

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

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**CRM-10555-2015 in/and
CRM-A-552-MA-2015
Date of decision: 08.02.2023**

Balram

.....Appellant

Versus

Jitender Singh Chauhan

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sandeep Kotla, Advocate
for the appellant.

Mr. Gurjeet Singh, Advocate for
Mr. Abhimanyu Singh, Advocate
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

The instant leave to appeal is directed against the judgment and order dated 02.08.2013 passed by learned Judicial Magistrate 1st Class, Gurgaon vide which the respondent-accused (hereinafter referred to as 'the accused') was discharged and the complaint filed by the appellant-complainant (hereinafter referred to as 'the complainant') under Section 406, 420 and 506 of the IPC was dismissed.

The case of the complainant in a nut shell may be noticed as thus. The complainant was serving as a sepoy in the Army and was posted in Delhi. On his transfer to the post of Company Quarter Master, one Surjit Singh Havaladar was posted as his Assistant. The accused was married to said Surjit Singh's cousin and would often visit him. The complainant and the accused became well acquainted with each other. The complainant retired from the Army on 01.04.2006. After his retirement he shifted to House No.1845, Sector 10-A, Gurgaon which

he had constructed during his service. In the month of August, 2006, the accused approached the complainant and requested for a friendly loan in the sum of Rs.3 lakhs. The complainant was assured by the accused that the loan would be repaid soon. Resultantly, the complainant issued two cheques bearing No.418047 and 418049 both dated 29.08.2006 drawn on Punjab National Bank in the sum of Rs.2 lakhs and Rs.1 lakh respectively in the name of one Dayal. In May, 2007, when the complainant demanded repayment of the loan, the accused offered to sell his plot measuring 85 sq. yds. situated opposite Sector 10 A, Market Main Khandsa Road, Gurgaon for a total sale consideration of Rs.15,30,000/-. Physical possession of the land was then handed over by the accused to the complainant in May, 2007. The complainant paid a sum of Rs.60,000/- and another sum of Rs.2,31,000/- to the accused in cash in January, 2008 and February, 2008 respectively. Another sum of Rs.9 lakhs was paid to the accused against the sale consideration vide cheque No.168524 dated 28.02.2008 in the sum of Rs.8 lakhs and another cheque No.168526 dated 28.02.2008 for a sum of Rs.1 lakh. However, when the complainant asked the accused for getting the sale deed in respect of the plot executed in his favour, he was told by him that it could not be executed and registered in respect of some part of the land. However, on an assurance given by the accused, the complainant agreed to construct a godown on the said land which was completed in February, 2008. The complainant also paid Rs.15,000/- to one Mukesh Building Material Supplier by cheque No.213433 dated 21.05.2007 on the asking of the

accused and another sum of Rs.10,735/- in favour of the DHBVNL vide cheque No.213435 dated 13.06.2007. Thereafter, the complainant continued requesting the accused to execute the registered sale deed in his favour, however, it proved to be futile and rather the complainant was threatened by the accused that in case he ever visited the property, he would be done to death. Resultantly, on account of the threats extended, the complainant stopped visiting the godown constructed by him on the said land. A legal notice was issued to the accused on 06.03.2009 calling upon him to either execute the sale deed in his favour or to refund the entire amount along with interest. Since the accused failed to act on the notice sent to him, the complainant was left with no other remedy but to file the complaint in question.

On the basis of material and other evidence led, the Court below discharged the accused by holding that it was essentially a monetary transaction between the parties and the remedy, if any available to the complainant, was under the civil law to file a suit for recovery.

Learned counsel appearing for the appellant-complainant has submitted that the Court below erred in not appreciating the ocular and documentary evidence on record. It was also submitted that civil and criminal proceedings could be carried on simultaneously and hence the Court should have taken a balanced approach while passing the impugned order.

On the other hand, learned counsel appearing for the respondent-accused has submitted that the impugned order was a well

reasoned one and did not warrant any interference.

I have heard learned counsel and perused the relevant material on record.

Entrustment is an essential ingredient of an offence under Section 405 of the IPC, hence, only if the person to whom the property has been entrusted, dishonestly misappropriates it, contrary to the terms of an obligation imposed would be liable for criminal breach of trust. Admittedly, in the case in hand there was no entrustment of any property by the complainant to the accused. Rather, it was the accused who had handed over the possession of the plot to the complainant for constructing a godown. It also needs to be pointed out that it is apparent that the complainant never raised any doubt qua any malafides on the part of the accused as it was a matter of record that both he and the accused started a tent house in the October, 2007 so much so they had common visiting cards wherein the names of both of them were mentioned.

Coming to the next allegation of the accused cheating the complainant, it needs to be reiterated that to attract the mischief of Section 420 of the IPC, one of the essential ingredients is *mens rea* on the part of the accused to deceive the complainant. However, as already observed earlier, the possession of the land as per the admitted case of the complainant was delivered by the accused himself to the complainant. Hence, in the circumstances, intention on the part of the accused to cheat the complainant is clearly amiss.

Furthermore, it does not also appeal to prudence that as per

the allegations levelled the complainant on 24.03.2008 had been threatened of dire consequences by the accused which also included threats by him to eliminate his son, and also to sell off his wife and daughter, however, the complainant for reasons very strange and which do raise eyebrows chose to sit mum for almost a year before instituting the complaint in question on 18.03.2009.

This Court thus has no hesitation in holding in the light of the above discussion that the dispute in question is essentially of a civil nature and the complainant has unsuccessfully attempted to give it a criminal complexion. The impugned judgment and order does not warrant any interference of this Court.

Dismissed.

Since the leave to appeal stands dismissed, there is no need to pass any separate order on the application, seeking condonation of delay of 507 days in filing the leave to appeal, which stands disposed of accordingly.

08.02.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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