

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

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**CRR-2326-2017 (O&M)
Reserved on : 21.04.2022
Pronounced on:18/05/2022**

SATISH KUMAR

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by : Mr. K.C. Rajput, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J.

The present revision petition raises a challenge to the judgment of Additional Sessions Judge, Sonapat dated 01.06.2017 passed in the Criminal Appeal No. 627 of 2013, as well as the judgment of conviction dated 20.11.2013 and order of sentence dated 22.11.2013 passed by the Sub-Divisional Judicial Magistrate, Ganaur in Criminal Case No.248/1 of 2008 arising out of FIR No.85 dated 29.03.2006 under Sections 417, 420, 467, 468, 471, 423, 426 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station Ganaur.

2. That briefly, the case of the prosecution is that on 17.08.2005, accused-Satish Kumar executed an agreement to sell for agricultural land measuring 1 Kanal 4 Marlas being 24/3009 share, out of land measuring 150 Kanals 9 Marlas situated within the municipal limits of Ganaur, Tehsil Ganaur District Sonapat, in favour of the complainant-Ramesh and received an earnest money of Rs.1 lakh. The sale deed was to be executed on or before 31.03.2006. It is alleged that the petitioner-accused had also executed another agreement to sell

in favour of one Naresh Dhiman S/o Rambhaj dated 29.06.2005 and the said fact was not disclosed to the complainant. The complainant claims to have become aware of the said fact upon receipt of summons from the Court in civil suit titled as 'Naresh Dhiman Versus Satish Kumar', wherein the complainant had been impleaded as defendant No. 2. Upon completion of the investigation, final report under Section 173 Code of Criminal Procedure (hereinafter referred to as 'CrPC') was filed against the petitioner for offences punishable under Sections 417, 420, 467, 468, 471, 423 and 426 IPC. In order to prove its case, the prosecution examined the following witnesses:-

<i>PW-1</i>	<i>Naresh Dhiman</i>
<i>PW-2</i>	<i>Ramehar</i>
<i>PW-3</i>	<i>Dayanand</i>
<i>PW-4</i>	<i>Retd. SI Dharampal</i>
<i>PW-5</i>	<i>Mahender Singh</i>
<i>PW-6</i>	<i>DSP Rajender Singh</i>
<i>PW-7</i>	<i>Rajesh Kumar, Civil Ahlmad</i>
<i>PW-8</i>	<i>Ramesh-complainant</i>
<i>PW-9</i>	<i>Hanif</i>
<i>PW-10</i>	<i>Sunil</i>

3. Upon conclusion of the evidence by the prosecution, the statement of the petitioner-accused was recorded under Section 313 CrPC and the entire incriminating evidence was put to him, to which he pleaded not guilty and claimed to lead evidence in defence. The following evidence was lead in defence by the petitioner:-

<i>DW1</i>	<i>Satish Kumar</i>
<i>Ex. D.1 and Ex. D.2</i>	<i>Copy of the judgment and decree-sheet dated 07.08.2008</i>
<i>Ex. D.3 and D.4</i>	<i>Copy of the judgment and decree-sheet dated 24.02.2012</i>
<i>Ex.D.5</i>	<i>Copy of mutation No.1799</i>

4. Upon consideration of the evidence adduced by the respective parties, the trial Court came to a conclusion that prosecution has been able to prove its case against the petitioner and that the accused incorporated wrong facts and concealed the information regarding the prior agreement to sell executed by the petitioner with Naresh Dhiman. Despite being aware of the said prior agreement to sell, the petitioner induced the complainant to pay the earnest money in lieu of the land. The petitioner was thus convicted by the judgment dated 20.11.2013 and was sentenced to undergo the following sentences vide order dated 22.11.2013:-

<i>Offence u/s</i>	<i>Period of sentence (RI)</i>	<i>Fine (Rupees)</i>
<i>417 IPC</i>	<i>One year</i>	<i>--</i>
<i>420 IPC</i>	<i>Two years</i>	<i>Rs.3,000/-</i>
<i>467 IPC</i>	<i>Two years six months</i>	<i>Rs.3,000/-</i>
<i>468 IPC</i>	<i>Two years</i>	<i>Rs.3,000/-</i>

In case of default of payment of fine, convict shall further undergo RI for a period of one month. The sentence awarded to the convict shall run concurrently and the period in custody already undergone by the convict during trial or investigation shall be set off as per the provisions of Section 428 CrPC.

5. Aggrieved of the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Sessions Court, Sonapat and vide judgment dated 01.06.2017, the appeal filed by the petitioner was dismissed. Hence, the present revision petition.

6. Learned counsel appearing on behalf of the petitioner has argued that no offence of cheating was committed by the petitioner and that in the civil suit filed by the complainant against the petitioner, it was clearly held that the agreement in question was duly executed in favour of the complainant as well. He has placed reliance on the fact that in the said civil suit bearing No.308 of 2006

dated 27.04.2006 titled as 'Ramesh Vs. Satish Kumar' decided on 24.02.2012, he had proved the copy of the agreement executed with the accused, hence, there was no intention to cheat.

7. It is further argued that owing to a decree passed by the Civil Court in favour of Naresh Dhiman, he could not execute the sale deed in favour of the complainant-Ramesh Kumar and that there was no criminality on his part. Rather it is a case of civil dispute between the parties.

8. Learned State counsel, on the other hand, has argued that the Courts below have passed detailed judgments dealing with the submissions advanced by the petitioner and have validly recorded the judgment of conviction against the petitioner. He has further submitted that the revisional jurisdiction cannot be invoked unless there is any illegality, infirmity, impropriety or the judgment suffers from gross mis-appreciation of the evidence, resulting in the conclusions which are otherwise not sustainable on an objective reading of the evidence. The Revisional Court does not interfere with the opinion of the Courts below merely because any other view is also possible.

9. I have heard the learned counsel on behalf of the parties and have gone through the record with their able assistance.

10. It is apparent that the agreement to sell was executed by the petitioner in favour of complainant on 17.08.2005, despite the petitioner having already executed an agreement in favour of Naresh Dhiman on 29.06.2005. In the said agreement to sell, executed on 17.08.2005 with the complainant-Ramesh Kumar, it was stated that there is no prior agreement pertaining to the land. Resultantly, the earnest money to the tune of Rs.1 lakh was given to the petitioner in the year 2005. The said Naresh Dhiman appeared as PW-1 and submitted that the agreement to sell was executed with him on 29.06.2005 and that the civil suit filed for specific

performance of the said agreement under the Specific Relief Act was decreed in his favour and consequently, the sale deed was executed in his favour. Undisputedly, the agreement to sell in favour of Naresh Dhiman was prior in point of time as compared to the agreement to sell Ex. P1 with the complainant-Ramesh Kumar executed on 17.08.2005. The claim of the petitioner that he did not intend to defraud the complainant is apparently misconceived inasmuch as both the agreements are established to have been executed by the petitioner and that he cannot claim that he was not aware of the agreement to sell executed with Naresh Dhiman on the date when the agreement to sell was executed with complainant-Ramesh Kumar. No explanation has been given as to why a wrong statement was made by the petitioner under his signature in the agreement executed on 17.08.2005. Even otherwise, in case the claim of the petitioner is to be accepted that he had no intent to defraud the complainant and even the suit in favour of the petitioner was decreed by the Civil Court, there is no reason why the petitioner could not bring on record the execution of any sale deed in favour of the petitioner with respect to the land in question. The fact that the petitioner acknowledges the execution of the agreement to sell in favour of complainant-Ramesh Kumar, despite a subsisting prior agreement to sell and without disclosing about the same in itself establishes the prosecution case against him. The filing of civil suit for seeking specific performance of the contract by Naresh Dhiman or the subsequent decree in favour of the complainant about the agreement to sell being valid does not in any manner prove the innocence of the petitioner and it cannot be said that the dispute in question was civil in nature. Rather, the civil proceedings arose on account of the fraudulent acts committed by the petitioner against the complainant-Ramesh Kumar.

Scope of Reivisional Jurisdiction:

11. It has been held by the Hon'ble Supreme Court in the matter of ***Janata Dal Vs. H.S.Chaudhary (1992) 4 Supreme Court Cases 305***, that the controlling power of the High Court under Section 401 Cr.P.C. must be exercised in the interest of justice and with regard to all facts and circumstances of the each particular case to prevent miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted in some undeserved hardship to individuals. The relevant observations of the Hon'ble Supreme Court are extracted as under:-

“128. Section 397, 401 and 482 of the new Code are analogous to Section 435, 439 and 561 (A) of the old code of 1898 except for certain substitutions, omissions and modifications. Under Section 397, the High Court possesses the general power of superintendence over the actions of Courts subordinate to it which the discretionary power when administered on administration side, is known as the power of superintendence and on the judicial side as the power of revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this Section, the High Court can, at any stage, on its own motion, if it so desires and certainly when illegalities and irregularities resulting in injustice are brought to its notice, call for the records and examine them. The words in Section 435 are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the correctness of any finding, sentence or order but also as to the regularity of any proceeding of any subordinate Court.

129. By virtue of the power under Section 401, the High Court can examine the proceedings of inferior Courts if the necessity for doing so is brought to its notice in any manner, namely, (1) when the records have been called for by itself, or (2) when the proceedings otherwise comes to its knowledge.

130. The object of the revisional jurisdiction under Section 401 is to confer power upon superior criminal Courts - a kind of paternal or supervisory jurisdiction - in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted on the one hand, or on the other hand in some underserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case.”

12. Furthermore, the issue was again examined in the matter of ***Amit Kapoor Vs. Ramesh Chander 2012 (9) SCC 440***. The relevant part of the judgment is extracted as under:

“The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial Court or the inferior Court, as the case may be. Though the Section does not specifically use the expression ‘prevent abuse of process of any Court or otherwise to secure the ends of justice’, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a Court is the very foundation of exercise of jurisdiction under Section 397 ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex liquid alicui con cedit, conceder videtur id quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.

13. It was further held in the matter of ***New India Assurance Company Limited Vs. Krishna Kumar Pandey*** decided on 06.12.2019 passed in ***Criminal Appeal No.1852 of 2019***, that:-

8. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under Section 397 Cr.P.C, is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court. The revisional Court is entitled to look into the regularity of any proceeding before an inferior Court. As reiterated by this Court in a number of cases, the purpose of this revisionsal power is to set right a patent defect or an error of jurisdiction or law.

14. Additionally, in the matter of ***Duli Chand Vs. Delhi Administration (1975) 4 Supreme Court Cases 649***, the Hon'ble Supreme Court has held that the revisional Court cannot re-appreciate evidence. The relevant part of the judgment is extracted as under:-

“4. Now, the jurisdiction of the High Court in a Criminal Revision Application is severally restricted and it cannot embark upon reappreciation of the evidence, but even so, the learned single Judge of the High Court who heard the revision application, examined the evidence afresh at the instance of the appellant. This was, however, of no avail, as the learned single Judge found that the conclusion reached by the lower Courts that the appellant was guilty of gross negligence, was correct and there was no reason to interfere with the conviction of the appellant. The learned single Judge accordingly confirmed the conviction and sentence recorded against the appellant and dismissed the revision application. Hence the present appeal by special leave obtained from this Court. “

5.The High Court in revision was exercising supervisory jurisdiction of a restriction nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purpose of determining whether the concurrent

finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate Courts and that the finding of fact was not unreasonable or perverse.....”

15. The revisional jurisdiction of the High Court being restricted to examine whether there is any manifest error of law or procedure, such a power is to be exercised only when there is an apparent illegality, gross procedural irregularity or impropriety leading to miscarriage of justice, legal infirmity or gross mis-appreciation of the evidence that does not reconcile to the conclusion drawn by the Court. The High Court in a revisional jurisdiction would not interfere in the opinion of the Courts below if such an opinion is a possible opinion on the basis of the evidence brought on record and would not substitute its own opinion merely because such opinion is also a possible opinion.

16. In view of the facts noticed above and scope of revisional jurisdiction noticed in the preceding paragraphs, I find that there is no illegality, perversity, infirmity or impropriety in the judgments passed by the Courts below.

The present revision petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
Judge

18/05/ 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>