have clearly held that the petitioner has failed to establish the intention to cheat while entering into the agreement to sale. Even otherwise, learned counsel for the petitioner failed to demonstrate that there was intention to cheat on the part of the respondent. In view of this, I do not find any force in the petition under Section 482 of the Cr.P.C. Accordingly, the petition is dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge