

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

**CRM-A-1051-MA-2018 (O&M)
Date of Decision : 06.09.2022**

Sanjay Kumar

....Applicant

Versus

Smt. Laddo Bai

....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Amit Chaudhary, Advocate
for the applicant.

PANKAJ JAIN, J. (ORAL)

This is a petition seeking leave to file appeal against the impugned order dated 12.02.2018, passed by the learned Sub-Divisional Judicial Magistrate Ratia, vide which the complaint filed by the applicant has been dismissed and the respondent has been acquitted.

2. The complainant filed a complaint against the respondent alleging therein as under:-

“That Smt. Laddo Bai (the accused) was the owner of residential house constructed over plot measuring 10 marla (7/96th share) out of land measuring 07 kanal 04 marla comprised in khasra no.229//19/2 (7-4) situated at Ram Nagar Colony, Ratia, Tehsil Ratia, District Fatehabad. On 15.07.2011, the accused agreed to sell her aforesaid plot to him for sale consideration of Rs.5.96 lac, and the date of execution and registration of sale deed was fixed as 18.03.2012. He has paid Rs.4.5 lac, as earnest money, at the time of the said agreement. On 19.03.2012, he was present in the Sub-Registrar office having balance sale consideration

and necessary stamp and registration charges, however, the accused did not turn up for execution purposes. He got his attendance marked by way of affidavit. Thereafter, he served legal notice dated 05.03.2014 upon the accused thereby asking her to execute the sale deed, in agreed terms, on 27.03.2014, but to no avail. He obtained copies of revenue records for filing suit for specific performance and at that time, he came to know that the accused got exchanged the said land with Sh. Jaipal Singh etc. vide deed no.3792 dated 14.01.2013, illegally and unauthorizedly. The accused was not having any right, titled and authority to exchange her land with aforesaid Sh. Jaipal Singh etc. as she had already entered into an agreement to sell her land. In these circumstances, the accused be summoned to face trial for commission of offences punishable under Section 420/406 of the Penal Code.”

3. The trial Court after considering the evidence on record observed as under:-

*“It is settled proposition of law that prosecution has to prove its case beyond reasonable shadow of doubt. In **Narender Singh and Anr. Vs. State of M.P. 2004 (3) RCR Criminal 613** the Hon'ble Supreme court of India held that “prosecution of innocence is a human right and burden of proof remains on the prosecution”. Similarly, in **Sachan Pal Vs. Phani Pal and Anr report in 2004 (1) RCR Criminal 211**, the Hon'ble Supreme court of India held that “prosecution can succeed by substantially proving the version of it alleges. It must stand on its own legs and cannot take advantage of the weaknesses in defence cases”. In this case, Hon'ble Supreme Court also held that “if two views are*

possible on the evidence adduced in the case, one pointing to the guilty of the accused and the other to his innocence, the view which is favourable to the accused should be adopted". In view of aforesaid, it can be concluded that prosecution miserably failed to prove its case against the accused persons.

In a criminal case mere suspicion, however, strong cannot take the place of proof. Between "may be true" and "must be true" is inevitability a long distance to travel and whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted. The prosecution has not covered the same in the present case."

4. Ld. Counsel for the applicant does not dispute the fact that subsequent to these proceedings, suit for possession by way of specific performance was also filed by the applicant which stands dismissed. However, he submits that the appeal against the said judgment and decree is pending.

5. In the present case there is nothing on record to show that there was any deception on part of the accused. The civil rights of the parties already stand adjudicated in the *lis* arising out of suit for specific performance. There is no allegation that on the day the petitioner allegedly parted away with the money, the accused had any intention to deceive the petitioner dishonestly. Thus, no offence under Sections 420 and 406 IPC is made out against the respondent and thus, no fault can be found with the

findings recorded by the trial Court.

6. Consequently, the instant application stands dismissed.

7. Needless to mention here that anything observed herein will have no bearing on the civil appeal, filed by the applicant, stated to be pending.

8. Since the main case has been decided, all the pending application(s), if any, stand(s) disposed off.

September 06, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No