IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-25168 of 2011
Pronounced on : 05.07.2023

Harbir Singh ….Petitioner

Versus

Babu Ram and another ….Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH

Present : Mr. Yogesh Saini, Advocate
for the petitioner.

Mr. Tejveer Singh, Advocate for
Mr. Munish Kumar Garg, Advocate
for the respondents.

GURBIR SINGH J.

1. Prayer in this petition under Section 482 Cr.P.C. is for setting aside the order dated 24.02.2011 passed by learned Chief Judicial Magistrate, Jind (Annexure P-2) as well as order dated 12.05.2011 passed by learned Additional Sessions Judge (Annexure P-3) and further prayer that respondents may be ordered to be summoned to face the trial in the criminal complaint No. 52 of 2010 filed by the petitioner.

2. As per the allegations, the accused-respondents Babu Ram and Ram Phal have been running property dealing business. Both agreed to sell 100 square yards land in Gobindpura to the complainant for a sum of Rs.12,500/-. The said plot was owned by Babu Ram. On 05.04.1991 complainant also paid a sum of Rs.3000/- and on 07.06.1991 he paid Rs.5000/- to the accused and the remaining amount of Rs.4500/- was paid on 23.01.1992. However, no sale deed was got registered in favour of the complainant and on 23.01.1992 possession of the plot was handed over to

the complainant. In June 2008, when the complainant tried to sell the plot, he discovered that accused had only given a power of attorney in favour of the complainant as the complainant was an illiterate person. Thus, the accused had committed fraud and forgery.

3. In order to prove the allegations, the complainant examined Ram Niwas, Registry Clerk as CW1, Anil Kumar, HRC as CW2 and complainant Harbir Singh himself stepped into the witness box as CW3.

4. After hearing and on the basis of preliminary evidence led on the file, the learned trial Court vide order dated 24.02.2011 (Annexure P-2) dismissed the complaint on the ground that there was no sufficient ground to summon the accused for having committing the offence of cheating and forgery. The complainant/petitioner filed revision petition. The learned Court of Additional Sessions Judge, Jind came to the conclusion that non execution of of sale deed after receiving the money does not give rise to criminal liability and vide order dated 12.05.2011 (Annexure P-3) affirmed the order passed by the learned trial Court and dismissed the revision petition.

5. The learned counsel for the petitioner submits that the FIR was registered against the respondents by invoking the provisions of Section 156(3) of Cr.P.C. The Investigating Officer, considering that civil suit was pending, filed the cancellation report on the ground that criminal proceedings cannot run simultaneously with the civil proceedings. The respondents did not join the investigation and cancellation report was prepared on the basis of documents provided by their counsel. The complaint of the petitioner was entertained by the Court of learned Chief Judicial

Magistrate, Jind but evidence led by the petitioner was not properly appreciated. The Court took as it was a case of the non execution of sale deed even after receiving the money but case of the petitioner in fact is that respondents handed over one power of attorney while saying and deceiving the petitioner that it was a registered sale deed and later on said power of attorney was also got cancelled even without informing the petitioner. The learned Court of Additional Sessions Judge also observed that non execution of sale deed after getting money does not attract criminal liability. The intention of the respondents can be gathered from the fact that they got the power of attorney cancelled and also refused to execute the sale deed. He has relied upon the cases of ***Lalmuni Devi vs. State of Bihar 2001(1) RCR (Criminal) 228*** and ***N. Devindrappa vs. State of Karnataka 2007(3) RCR (Criminal) 70*** and further submits that in view of the law relied upon in the above referred authorities, an act can result in both civil as well as criminal liability, merely because the civil claim is maintainable does not mean that criminal complaint is not maintainable.

6. The learned counsel for the respondents has submitted that well reasoned order is passed by the learned trial Court. A civil claim cannot be given a colour of criminal offence. There is no illegality in the orders passed by learned Courts below. So, this petition is liable to be dismissed.

7. I have heard the submissions of learned counsel for the parties and have gone through the file.

8. Originally the complaint was sent to the police station under Section 156(3) Cr.P.C. and FIR (Annexure P-1) was registered. After investigation, the said FIR was cancelled. The petitioner filed complaint and

led preliminary evidence. The complaint was dismissed vide order dated 24.02.2011 (Annexure P-2). The complainant filed revision petition which was also dismissed vide order dated 12.05.2011 (Annexure P-3). Para 9 of the order passed in revision petition by the learned Additional Sessions Judge (Annexure P-3) is as under :-

> *"It is of course true that there are two receipts on the file which show payment of Rs.5000/- and Rs.3000/-. These receipts also shows that this amount was paid as earnest money towards sale consideration. Date of execution of sale deed has also been mentioned but as per report submitted by police it is clear that wife of complainant has filed a civil suit against accused persons. Complainant has not disclosed this fact to this Court. Even otherwise non execution of sale deed after receiving money does not give rise to criminal liability. In these circumstances the learned trial Court has rightly appreciated evidence on record and rightly dismissed the complaint. Its finding does not suffer from any infirmity and same is hereby affirmed."*

9. In the case of ***Vesa Holdings P. Ltd. and another vs. State of Kerala and others 2015(2) RCR (Criminal) 442,*** it is held by Hon'ble Apex Court that for the purpose of constituting an offence of cheating the complainant is required to show that accused had fraudulent or dishonest intention at the time of making promise or representation. In the case of ***Vijay Kumar Ghai and others vs. State of West Bengal and others 2022(2) RCR (Criminal) 528***, it is held by Hon'ble Apex Court that breach of contract cannot give rise to criminal proceedings for cheating.

10. Admittedly, in the case in hand it is not the case of the petitioner that respondents-accused had intention to cheat the petitioner at

the time of entering into the contract. It is his own version that power of attorney was executed but later on same was got cancelled. Thus, from the facts of the case, it cannot be prima-facie gathered that respondents had any intention to cheat the complainant at the time of receiving the money for selling the property. In the case of ***Lalmuni Devi vs. State of Bihar cited (supra)***, the allegations were that the respondents had fraudulently got the father of complainant to execute the gift deed. They were summoned to face trial and the complaint was quashed on the ground that complaint spelled out a civil wrong. In the case of ***N. Devindrappa vs. State of Karnataka cited (supra)***, the accused got an advance to sell the plot of the land of which he was not the owner. Both the said authorities are distinguishable on facts and ratio of said authorities cannot be applied to the facts of the present case.

11. There is no illegality in the order passed by the learned trial Court and there is no ground to interfere in the same. The instant petition is accordingly dismissed.

(GURBIR SINGH)
JUDGE

05.07.2023.
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Whether speaking/reasoned Yes / No
Whether Reportable Yes / No