

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRA-AS-45-2020 (O&M)

Date of Decision: 23.08.2022

Parveen Kumar

... Appellant

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Rohit Kapoor, Advocate for the appellant

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J. (Oral)

This criminal appeal is directed against the judgment dated 25.11.2019 passed by learned Additional Sessions Judge, Amritsar whereby the judgment of the learned JMIC, Amritsar dated 19.12.2018 convicting respondent no.2 under Section 420 IPC and sentencing him to undergo RI for 2 years along with fine of Rs.2000/-, has been set aside and the accused has been acquitted of the charges framed against him.

Brief facts of the case are that FIR No.241 dated 19.07.2011 under Sections 420/467/468/471/506/120-B IPC and Sections 25/54/59 of Arms Act, registered at Police Station Civil Lines, Amritsar, on written complaint of Parveen Kumar son of Gian Chand, resident of 239, Gumtala colony, Loharka Road, Amritsar, which he moved to Commissioner of Police, Amritsar. As per allegations of complainant, Gulzar Singh son of Swaran Singh sold Bus No. PB-02-M-9952, Model 1996 and Bus No.PB-02-F-9451 alongwith Route permits for a sum of Rs.14,50,000/- to him vide agreement dated 3.6.2011 and on the said date also, Gulzar Singh executed a general power of attorney in his favour, after receiving the above said amount of

agreement in the presence of Sub Registrar, Amritsar. Besides this, Gulzar Singh had also made an agreement in regard to sell the buses that he will not cancel the power of attorney dated 3.6.2011 in any manner and if he will cancel the same, he will pay the double amount of said agreement, to the complainant. Gulzar Singh has also given a writing on a letter pad of his transport company i.e. Sahib Transport Company Private Limited that the Board of Directors of said company has passed resolution no.83 on 2.6.2011 that he can sell the above said buses and its route permits at his own. Gulzar Singh had sent a registered letter on 17.7.2011 at the address of complainant, in which he sent a copy of cancellation of power of attorney dated 3.6.2011. However, Gulzar Singh did not send notice to complainant, earlier in regard to cancellation of attorney. It seems that Gulzar Singh is going to cancel the general power of attorney. However, as per agreement dated 3.6.2011, Gulzar Singh admitted that he will not cancel the said general power of attorney in any condition and if he will cancel the attorney, he will pay the double amount of agreement dated 3.6.2011. It is further submitted by complainant that he, alongwith Ravinder Devgun son of Hari Kishan, went to the house of Gulzar Singh and questioned him that why he has cancelled the power of attorney, when he had given the entire sale amount of buses to him, then he replied that he will sell the said buses to a party, which has agreed to give him higher amount, on which complainant told Gulzar Singh that as per condition of agreement dated 3.6.2011, you have to pay Rs.29,00,000/-, on which Gulzar Singh came in anger and threatened to kill the complainant, after pointing out a pistol on complainant. The complainant alongwith

Ravinder Devgun left the house of Gulzar Singh after saving his life. Complainant further prayed that he is a poor person and he had borrowed the amount of Rs.14,50,000/- from his relatives and Gulzar Singh has grabbed the same by cheating. Complainant further prayed for taking action against Gulzar Singh alongwith Lakhwinder Singh and Gursahib Singh, who are witnesses of cancellation of power of attorney. The complainant further stated that Bakhshish Singh son of Bahadur Singh and Surjit Singh son of Harjinder Singh will give the evidence about writing of power of attorney and agreement dated 3.6.2011. On written complaint of complainant, investigation was conducted and case under Section 420/467/468/471/506/120-B IPC 25/54/59 of Arms Act was registered against the accused. After completion of investigation and other formalities, challan was prepared and presented in the court of JMIC. The said Court vide judgment and order dated 19.12.2018 convicted the accused under Section 420 IPC and sentenced him to undergo RI for 2 years with fine of Rs.2000. The said judgment has been challenged by the accused in appeal and the learned Additional Sessions Judge, Amritsar vide judgment dated 25.11.2019 set aside the judgment and order passed by JMIC dated 19.12.2018 and acquitted the accused Gulzar Singh of the charges framed against him under Section 420 IPC holding that the judgment of the trial court is based on misreading of evidence on file. The aggrieved complainant – Parveen Kumar has filed the present revision petition.

Learned counsel for the petitioner contended that the learned lower appellate court has wrongly discarded the evidence of PW1 Parveen Kumar on the ground that he has admitted in his cross examination that the

original permit was not handed over to him and the said finding is contrary to the provisions of Rule 82 of the Punjab Motor Vehicle Rules, 1989. It is further contended that there is no provision of law which requires the transferor to be in possession of the original permit for making joint application.

Learned counsel further contended that learned lower appellate court has wrongly relied upon **Unnin Menon vs. Kerala Film Artists and Critics Society 1986 (3) Crimes 411 (Kerala)** to hold that the present case is a breach of contract and does not constitute criminal offence. Further the lower appellate court has wrongly ignored the resolution No.83 dated 02.06.2011 authorising Gulzar Singh to sell the buses along with route permit on behalf of the company as there is no authority given by the company to accused to revoke the general power of attorney.

I have heard learned counsel for the appellant and am of the considered view that this appeal ought to fail.

Learned lower appellate court rightly held that FIR Ex.PW4/A was registered on the basis of complaint Ex.PA given by complainant Parveen Kumar to the Commissioner of Police, Amritsar. As per the allegations, Gulzar Singh son of Swaran Singh, who was one of the Director of M/s. Sahib Bus Service Private Limited, vide agreement dated 3.6.2011, sold his two buses bearing no. PB02-M-9952 Model 1996 and no.PB02-F-9451 Model 1994 to the complainant Parveen Kumar alongwith route permit for the sum of Rs.14,50,000/- and also executed power of attorney dated 3.6.2011. Subsequently on 17.7.2011 complainant received a registered letter from Gulzar Singh cancelling the

power of attorney. But before cancelling the power of attorney, no notice was given. In the agreement dated 3.6.2011, it was written that in case he cancels power of attorney, he will give double amount. Thereafter, he alongwith Ravinder Devgan, went to the house of Gulzar Singh and apprised him of all the facts and demanded Rs.29,00,000/- but he threatened him to kill.

Learned lower appellate court rightly held that the cross examination of Parveen Kumar shows that the transaction was initially made by the owners of the New Piar Bus Service, which is subsidiary of Piar Bus Service and complainant was only a dummy.

The second thing which is falsified from the cross examination of Parveen Kumar is that original permit and buses were not handed over to him. When he himself stated that an application was moved for transfer of the bus permit in the name of New Piar Bus Service, then requirement of original bus permit is mandatory. This application for transfer cannot be moved on the basis of photostat copies. Thus, statement of complainant is not reliable.

Moreover, in this case execution of the agreement to sell is not denied by accused Gulzar Singh. He has denied that total sale price has not been received. Learned appellate court further held pointed out that every case of breach of contract does not amount to cheating. For cheating deception should exist from the start of transaction. Subsequent breach of promise is not cheating. It is an admitted fact that agreement to sell Ex.P1 was executed for selling two buses alongwith route permit and also power of attorney was executed, which was subsequently cancelled. Learned appellate court rightly concluded that the remedy available with the Parveen Kumar

was a civil remedy, to enforce the agreement to sell Ex.P1. The criminal liability is not made out, because at the time of execution of agreement to sell Ex.P1, power of attorney has been executed in favour of the complainant, giving him all the powers, which was subsequently revoked vide document Ex.P5 i.e. cancellation of power of attorney and this was executed on 8.7.2011. It was rightly observed that the finding of the trial Court holding accused guilty for the commission of offence under section 420 of IPC is based on misreading of evidence on file and is not sustainable in the eyes of law.

I do not find any error apparent on the face of the judgment passed by the lower appellate court.

Accordingly, this petition is dismissed.

23.08.2022
V.Vishal

(Sandeep Moudgil)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No