

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

Date of decision : 25th of August, 2023

CRM-A No.1007-MA of 2018 (O&M)

Jai Narain

....Applicant

Versus

Amarjit

.....Respondent

CRA-AS No.376 of 2023

State of Haryana

.....Applicant

Versus

Jai Narain

.....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gaurav Mohunta, Advocate,
Mr. Satyam Rathi, Advocate and
Mr. Satyendra Yadav, Advocate
for the applicant (in CRM-A-1007-MA-2018)

Mr. R.K. Ambavta, Asstt. Advocate General, Haryana
for the appellant (in CRA-AS-376-2023)

Mr. Ashit Malik, Advocate for the respondent.

PANKAJ JAIN, J.

These two appeals one arising out of FIR case and the other in complaint case were ordered to be heard together vide order dated 16th of November, 2019

CRM-A No.1007-MA of 2018 (O&M)

By way of present application the applicant seeks leave to appeal. Along with the application seeking leave to appeal there is an application i.e. CRM No.20149 of 2018 seeking condonation of delay

of 68 days in filing the present application under Section 378(4) Cr.P.C.

2. For the reasons as mentioned in Para No.2 of the application seeking condonation of delay, this Court is satisfied that the applicant has made out a sufficient cause to condone the delay.

3. Resultantly, the application (CRM No.20149 of 2018) is allowed. Delay of 68 days in filing the instant application seeking leave to appeal is hereby condoned.

4. Complaint was preferred by the applicant against the respondent alleging that an agreement to sell was executed in his favour by the accused on 1st of May, 2007 *qua* land measuring 107 Kanal 10 Marla @ 75 lac. per acre. The complainant claims to have paid an earnest money of Rs.1.00 crore at the time of execution to the accused Amarjit and as per the covenants contained in the agreement to sell further Rs.1.00 crore of earnest money was to be paid on or before 30th of May, 2007 with appointed date for execution of sale deed to be 30th of September, 2007. It is claimed by the complainant that he was told by the accused Amarjit that four of the original owners are minors and thus permission of Competent Court was required for execution of sale deed. It is further claimed that agreement to sell was executed by the accused in favour of the complainant on the strength of one agreement to sell dated 1st of

February, 2007 purported to have been executed by the original owners namely Guddi, Jitender etc. in his favour. Applicant claims that Rs.50.00 lacs was paid by him to the accused on 1st of August, 2007 and date of execution of sale deed was extended till 28th of February, 2008. He further claims to have paid another some of Rs.50.00 lacs on 25th of February, 2008 when date of execution of sale deed was further extended to 30th of September, 2008. It is claimed that Jai Narain the complainant asked Amarjit to execute the sale deed who made excuses. It was further discovered by the complainant that permission was given by the Competent Court which resulted in execution of two sale deeds dated 30th of April, 2004 in favour of Sandeep Kumar and Sunil Kumar wherein the accused Amarjit was attesting witness. The accused was summoned by the Trial Court after trial complaint was dismissed holding that the complainant failed to prove as to how the agreement to sell dated 1st of February, 2007 was forged and fabricated as he never examined the original land owners. Trial Court further held that Jai Pal Hooda the said facilitator of the transaction between the parties and attesting witness to receipts was never examined and no suit for specific performance was ever filed by the complainant.

5. Ld. Counsel for the applicant assails judgment passed by the Trial Court dismissing the complaint claiming that there being no

agreement to sell in favour of the accused by the original owners it is evident that the accused had intent to cheat the complainant from the very beginning and thus offence as defined under Section 415 IPC is completely made out and thus accused ought to have been punished for offence punishable under Section 420 IPC. He further submit that Jai Pal Hooda in his statement under Section 161 Cr.P.C. admits signatures and payment of Rs.50.00 lacs each to the accused and it having come on record in form of Exhibits P-5 and P-6 that the accused was attesting witness to the sale deed executed in favour of Sandeep Kumar and Sunil Kumar *qua* the land in dispute the Trial Court ought to have convicted the respondent/accused.

6. Per contra, counsel for the respondent submits that the Trial Court has given a well reasoned judgment after analyzing whole of the evidence on record threadbare and has rightly held that the prosecution has failed to prove their case and thus it won't be a case wherein the view taken by the Trial Court can be said to be improbable and therefore it won't be a case to upset the judgment of acquittal passed by the Trial Court.

7. I have heard counsel for the parties and have gone through records of the case.

8. The gravamen of the complaint preferred by the applicant against the respondent is that the agreement to sell executed in favour

of the complainant by the respondent dated 1st of May, 2007 is a result of misrepresentation. It is being claimed that agreement to sell dated 1st of February, 2007 executed by original owners of the suit land in favour of the accused was shown by him whereas in fact he had no such agreement to sell in his favour executed by the original owners. Exhibit C1 is the copy of the agreement to sell dated 1st of February, 2007. The complainant claims to have been duped on the strength thereof. A bare perusal of Exhibit C1 would reveal that the same is in favour of one Anupam Verma. Complainant admits that the said agreement to sell was shown to him and on the strength thereof he executed agreement to sell dated 1st of May, 2007 and parted away with the consideration of Rs.1.00 crore.

9. In view of above admission made by the complainant that he was shown agreement to sell Exhibit C1 prior to execution of agreement to sell dated 1st of May, 2007, this Court does not find that the complainant can claim misrepresentation at the hands of the accused that too when in his cross-examination he claims to have entered into agreement to sell with the original owners and not with the accused. Apart from that the payment of money could not be proved in the absence of examination of attesting witness Jai Pal Hooda. Thus, this Court finds that the complainant could not prove his case against the accused beyond reasonable doubt and thus no fault can

be found with the view taken by the Trial Court which cannot be held to be improbable warranting interference by this Court in the present appeal.

CRA-AS No.376 of 2023

The present appeal has been preferred by the State against the judgment of acquittal passed by Trial Court in FIR No.127 dated 1st of March, 2011 registered for the offences punishable under Sections 420, 467, 468, 471 IPC, at Police Station Civil Lines, District Gurugram.

2. FIR was registered against the respondent by the complainant claiming that he entered into agreement to sell with the accused on 1st of May, 2007. As per the covenants contained in the agreement to sell the petitioner was required to pay part of earnest money amounting to Rs.1.00 crore to the complainant on or before 30th of May, 2007. He been failed to pay the same. Agreement to sell was cancelled. However, the accused forged receipts of Rs.50.00 lacs each dated 1st of August, 2007 and that of 25th of February, 2008 claiming that the date for execution of sale deed stands extended from 30th of September, 2007 to 28th of February, 2008 and thereafter to 30th of September, 2008 on the strength of those two receipts and thus committed offence punishable under Sections 420, 467, 468, 471 IPC. Trial Court came to the conclusion that the testimony of the

complainant himself is unreliable as he had no agreement to sell in his favour by the original owners but had the same from one Anupam Verma. Likewise the Trial Court completely disbelieved Jai Pal Hooda (PW-1) who was found to be changing his stance as per situation and in fact had no account of his personal knowledge. Trial Court further found that the prosecution has failed to prove that it was the petitioner who forged and fabricated the receipts and resultantly acquitted the respondent/accused of charges framed against him by giving benefit of doubt.

3. Counsel representing the appellant/State has not been able to show as to how the view taken by the Courts below can be said to be improbable. The star witness of the petitioner PW1-Jai Pal Hooda denied any transaction and submits that in fact he signed blank receipts in good faith whereas in his statement before IO Exhibit DA he has admitted the valid execution of receipts Exhibits PA and PB. The FSL report relied upon by the prosecution only is to the effect that the signatures on the receipts were not of the complainant but the same cannot be read to drive-home guilt against the respondent/accused to hold him liable for forgery and fabrication. Apart from that as per agreement to sell the respondent/accused was required to pay part of the earnest money amounting to Rs.1.00 crore on or before 30th of May, 2007 whereas the alleged fabricated receipts are dated 1st of

August, 2007 and 25th of February, 2008. Trial Court is right in holding that had the accused intended to forge or fabricate the receipts he would have forged or fabricated prior to date of 30th of May, 2007 and not thereafter as the agreement to sell got frustrated on 31st of July, 2007 after the accused failed to comply with the covenant w.r.t. the payment of part of earnest money.

4. In view of above, this Court finds that none of the parties to the present two appeals approached the Court with clean hands and each of them had more to conceal from the Court than they had to reveal.

5. In the circumstances, this Court does not find any reason to interfere in the judgment passed by the Trial Court. Resultantly, the instant appeals against the judgment of acquittal (**CRM-A No.1007-MA of 2018** and **CRA-AS No.376 of 2023**) stand rejected.

6. Copy of this order be kept on the files of other connected case.

August, 25, 2023
Dpr

(Pankaj Jain)
Judge

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