



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL REVISION APPLICATION NO. 182 of 2023

Shri Sanjay s/o Gunwant Band,
Age 60 years, Occ: Business,
r/o Plot No. 10, Near Mahalaxmi
Mandir, Jaiprakash Nagar,
Nagpur-25

**.... Applicant/
Complainant**

// VERSUS //

1. Vilas s/o Ramchandra Ladikar,
Age 60 years, r/o Dr. Khankhoje
Nagar, Manewada Road, Nagpur.

2. State of Maharashtra,
Through Police Station Officer,
Police Station Sonegaon, Nagpur.

.... Non-Applicants

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. R. Shrivastava, Advocate for the applicant
Ms. Shamsi Haider, APP for the State

CORAM : ANIL L. PANSARE J.

DATED : 30-08-2023

P. C.

The applicant (original complainant) has invoked jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Code) to assail the judgment dated 28-6-2023 passed by Additional Sessions Judge-17, Nagpur in Criminal Appeal No. 89/2015 thereby dismissed the appeal filed against the judgment dated 30/8/2013 passed by Judicial Magistrate First Class and 12th Joint Civil Judge Junior

Division, Nagpur in Regular Criminal Case No. 1625/2007. The trial Court has acquitted the non-applicant no. 1 for the offence punishable under Section 420 of the Indian Penal Code, 1860 (IPC). The said order has been upheld by the first appellate Court.

2. Briefly stated, the facts are as under :

The applicant lodged the report with Police Station, Sonegaon on 16-10-2006 stating therein that non-applicant no. 1 (original accused) along with his brother (absconding accused - Rajendra) informed the applicant that a construction of building, namely, Shriram Tower is under progress and is owned by them and that the shops and residential flats are available for sale. The applicant and non-applicant no. 1, who holds power of attorney of original accused no. 2, have after negotiations entered into agreement to purchase Flat No. 1 for Rs. 6,11,000/-. On 25-9-2003, the applicant has paid Rs. 11,000/- and issued cheque bearing no. 055925 for Rs. 5,50,000/- to Ladikar Construction, represented by non-applicant no. 1 and his brother. The balance amount was to be paid at the time of execution of sale deed, which was agreed to be executed after a period of 1½ years. The applicant, since March, 2005, pursued for execution of sale deed, however, the non-applicant no. 1 and his brother have neglected to do so. On 5-10-2006, the applicant came to know that the flat in question has been sold by non-applicant no. 1 and his brother to one Mirabai

Govindgiri. Accordingly, police report came to be lodged. The investigation was carried out and the charge-sheet came to be filed against the non-applicant no. 1 under Sections 420, 452, 458, 465, 467, 468, 469, 500 and 120-B read with Section 34 of the IPC. His brother was shown absconding. The prosecution has led evidence. The trial Court, so also, the first appellate Court have held that prosecution failed to prove that on 25-9-2003, the non-applicant no. 1 and his brother, in furtherance of their common intention, have cheated the applicant by dishonestly inducing him to deliver the amount of Rs. 11,000/- and cheque of Rs. 5,50,000/- on the pretext of selling flat, which they never intended to sell to the applicant.

3. Both the Courts have considered the evidence led before the trial Court. The applicant, being informant, was examined as P.W. 1. Apart from certain omissions in lodging report, it is brought on record in cross-examination that he is also involved in the construction business. The cheque though allegedly given by the applicant to non-applicant no. 1 in September, 2003, was requested to be deposited in May, 2004. The defence was put to the applicant that the transaction in question is a loan transaction and the amount has been repaid to him. It was brought on record that during the period from 18-1-2005 to 26-4-2005, an amount of Rs. 4,29,375/- was paid to the applicant. The applicant volunteered that this amount relates to some other transaction. However, the applicant has not placed on record any evidence in this

regard. The applicant has also admitted that certain part of the agreement particularly consideration amount is handwritten.

4. Bank Manager was examined as P.W. 4. He has deposed that cheque book containing cheque bearing no. 055925, which the applicant claims to have been issued to non-applicant no. 1 in September, 2003, was issued to the applicant on 16-2-2004. Thus the cheque was not available with the applicant in September, 2003.

5. The Courts below on the basis of the aforesaid evidence coupled with evidence of other witnesses have held that the cheque allegedly issued by the applicant to non-applicant no. 1 in September, 2003 was not even available with him since cheque book containing said cheque itself was issued on 16-2-2004. The Courts below further noted that substantial amount has been repaid to the applicant, which the applicant claims to be of different transaction. The applicant, however, has not placed on record any cogent material to indicate that there occurred any other transaction between the parties. Considering the said fact and the other discrepancies in the evidence, the Courts below have held that the applicant might have financed the non-applicant and his brother, and, therefore, the agreement under question was not meant for its specific performance.

6. The Court noted that to attract ingredients of Section 420, one has to lead evidence to show that he was fraudulently or dishonestly

induced to deliver the property. The Court found that the applicant was not induced to deliver the amount, considering the evidence led before the Court. This concurrent finding has been challenged before this Court.

7. The Supreme Court in the case of ***Malkeet Singh Gill Vs. State of Chhattisgarh [(2022) 8 SCC 204]*** held that Section 397 of the Code vests jurisdiction for the purpose of satisfying the revisional Court as to the correctness, legality or propriety of any finding of the sentence or order passed by the lower Court. It is further held that the object of the provision is to set right a patent defect or an error of jurisdiction of law. The Court further held that there has to be well founded error which is to be determined on the merits of individual case. The Court then held that it is well settled principle that while considering the same, the revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings. It is also held to be well settled that if the Courts below have recorded the finding of fact, the question of reappraisal of evidence by the third Court does not arise unless it is found to be totally perverse.

8. In the present case, both the Courts below have rendered a concurrent finding of acquittal after detailed appreciation of material and evidence brought on record. The reasoning and findings recorded by the Courts below are consistent with the material on record. The

applicant failed to show that there is patent defect or an error of jurisdiction or that the findings rendered by the Courts below are totally perverse. In the circumstances, I do not find any reason to interfere with the said findings. There is no merit in the revision. The same is dismissed.

(Anil L. Pansare, J.)

wasnik