

CRR-1284-2022 (O&M)

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2023:PHHC:109606

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

CRR-1284-2022 (O&M)

Date of decision: 14.07.2023

Samunder Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. A.D.S. Sukhija, Advocate
for the petitioner.

Mr. Ashok Kumar Sehrawat, D.A.G., Haryana.

PANKAJ JAIN, J. (ORAL)

This is the revision at the behest of complainant/petitioner against judgment of acquittal of respondents No.2 & 3 passed by Ld. Judicial Magistrate Ist Class, Bahadurgarh dated 26.03.2019 which stands affirmed by Ld. Appellate Court vide judgment dated 18.10.2021.

2. FIR was registered for offences punishable under Sections 420 & 120-B IPC after the complainant/petitioner moved an application under Section 156(3) Cr.P.C. The complainant/petitioner claims to be a co-sharer in Khasra No.2002. It has been alleged that accused-respondent No.2 sold two plots measuring 101 sq. yards and 134 sq. yards in favour of accused – respondent No.3, who happens to be his wife, vide registered sale deed. Subject matter of the said sale deed is land comprised in Khasra No.2002

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I attest to the accuracy and
integrity of this judgment/order

own will. It may be appreciated that the complainant was having knowledge of all the co-sharers in khasra no. 2002 as such he was not in a position to be deceived by the accused persons. Therefore, in such circumstances, this court is of the view that the ingredients of offence of cheating are not made out because the commission of cheating requires a dishonest state of mind at the time of very inception of transaction, the complainant also have the remedies of filing of civil suit for refund of his earnest money paid to the accused persons. Moreover, the nature of the allegations involved in the present case are more or less are of civil nature which can only be adjudicated upon by the civil court as the prosecution has heavy onus to establish on record that at the time of entering into the agreement/transaction, the accused have misrepresented the facts in order to cause wrongful loss to the complainant but nothing as such has come on record. The complainant PW3 Samunder Singh who was himself a co-sharer in khasra no.2002 could not be misrepresented by the accused as it cannot be expected from the complainant that he would pay Rs 7,00,000/- to the accused without having made inquiry about the land in dispute from the revenue officials. As far as question as to whether the accused are co-sharer in khasra no. 2002 or not has to be determined by the civil court and considering the nature of the dispute involve between the parties, the best remedy available to the complainant was to approach the civil court.

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The said findings stand affirmed by Ld. Appellate Court.

3. Counsel for the petitioner has not been able to show any piece of evidence which has not been considered by the Courts below while recording the findings in favour of respondents No.2 & 3.

4. Revisional jurisdiction under Section 401 Cr.P.C. is limited and as per settled law unless any error of law on the part of Ld. Trial Court is pointed out, the same cannot be pressed seeking reappreciation of evidence. Reference can be made to the judgment of Supreme Court in the matter of *Thankappan Nadar and others vs. Gopala Krishnan and another, 2002(9) SCC 393*. As per settled law the revisional jurisdiction can be exercised by the High Court in the cases of legal infirmities and as per the series of the precedents some of the illustrative categories are:

- i) where the Trial Court has wrongly shut out evidence which the party wish to produce.
- ii) where the admissible evidence brought on record by the defence has been wrongly brushed aside as inadmissible.
- iii) where the trial court had no jurisdiction to try the case and yet the accused stands convicted.
- iv) where the material evidence has been overlooked either by the Trial Court or the Appellate Court or the order has been passed by considering irrelevant evidence.
- v) where the conviction is based upon a view which is impossible and improbable.

5. Exercise of revisional jurisdiction under Section 401 Cr.P.C. is much narrow as compared to appellate jurisdiction.

6. Ld. Counsel for the petitioner has not been able to point out any circumstance which would warrant exercise of revisional jurisdiction in the findings recorded by the Courts below.

7. After hearing counsel for the petitioner, this Court finds that there is no legal infirmity in the judgment of acquittal passed by Ld. Trial Court and affirmed by Ld. Appellate Court. In the absence of any

jurisdictional or legal error committed by the Courts below, this Court does not find any reason to exercise revisional jurisdiction to reappraise the evidence which is beyond the scope. Consequently, the findings recorded by the Courts below *qua* acquittal of respondent Nos.2 & 3 are affirmed.

- 8. Revision petition is dismissed.
- 9. Pending application(s), if any, shall also stand disposed of.

July 14, 2023
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(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No