

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-A-1561-MA-2014(O & M)
Date of Decision:02.07.2019

NARENDER KUMAR

...PETITIONER

VERSUS

STATE OF HARYANA AND ANR.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Ms. Ramandeep Kaur, Advocate
for the applicant.

MANOJ BAJAJ, J.

Narender Kumar has filed this application to challenge the judgment dated 05.08.2014 passed by the Judicial Magistrate Ist Class, Panipat in Criminal Complaint No.12 of 2014 whereby respondent-accused namely Banarasi Dass was acquitted of the charge under Section 420 IPC.

The facts in brief are that the applicant had brought a complaint case against the respondent-accused wherein it was alleged that accused entered into an agreement to sell dated 28.03.2003 with the complainant for sale of house situated at Batra Colony, Panipat. It was assured that Banarasi Dass was owner in the possession in question, which was free from all incumbrances.

According to the complainant, previously an agreement to sell was executed on 09.08.2002 for a total sale consideration of ₹2,25,000/- and ₹70,000/- was paid as an earnest money and the possession of the house was delivered to the complainant on the same day. It was agreed that the

remaining amount would be paid in two installments, which is to be paid on

09.02.2003 and 09.08.2003. It was further pleaded that on 28.03.2003, another agreement was executed for sale of the same house and an amount of ₹2,05,000/- including the previous amount of ₹70,000/- stood paid to the accused and the remaining amount of ₹5,000/- was to be paid on 21.04.2003. The date of registration of sale deed was fixed as 28.03.2003. The sale consideration was reduced to ₹2,10,000/- as there were charges towards electricity bill etc. to be paid by the accused.

According to the complainant, a request was made in the month of January, 2006. However, no sale deed was executed and later on it came to the notice that the house in question was not in the name of the accused. On these broad allegations, the complaint was filed for the offences punishable under Sections 420, 467, 468, 471, 506 and 120-B IPC.

Thereafter, the complainant adduced pre-summoning evidence and examined himself as CW-1 and another witnesses Nathu Ram as CW-2. Thereafter, the pre-charged evidence was adduced and the Court proceeded to frame the charges only for the offence punishable under Section 420 IPC.

After examining the evidence, the trial Court proceeded to acquit the respondent vide its judgment dated 05.08.2014.

With the assistance of the counsel, I have gone through the impugned judgment and find that the same is based on correct appreciation of material on record. It is settled law that mere breach of an agreement to sell may not constitute an offence punishable under **Section 420** IPC particularly in the given facts in the case, where nothing has been shown to establish that the complainant was ready and willing to perform his part of the contract/agreement to sell. Even otherwise, there are variations in two

agreements to sell executed between the parties and there is no evidence on

record to suggest that the house in question does not belong to the respondent. The onus was upon him and he has failed to discharge the same particularly when it is admitted by him in his complaint that at the time of alleged agreement to sell, the possession of the house was delivered by the accused to the complainant.

A perusal of Para 5 of the grounds of appeal would show that a specific ground that respondent-accused did not produce any evidence to prove that respondent neither sold the house to the applicant nor executed any agreement or received the amount from the complainant/applicant was set up to challenge the impugned judgment. This pleading itself shows that the case set up by the complainant was surrounded by serious doubts as in view of the ground contained in Para 5, an impression is conveyed that the respondent-accused was owner of the house in question.

In view of the above, it is clear that the trial Court has rightly extended the benefit of doubt in favour of the accused.

Resultantly, the application for grant of leave to appeal is declined.

02.07.2019

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(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No