(259) IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1323-2022 (O & M)
Date of Decision: 18.01.2023

Usha Rani

... Petitioner

Versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Yash Dev Kaushik,Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

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JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 15.11.2021 passed by the Additional Sessions Judge, Faridabad, vide which the appeal preferred by the petitioner against the judgment of acquittal dated 12.11.2016 passed by the Judicial Magistrate, 1st Class, Faridabad, has been dismissed.

2 Briefly stated, the case of the prosecution is that complainant-petitioner (hereinafter known as 'the complainant') Usha Rani filed the criminal complaint under Sections 420, 467, 468, 471, 506 and120B of IPC against the accused Smt. Monika Sharma, Vishwas Sharma, Vikas Sharma and Dharmender. The said complaint was sent for investigation by the Illaqa Magistrate under Section 156(3) Cr.PC to the concerned police station. It was submitted in the complaint that the complainant had entered into an agreement to sell with accused No. 1 Monika Sharma on 20.06.2009 for pur-

chasing a plot for a total sale consideration of Rs.15,25,000/- out of which the amount of Rs.14,75,000/- was paid to accused No. 1 on 20.06.2010. Accused No. 1 Monika Sharma signed the receipt of payment dated 20.06.2010. Accused No. 2 Vishwas Sharma husband of accused No. I stood as a witness of the said receipt. The said agreement to sell dated 20.06.2009 was notarized by a public notary on 24.06.2009 and was also registered on 24.06.2009. Accused No. 1 handed over the original sale deed of her plot to the complainant. The due date for execution and registration of sale deed was fixed as 02.07.2009. On the date fixed the complainant remained at the Office of Sub- Registrar, Ballabgarh for execution and registration of the sale deed with the remaining amount of Rs.50,000/- of the sale consideration. But the accused Monika Sharma did not turn up at the office. Thereafter, the complainant issued a legal notice to accused Monika Sharma and called her to execute the sale deed on 17.08.2009. On 18.08.2009 complainant personally met accused Monika Sharma and requested her to execute the sale deed on 18.08.2009. On 18.08.2009 also, accused Monika Sharma did not turn up at the Office of the Sub-Registrar. Thereafter, on several occasions, the complainant made a request to the accused for execution of sale deed. On 21.07.2010 accused No. 2 flatly refused to execute the sale deed. Thereafter, the complainant came to know that accused No. 1 had fraudulently executed the sale deed on 22.06.2009 in favour of accused No. 4 Dharmender. Accused No. 3 drafted the said sale deed and he was close relative of accused No. 1. Accused No. 4 had the knowledge of the agreement to sell in favour of complainant and he was present in the Court on 20.06.2009 and assured that the said property was free from all sorts of encumbrance. In this manner all the accused had cheated the complainant and had forged the sale deed in favour of accused No. 4 in consequence of a criminal conspiracy.

3. The formal FIR was registered and investigation was conducted by SI Somdutt. The relevant records of the case were collected and accused Vishwas Sharma and Monika Sharma were arrested in the case. Accused Vikas and Dharmender were found innocent and after completion of investigation, challan was filed against the accused Vishwas Sharma and Monika Sharma by the SHO concerned.

4. The copy of the challan were supplied to the accused free of cost as envisaged under Section 207 Cr.P.C and the charges against the accused were framed for the offences under sections 420, 406, 506, 120B of IPC. The accused pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined as many as seven witnesses. PW Sarwan Kumar Gaur, Advocate has already been died and PWs Ajit Singh, SHO Narender Singh and Tek Chand were given up by Ld. APP. Thereafter, evidence of the prosecution was closed by the APP, vide his separate statement on 02.09.2016.

6. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C. in which the accused denied the allegations of the prosecution and pleaded that they had been implicated in a false case. However, they led no evidence in defence.

7. Based on the evidence led, the accused were acquitted by the Court of the Judicial Magistrate Ist Class, Faridabad vide its judgment dated 12.11.2016.

8. Thereafter, the complainant-Usha Rani filed an appeal against respondents No.2 and 3 before the Court of Additional Sessions Judge,

Faridabad, and the same came to be dismissed vide judgment dated 15.11.2021.

The aforementioned judgements are under challenge in this revision petition.

9. The learned counsel for the petitioner/complainant contends that the judgments of acquittal have been passed on whims and fancies of the Court. Minor contradictions as to where the agreement to sell was prepared have been given undue importance to acquit the accused. The Court below did not take into consideration the fact that both the complainant and attesting witness have duly supported the case of the prosecution and they proved the due execution of the agreement to sell dated 20.06.2009 by accused Monika Sharma whereas she has fraudulently executed a sale deed dated 22.06.2009 in favour of another person namely, Dharmeder. No adverse inference could have been drawn of the fact that the agreement to sell was dated 20.06.2009 whereas it was notorized on 24.06.2009 when it had been properly explained on record that on the date of the execution of the agreement to sell, the notary was not available. In fact, the trial Court had failed to take the notice of the fact that the complainant-petitioner had got her presences marked with the Tehsildar on the relevant target dates.

10. I have heard the learned counsel for the petitioner.

11. There are a number of material discrepancies/contradictions in the case of the prosecution, which are discussed hereunder:-

> *Firstly, the agreement to sell by accused Monika Sharma was allegedly executed in favour of complainant on 20.06.2009, whereas the complainant presented a complaint u/s 156(3) of Cr.PC. in the court only on 13.10.2010, on the basis of which FIR in question was registered by the police. Thus, there is an unexplained delay of about 1 year and 4 months in registration of FIR. The evidence led by the pro-*

secution reveals that complainant has miserably failed to explain the reason for the delay in reporting matter to police. The law is well settled to the effect that once the FIR is held to be brought into existence long after the occurrence, the entire prosecution case becomes doubtful. Delay affords an opportunity to the complainant so make deliberation upon the complaint and to make embellishment or even make fabrications and the Courts always view such allegations with suspicion.

Secondly, one of the attesting witness of agreement to sell dated 20.06.2009 namely Daya Ram, while appearing as PW2 stated that he had merely signed it on the asking of Kamal Kishore: parties to the agreement were not known to him and no money transaction had taken place in his presence. As such, PW2 did not support the case of the prosecution and was declared hostile.

Thirdly, the prosecution neither cited nor examined the scribe of the agreement namely Sh. M.K.Gaur, Advocate, whose testimony would had thrown light on the true facts of this case and in the absence thereof, an adverse inference has to be drawn qua the due execution of said agreement, especially when a categoric suggestion was put to complainant (PW7) during her cross examination that blank papers were got signed by her, which she with the assistance of her husband, who had been working as Munshi with Sh. Rajesh Kaushik Advocate, converted into an agreement to sell;

Fourthly, it is evident from the cross examination of complainant (PW7) that she admitted therein that she had filed a separate complaint of Rs. 4 lakh and Rs. 5.50 lakh against Tek Chand and Ankur Maheshwari, respectively. Though PW7 denied that the accused - Vishwas owed Rs. 36 lakh to her and had given a cheque of Rs. 1 lakh to her, in respect of which complaint under section 138 of Negotiable Instruments Act was pending and stood compromise. The PW7 also admitted that one FIR No. 152 dated 17.03.2010 under section 406, 420, 467 471, 506 and 120-B IPC, PS. Sector 7 Faridabad was registered, in which besides her self, other persons who were facing trial were Vijay Nagar, Ankur Maheshwari and Vishwas Sharma. She, however, stated that in revision she was discharged. PW7 admitted that she had lodged a case under section 376/506 IPC against Kamal

Kishore, in which he was granted interim bail by the court of Sh. D.R.Chalia, on dated 15.01.2016. It needs mentioning here that PW7 in the later part of her cross examination admitted that aforesaid Kamal Kishore was initially called by her to sign the agreement and receipt, but he could not come due to some personal reason and had sent Daya Ram instead. Therefore, a combined reading of the aforesaid facts, creates a doubt about the version put forth by complainant and indicates that the complainant had in fact concealed the real genesis of this case.

Fifthly, it was evident from the cross examination of complainant (PW7) that she had entered into another agreement with accused - Vishwas in the year 2013, whereby she had purchased one plot from him at Palwal. On the other hand, complainant was pursuing the present case against accused Vishwas and his wife Monika Sharma, for having committed fraud upon her by entering in to agreement to sell dated 20.06.2009. This fact itself creates a substantial doubt about the authenticity of the case set up by her.

Sixthly, the complainant (PW7) stated that she had paid a sum of Rs. 14,75,000/- in cash to the accused against total sale consideration of Rs. 15,25,000/-, but she did not disclose her source of income, though PW7 during her cross. examination stated that she was 12th pass and was running a beauty parlour whereas her husband, who is matriculate was merely a múnshi. If the version of the the complainant (PW7) was to be taken as the gospel truth and it be believed that she had already paid a sum of Rs. 14,75,000/- against the total sale consideration of Rs. 15,25,000/- to her vendor i.e. accused - Monika and she was always ready and willing to perform her part of contract as on the target date(s), she had got her presence marked before the Tehsildar, then the complainant ought to have filed a suit for specific performance of said contract. However, there was a feeble attempt on her part by filing a suit for mandatory injunction in this regard and she admitted in her cross examination that the said suit was dismissed by the court on account of want of requisite court fee and she further admitted that she was not pursuing said case;

Seventhly, it is well settled that failure to perform obligation under an agreement to sell does not normally give rise to a criminal offence. It *would always depend upon the facts and circumstances of the case. The remedy for non-performance or failure to perform is to file a suit for specific performance of the agreement to sell as provided under the Specific Relief Act, 1963 or to recover the amount paid.*

12. In fact, it is apparent that the prosecution case suffers from serious discrepancies and contradictions in the statements of the witnesses, and therefore, the false implication of the accused on account of other pending litigations between them cannot be ruled out.

13. In view of the aforementioned discussion, I find no reason to interfere with the well-reasoned judgments of the Trial Court and the Lower Appellate Court. Hence this revision petition is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

18.01.2023
sukhpreet

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