

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

241

CRM-M-16930-2018

Date of decision: 17.01.2023

Jagdish Parshad

....Petitioner

Versus

State of Haryana and another

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rajesh Lamba, Advocate for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

AMAN CHAUDHARY. J.

Challenge is to the order dated 17.02.2018 (Annexure P-3) passed by the Additional Sessions Judge, Faridabad dismissing the revision filed against the order dated 11.08.2016 (Annexure P-1) vide which the complaint preferred by the petitioner was dismissed.

Briefly put, respondent No. 2 stated himself as owner in possession of land measuring 12 kanal 10 marlas situated at village Sarurpur, Tehsil Ballabgarh, District Faridabad. On this statement, the petitioner entered into an agreement to sell on 21.05.2008 with respondent No. 2 for an amount of Rs.1,32,81,250/-. Respondent No. 2 received a sum of Rs.14,00,000/- as earnest money from the petitioner and date of registration of sale deed was fixed on or before 07.03.2009 and because of absence of respondent No. 3, sale deed was not executed in favour of the petitioner. Despite the agreement to sell executed by respondent No. 2 in favour of the petitioner, respondent No. 2 sold out the land in two parts measuring 10 kanal 3 marlas and 2 kanal 7 marlas respectively.

Learned counsel for the petitioner submits that the Courts below have committed grave error while dismissing the complaint without appreciating the evidence on record. There was no dispute with regard to the agreement executed between the petitioner and respondent No.2 in the presence of the witnesses and receiving of Rs.14,00,000/- as earnest money from him. However, he did not turn up for registration of the sale deed. The accused-respondent No.2 has thus cheated the petitioner and the ingredients of Sections 406 and 420 are thus made out.

Heard.

It is worthwhile to refer to the order passed by the trial Court dismissing the complaint which reads thus:-

“6. Hence, as per the above stated ingredients there must be some deception and a dishonest intention to induce a person by the accused. Thus, in order to constitute the offence of cheating under Section 420 IPC there must be some inducement by the accused to the complainant at the initial stage and if there is no inducement at the initial stage, then the offence under Section 420 IPC cannot be made out. The accused person is alleged to have not complied with the terms and conditions laid down in the agreement. Hence, from the perusal of whole documents on record, the necessary ingredients of Section 420 I.P.C. it was to be prima-facie prove that complainant is being dishonestly/fraudulently induced to do some act which he would have not done, had he not been induced? In the present case, the complainant has failed to prove the said ingredients as it cannot be said that accused had the dishonest intention while entering into the sell agreement as he himself not present at the Registrar office on the date fixed. In my view the offence under Section 420 IPC is not committed as while entering into the agreement to sell the accused had the intention to execute the sale deed in favour of the complainant but it was complainant himself who has not reached the Registrar Office alongwith balance payment. Non fulfillment of agreement by the accused person can not be termed as cheating and no criminal proceeding can be initiated as from the material on record it is not prima-facie proved that there was any deception or dishonest intention on the part of the accused at the initial stage. Accordingly, no order with respect to summoning of the accused can be passed. However, the complainant is at liberty to initiate civil remedy if any, as the same appears to be of civil

nature.”

The aforesaid order was affirmed by the Revisional Court by observing that:-

“5. After hearing counsel for the parties, it is observed that the revisionist had filed a private criminal complaint against the respondent under Sections 406, 420 IPC. As per the case of the revisionist, the respondent had entered into an agreement to sell his land with him at the rate of Rs. 1,32,81,250/- per acre and received an amount of Rs. 14 lakh as earnest money and agreed to execute the sale deed on or before 7.3.2009 after receipt of balance sale consideration but the respondent did not execute the sale deed and sold the land to some other person vide registered sale deed mark 'A'. In the present case the sale deed was to be executed on 7.3.2009 and on that day, the revisionist had marked his presence before the Sub Registrar. The revisionist has claimed that despite repeated requests, the respondent had not executed the sale deed. The present complaint was filed by the revisionist on 19.6.2013 whereas the sale deed was to be executed on 7.3.2009. This fact makes it clear that the complaint was filed by the revisionist even after a lapse of more than four years of the target date as no suit for specific performance was filed by the revisionist against the respondent. The respondent had executed the sale deed in the year 2013. In para No.4 of the complaint, the revisionist has that infact due to increase of market rates of the land in dispute, the respondent had become dishonest and he had breached the terms and conditions of the agreement to sell. In the present case, essential ingredients/elements of cheating are lacking. revisionist has not alleged even a single word that the respondent was having fraudulent or dishonest intention at the time of executing the agreement to sell. For the sake of arguments, even if it is assumed that the respondent had not executed the sale deed in favour of the revisionist in terms of the agreement to sell, even then remedy of the revisionist was to file a suit for specific performance but the revisionist had not filed any suit for specific performance and filed the complaint after a lapse of more than 4 years. Even the original agreement to sell is also not in possession of the revisionist and the revisionist has claimed that the same was in possession of the respondent. The above facts make it clear that the revisionist has failed to prove that there was any dishonest intention of the respondent at the time of executing the sale deed. The revisionist has not appeared before the Sub Registrar on the target date and now he cannot claim that he was cheated by the respondent. The dispute between the revisionist and respondent

was of civil nature and the revisionist wants to set its score by filing the criminal complaint.”

The learned trial Court has not examined the matter superficially. After having considered all aspects, it found the essential ingredients/elements of cheating lacking in the case, as there was no evidence brought out of any deception or dishonest intention on the part of the accused from the very inception. It being a dispute of civil nature, given a criminal cloak, was rightly dismissed and affirmed by the revisional Court.

This Court finds no illegality or perversity in the impugned orders, which call for any intervention. As such, the present petition being devoid of merit is dismissed.

January 17, 2023
Mehak

(AMAN CHAUDHARY)
JUDGE

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