

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2285-SB of 2014

Date of decision: July 09, 2019

Ajay Ahlawat

... Appellant

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: None for the appellant.

Mr. Manish Sharma, AAG, Haryana.

Mr. R.N. Lohan, Advocate
for respondent no.2.

SURINDER GUPTA, J

None has appeared on behalf of appellant. On perusal of the file I found that learned counsel for appellant has taken liberty not to appear on many dates of hearing. He did not appear on the following dates :-

1) 4.12.2015

2) 9.2.2016,

3) 26.2.2018

4) 15.10.2018

5) 11.2.2019

I have heard learned State counsel, learned counsel for respondent no.2 and have perused the file with their assistance.

As the learned counsel for appellant has not turned up I proceed to dispose of the appeal on merits.

As per case of prosecution, complainant, Ajay Ahlawat is running a shop in the name and style of M/s Delta Infotech in Appu Ghar Complex Rohtak. He had supplied computers and parts of computers worth

₹11,50,000/- to respondent no.2 who is owner of M/s Paras Computers, Jind. He defaulted in making payment on stipulated dates i.e. 18.11.2011/22.11.2011 and when the complainant visited his shop, he found that respondent no.2 had fled away from his house.

The police registered FIR No. 656 dated 25.11.2011 at Police Station Civil Lines, Rohtak for offence punishable under Section 406 of Indian Penal Code (For short "IPC") and arrested respondent no.2. On completion of investigation, challan against him was presented in the court and he faced trial for offence punishable under Section 420 IPC.

Before closing the evidence, prosecution examined PW-1 ASI Virbhan, PW-2 C. Deepak, PW-3 Ajay Ahlawat, PW-4 C. Dinesh Kumar, PW-5 ASI Shankar Lal, PW-6 SI Umed Singh and PW-7 Manjit.

In his statement recorded under Section 313 Cr.P.C. respondent no.2 denied prosecution allegations and pleaded his false implication.

On perusal of the evidence, trial court recorded finding that the prosecution has not been able to prove charge for offence punishable under Section 420 IPC against respondent no.2 for the reasons as follows :-

- i) No evidence was produced by the prosecution to prove that respondent no.2 was proprietor of M/s Paras Computers, Jind.
- ii) Some bills/cash memos were produced by the prosecution regarding which PW-5 ASI Shankar Lal Investigating Officer admitted that he had never verified the authenticity of the said bills/cash memos from the cash book/ledger of the complainant or from any other person.
- iii) The cash memos/bills Ex.PW3/B to Ex.PW3/G were admittedly stored in the computer of complainant and copy

of the same could be taken at any point of time and then could be signed by him. These bills were not bearing signatures of respondent no.2.

- iv) The offence of cheating as defined under Section 415 IPC is not made out as there was no allegations in the FIR or any evidence was produced by the prosecution to prove that respondent no.2 had dishonest intention from the very inception of the transaction.

The trial court observed that mere breach of contract does not give rise to offence of cheating. The breach of contract, if any, does not give rise to any criminal offence.

The reasons as recorded by the trial court are based on the appreciation of evidence and I find no reason to differ with the same or recording any finding contrary to the findings recorded by the trial court while extending benefit of acquittal to respondent no.2. Consequently this appeal has no merits.

Dismissed.

CRM-16264-2014

As the appeal has been considered on merits, the application seeking condonation of delay of 423 days in filing the appeal is now only of academic discussion. On perusal of the application, I find no substantial reason coming forth to condone the delay and the same is also declined.

July 09, 2019
deepak

(Surinder Gupta)
Judge

Whether speaking/reasoned* : *Yes/No

Whether reportable* : *Yes/No