

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

226

**CRM-A-652-MA-2014 (O&M)**  
**Date of Decision: 08.02.2023**

**MAURDHWAJ YADAV**

... Appellant

**VERSUS**

**KRISHAN AND OTHERS**

... Respondents

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

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Present: Mr. P.R. Yadav, Advocate, for the appellant.

Mr. N.D. Achint, Advocate, for respondents No.1 to 8.

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**SANDEEP MOUDGIL, J**

The instant appeal has been preferred against the judgment dated 06.12.2013 passed by the Chief Judicial Magistrate, Gurgaon, whereby, the respondents have been acquitted of the charges framed against them under Sections 420 and 120-B of the IPC.

The crux of the allegations levelled against the respondents are that the accused persons had entered into an agreement dated 24.12.2005 (wrongly mentioned as 24.12.2006 in the impugned judgment) to sell their land comprised in Khewat/Khata No.261/270, Rect. No.38, Kill No.13 (8-0) total land measuring 8 kanal – 0 Marla at the rate of Rs.52,00,000/- per acre in favour of the complainant. The respondents-accused persons had received the earnest money of Rs.4,15,000/- for themselves and on behalf of the other co-sharers in the disputed land. The date 23.01.2006 was fixed for execution and registration of the sale deed. The appellant remained present before the office of Sub-Registrar alongwith balance sale consideration for execution and registration of the sale deed in his favour, but the respondents-accused persons

did not turn up. The appellant-complainant served a legal notice dated 02.03.2016 calling upon the respondents-accused persons to come present before the office of Sub-Registrar, Gurgaon on 16.03.2006 for performing their part of contract and to execute and register the sale deed in favour of the complainant; but the respondents-accused did not bother to appear. The complainant came to know that the respondent-accused persons have cheated upon the complainant-appellant just to grab the amount of earnest money and as such, they have defrauded the complainant. The complainant moved various complaints to the Police and other higher authorities; but of no use. Lastly, the complainant filed the complaint before the Illaqa Magistrate, wherein the respondents-accused persons were summoned to face trial.

On the basis of pre-charge evidence, the respondent-accused persons were charged sheeted under Sections 420 and 120-B of the I.P.C.

In post-charge evidence, both the parties did not opt to lead any other evidence and made statement that the evidence led in pre-charge evidence may be considered for the adjudication of the complaint.

After considering the evidences led by both sides, the trial Court acquitted the respondents-accused persons of the charges framed against them. Hence, the present appeal.

Learned counsel for the appellant-complainant has vehemently argued that the learned trial Court has committed grave error while acquitted the respondents-accused persons. He further argued that the respondents-accused persons have conspired against the complainant and have cheated him for an amount of Rs.4,15,000/-, which he had paid as earnest money to the accused persons. Even despite serving a legal notice, the accused persons did not appear for execution and registration of sale deed in favour of the

complainant. As such, they have cheated upon the complainant and are liable to be punished therefor.

On the other hand, learned counsel for the respondents-accused persons vehemently argued that the ingredients of Sections 420 and 120-B of the I.P.C. are not fulfilled in the present case. The complainant has attempted to give a criminal colour to a case of civil nature. There is allegedly dispute of the non-performance of contract, which certainly falls within the ambit of Civil Procedure Code and the complainant ought to have availed the civil remedy available for him in that context. Hence, there is no force in the contentions of the learned counsel for the appellant and the judgment of the trial Court is liable to be upheld.

I have heard the learned counsel for the respective parties at length and have gone through the material available on record with their able assistance.

Before proceeding further, this Court would like to point out that in order to constitute the commission of a criminal offence, the *mens rea* is to be proved first. The complainant has utterly failed to prove that the accused persons had an intention to cheat him from the very beginning and in pursuance thereof, they had hatched a criminal conspiracy against the complainant and then committed cheating upon him.

The matter relates to an agreement to sell dated 24.12.2005 whereby the accused persons agreed to sell their 8K-0M land in favour of the complainant. Later on, the accused person failed to perform their part of contract and did not execute and register the sale deed in favour of the complainant. From the allegations of the complainant, it is nowhere found that the accused persons had a pre-intention to defraud the complainant. After

serving the legal notice, the complainant could have availed his legal remedy i.e. filing a civil suit for specific performance of contract. Rather on the contrary, the complainant chose not to file the civil suit and rushed towards filing a criminal complaint against the accused persons, may be on account of some ill-founded legal advice. The evidence led by the complainant is quite insufficient to prove the ingredients of criminal conspiracy or cheating. In order to convict an accused for an offence, the guilt of the accused must be prove beyond shadow of reasonable doubt. However, the complainant has utterly failed to bring home the guilt of the accused persons beyond shadow of any reasonable doubt. Rather, on the contrary, it appears that the complainant has choosen the path of criminal prosecution just to put undue pressure upon the accused persons and may be to settle his personal scores with them. Moreover, the counsel for the appellant has further failed to point out any illegality or infirmity in the judgment so passed by the learned trial Court. Hence, this Court is of the opinion that the impugned judgment passed by the learned trial Court is well reasoned and does not suffer from any illegality, perversity, impropriety or infirmity. Hence, the same is upheld.

The appeal stands dismissed, accordingly,

However, the appellant would be at liberty to avail his civil remedy of specific performance, if law so permits him to do so. The period of pendency of the instant appeal would be set off while computing the period of limitation to seek the civil remedy.

08.02.2023

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(SANDEEP MOUDGIL)  
JUDGE

*Whether speaking/reasoned* : Yes/No

*Whether reportable* : Yes/No