

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

CRM-M-1761-2018

Date of decision:-3.2.2020

Jitender

...Petitioner

Versus

Kuldeep Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Rahul Srivastava, Advocate
for the petitioner.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that complainant Jitender son of late Sh.Sunehra aged 58 years, resident of House No.1693/31, Street No.2, Near Water Pump, Shastri Colony, District Sonapat had submitted a written complaint to the police contending that he had entered into an agreement dated 9.9.2009 with accused Kuldeep to purchase his house measuring 250 square yards situated within *abadi* of Shastri Colony, Sonapat for a sum of Rs.30 lakhs paying a sum of Rs.13 lakhs as earnest money; at that time, accused had shown photocopy of a registered sale deed to establish his ownership; the stipulated date for execution of the sale deed was fixed as 8.9.2010; a receipt for a sum of Rs.13 lakhs was issued to the complainant by the accused duly attested by Naveen Sharma and Mukesh Kumar as witnesses; the accused had given an assurance that on execution and

registration of the sale deed, the possession of the house would be handed over to the complainant and he would not enter into another agreement to sell and hand over the possession of the house to anybody else; the complainant had asked accused Kuldeep to get the sale deed executed and registered prior to 8.9.2010 on receipt of balance sale consideration but the accused had an altercation with him and he threatened the complainant; subsequently the complainant came to know that Kuldeep had sold out 100 square yards of the house, which he had agreed to sell with the complainant, in that way violating the terms and conditions of the agreement; the complainant further came to know that accused Kuldeep had prepared some false papers, however, he did not have any knowledge regarding the form and contents of that false documents; that the accused has got executed and registered the sale deed of the house in question to some third person, thereby cheating the complainant and committing a fraud upon him.

On the basis of that complaint, formal FIR was registered. The matter was investigated. During the course of investigation, a pocket diary was sought from the accused but the accused refused to hand over the same to the police stating that it had been placed in the Court in some other case through his counsel. On completion of investigation, challan against the accused was prepared and filed in the Court. When challan was filed, copies thereof were supplied and arguments on the point of framing of charge were heard. Learned Judicial Magistrate Ist Class, Sonapat vide order dated 22.10.2013 observed that on the relevant date, accused was owner of the property, which was subject matter of the agreement to sell dated 9.9.2009;

although in the complaint submitted to the police the complainant had alleged that after entering into an agreement to sell with the complainant, the accused sold 100 square yards of the house to some third person, thereby violating the terms and conditions of the agreement, however no document had been placed on record to establish that fact. Furthermore, as per the version of the complainant, the accused had prepared some false documents but nature and details of such document could not be disclosed. It has categorically been observed that the dispute between the parties is of civil nature and there was nothing on record to show that the accused deceived the complainant fraudulently or dishonestly and induced the complainant to deliver any property to any person or to consent that any person shall retain any property. Furthermore, the remedy of filing a suit for specific performance of agreement to sell was there with the complainant and dispute was also of civil nature. Furthermore, there was nothing on record to show that alleged sum of Rs.13 lakhs allegedly entrusted by the complainant to the accused in pursuance of the alleged agreement to sell had been dishonestly misappropriated or converted to his own use by the accused or that the house in question had been dishonestly disposed of by the accused. The trial Court had categorically observed that there was nothing on record to show that any false document had been used by the accused as genuine. Thus no prima facie offence against the accused disclosed, therefore, the accused deserved to be discharged.

When this order was challenged by way of filing criminal revision petition before the Court of Sessions, the same was dismissed

by learned Additional Sessions Judge, Sonapat vide judgment dated 4.9.2017, who found himself in complete agreement with the trial Court. Learned Additional Sessions Judge, Sonapat had observed that in the complaint, the complainant had nowhere stated that at the time of entering into an agreement in question, the accused was not owner of the property in question or that he had induced the complainant in any manner. Rather from the perusal of copy of sale deed No.3659 dated 30.7.2007 on the record, it comes out that accused was owner of the property in question at the time of entering into an agreement to sell with the complainant and he was legally entitled to receive the payment in respect of the sale of the said property in question. Therefore, at the time of agreement to sell when the accused was lawful owner of the property in question, it could not be said that the complainant was illegally induced by the accused to receive any amount from him, rather he being a lawful owner of the property had legally entered into an agreement to sell with the complainant receiving amount from him with regard to sale of the property in question and further breach of contract cannot give rise to criminal prosecution under Section 420 IPC unless fraudulent or dishonest intention is shown right at the beginning of transaction time when the offence was said to have been committed. Furthermore, if all that is established that a representation made by accused had subsequently not been kept, criminal liability cannot be fastened on the accused and only right which the complainant acquired is to a decree of damages for breach of contract in Civil Court. Furthermore, it came out that a Civil Suit No.53 of 2010 between the parties had been decreed in favour of complainant/plaintiff Jitender, in

that way, the complainant had availed appropriate remedy of civil suit and no criminal liability was made out and no charge was made out against the accused.

Feeling aggrieved by both the orders passed by the Courts below, the petitioner has approached this Court by way of filing instant petition under Section 482 Cr.P.C.

I have heard learned counsel for the petitioner besides going through the record.

Both the orders passed by the Courts below are detailed and well reasoned. They do not come out to suffer from any illegality or infirmity much less apparent on the face of those orders. The present petition does not fall within four corners of Section 482 Cr.P.C. No ground is there to interfere with the impugned orders while exercising jurisdiction under Section 482 Cr.P.C.

The petition being without merit stands dismissed accordingly.

(H.S.MADAAN)
JUDGE

3.2.2020
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No