

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

365

CRR-745-2012 (O&M)**Date of Decision : 06.09.2019**

Dagdish Singh

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. R.S.Ghuman, Advocate for the petitioner.

Mr. H.S.Sullar, DAG, Punjab.

HARNARESH SINGH GILL, J.

The present petition has arisen out of the judgment dated 21.02.2012 passed by the Additional Sessions Judge, Faridkot, vide which the appeal filed by the petitioner, challenging the judgment of conviction and order of sentence dated 01.02.2011, passed by the Chief Judicial Magistrate, Faridkot in case FIR No. 13 dated 19.01.2005 under Section 420 of Indian Penal Code ('IPC' for short), registered at Police Station City Faridkot, was dismissed.

Brief facts of the present case are that complainant, Baldev Kaur had submitted a complaint to the police with the allegations that petitioner Dagdish Singh, who was working in Drainage Department had promised to send her niece Devinder Kaur, who was residing with her, abroad for which he demanded Rs.15 Lacs from the complainant. Complainant sold one acre of land for a sum of Rs.1,80,000/- and also 82 grams of gold. It was further alleged by the complainant that the petitioner had also taken one Moped for the complainant for a sum of Rs.22,000/-

belonging to one Dhani but no amount was paid to the owner of the Moped. Dhani came to her house and demanded the amount or to return of the Moped. Neither Moped was returned nor the amount was paid. Thereafter, complainant asked the petitioner to send her niece abroad or return the money but neither the money was returned nor her niece was sent abroad. Rather the petitioner demanded possession of the house on the ground that he had already got the same registered in his name. It was further alleged that one Balwant Singh ASI, who was related to the petitioner, was helping him out of the way.

Charge was framed against the petitioner under Section 420 IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 9 witnesses.

In the statement recorded under Section 313 Cr.P.C., the petitioner-accused denied the charges and pleaded false implication.

After taking into consideration the evidence on record, the Chief Judicial Magistrate, Faridkot vide judgment and order dated 01.02.2011 convicted the petitioner under Section 420 IPC and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month.

Aggrieved of the said judgment and order, the petitioner preferred an appeal which came up for hearing before the Additional Sessions Judge, Faridkot and the same was dismissed by the Appellate Court vide judgment dated 21.02.2012.

Still aggrieved, the petitioner has preferred the present revision

petition before this Court.

I have heard learned counsel for the parties and have also gone through the record of the Courts below, with their able assistance.

Counsel for the petitioner has stated that the complainant, Baldev Kaur was the owner in possession of the house and she had agreed to sell the same to the petitioner. Agreement to sell was executed in favour of the petitioner and thereafter, complainant vide registered sale deed dated 13.02.2004 sold her house to the petitioner for a sum of Rs. 6 Lacs and as per the registered sale deed, the possession of the same was delivered to the petitioner. But later on, complainant-Baldev Kaur, refused to hand over the possession for which petitioner had filed a suit for possession. The complainant, being owner of the house, had also filed a suit for declaration against the petitioner.

After taking into consideration, the evidence on record, learned Additional Civil Judge (Senior Division), Faridkot decreed the suit filed by the petitioner and dismissed the suit filed by the complainant vide judgment and decree dated 24.05.2017 and complainant was directed to hand over the vacant possession of the suit property within a period of 3 months to the petitioner.

It will not be out of place to mention here that the Additional Civil Judge, (Senior Division) Faridkot had specifically found that PW1-Baldev Kaur was called for the remaining cross-examination as the same was deferred for 25.05.2007 but she chose not to appear for the reasons best known to her.

Aggrieved of the judgment and decree passed by the Additional Civil Judge (Senior Division), Faridkot, the complainant preferred two

appeals. Both the appeals were dismissed by the Additional District Judge, Faridkot on 29.01.2019 by holding that complainant had failed to bring any concrete evidence to show that the sale deed was got executed from her by playing fraud. Thus, she was rightly declined the relief of declaration of suit.

Counsel for the petitioner has also stated that the case of the complainant is based on the oral version and no document has been placed on record to substantiate the allegations against the petitioner. Even in the statement made by the petitioner before the trial Court under Section 313 Cr.P.C., the stand of the petitioner was that he had never induced Baldev Kaur to send her niece Devinder Kaur abroad and had never demanded any money nor she had sold the land to the petitioner situated in village Patti Rori as alleged by the complainant. On 13.02.2004, complainant Baldev Kaur, in accordance with agreement to sell, executed sale deed in favour of the petitioner in the presence of witnesses, sold her house to the petitioner. Cheque No. 422902 dated 31.01.2004 drawn on the Bank of Punjab, amounting to Rs.4,97,300/- had been received by the complainant, Baldev Kaur and the amount stood realized in her account.

On the other hand, learned State counsel has drawn the attention of this Court to the inquiry conducted by the Inspector, Malkit Singh (PW-9). Referring to the inquiry Ex.PW9/1 wherein the allegations against the petitioner for sending the niece of the complainant abroad, were found to be correct. It has been further argued that same allegations had been raised by the complainant in her civil suit and thus, the petitioner has been rightly convicted by the trial Court and the Appellate Court has rightly dismissed his appeal.

The present case is based on oral evidence brought by the complainant against the petitioner. PW2-Gurditta Singh is her neighbour, PW3-Sukhdev Singh is her brother. The present case regarding the sale of immovable property being civil in nature has been given the colour of criminal proceedings. Even the registered sale deed Ex.D-1 placed on record clearly shows the photographs of the complainant as well as petitioner. The said sale deed had been executed before the competent authority. Validity of the said sale deed has been upheld by the civil Court. Besides the cheque amount also stood credited in favour of the complainant. The judgment of the Civil Court is Ex.P-9 vide which suit of possession has been decreed in favour of the petitioner whereas the suit for declaration filed by the complainant, Baldev Kaur was dismissed. Rather while appearing as PW-1, Baldev Kaur had not turned up for her cross examination which was deferred for 25.05.2007 for the reasons best known to her and there was a specific stand taken by the petitioner in his statement under Section 313 Cr.P.C. that he had neither made any promise to send the niece of the complainant abroad nor had he received any amount. The stand of the petitioner is that after receiving sale consideration, the sale deed was executed in favour of the petitioner before the competent authority but the complainant had given criminal colour to the civil dispute by registering an FIR under Section 420 IPC against the petitioner.

Thus, after taking into consideration the documents on record, especially the sale deed executed by the complainant in favour of the petitioner and the amount which had been credited in the account of the complainant, there is no reason to believe that any offence under Section 420 IPC had been committed by the petitioner.

There is no debate over the legal proposition that the civil and criminal proceedings may go on simultaneously. However, in the instant case, where the civil proceedings, on the same set of allegations, stand culminated in favour of the petitioner and against the complainant, it is sufficient to hold the criminal proceedings initiated by the complainant are nothing, but an abuse of process of law. It may be noticed that in the civil proceedings, the findings are recorded on the basis of preponderance of evidence.

Though the factum of the pendency of the civil suits stood noticed by the learned trial Court in its judgment, yet there was no occasion before both the Courts below to consider the judgments and decrees passed by the Civil Courts, as the same were passed at a later point of time than the decision in the criminal proceedings. Hence, this Court has no hesitation to hold that no offence under Section 420 IPC is made out against the petitioner.

In view of the above, present revision petition stands allowed and judgment and order dated 01.02.2011 passed by Chief Judicial Magistrate, Faridkot and judgment dated 21.02.2012 passed by the Additional Sessions Judge, Faridkot are set aside. The petitioner is acquitted of the charges framed against him.

(HARNARESH SINGH GILL)
JUDGE

06.09.2019

pooja saini

Whether speaking/reasoned?

Yes

Whether reportable?

Yes