

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

256

CRM-M-32138-2016

Date of decision: 20.09.2023

Manoj

...Petitioner

Versus

Surender Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Ram Kumar Saini, Advocate for the petitioner.

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 28.09.2013 passed by learned Chief Judicial Magistrate, Hisar vide which the complaint under Sections 420, 406, 506 and 120-B IPC filed by the petitioner had been dismissed and order dated 04.07.2016, passed by learned Additional Sessions Judge, Hisar, dismissing the criminal revision filed by him.

2. Briefly put, the facts are that respondent no.1 entered into an agreement to sell off a plot situated near water works, Mahabir Colony, Chandu Lal Garden, Hisar, Tehsil and District Hisar with the petitioner, the date fixed for the execution of sale deed was 27.1.2013 and a payment of Rs. 1 lac was made in the presence of one Sajjan Singh and respondent Nos.2 and 3. When the complainant reached the office of Tehsildar, Hisar on the given date, he was informed that the plot was getting sold to some

other person. He approached the accused and asked them to honour the agreement, which they declined. Hence the complaint was instituted.

3. To prove his case, the complainant examined himself as also PW-2, Sajjan Kumar and thereafter closed the preliminary evidence.

4. The trial Court after carefully examining the evidence on record and hearing the learned counsel for the complainant came to the conclusion that there was no sufficient ground to summon the accused and thus, dismissed the complaint vide order dated 28.09.2013.

5. Feeling aggrieved, the petitioner filed an appeal against the aforesaid order before the Additional Sessions Judge, Hisar, which also came to be dismissed vide judgment dated 04.07.2016.

6. Hence, the present revision petition.

7. Learned counsel for the petitioner contends that the Courts below have committed grave error in dismissing the complaint merely on conjectures and surmises and failed to appreciate the evidence on record. He submits that the complainant had established his case with cogent and reliable statements of witnesses and without application of judicious mind, the Courts below have given the finding that the nature of dispute is of civil nature whereas the same is of criminal nature as the petitioner was cheated by the accused-respondents.

8. Heard and perused the file.

9. Before considering the case at hand, a reference is required to be made to the order passed by the trial Court whereby the complaint was dismissed by recording the following findings:

“4. Allegations as alleged in the complaint are civil in nature. If there had been violation of an agreement to sell proper remedy available to the complainant to file suit for specific performance or approach other appropriate forum. Since there has been breach of contract, no criminal offence is made out. The Apex Court in **Pespsi Foods Ltd. and Another vs. S.J. Magistrate and Others reported in JT 1997 (8) SC 705** cautioned the Courts below in the matter of summoning of the accused....

xx xx xx

6. The principal of underlying rulings fully applicable to the present case. Similar is the position in the present case. An agreement of sale-deed was not executed between the parties. There is no allegation that right at the beginning of the transaction, there was fraudulent or dishonest intention on the part of the accused. When they failed to keep up promise subsequently, such a culpable intention right at the beginning, i.e. when they made the promise, cannot be presumed. In such a situation complainant had remedy of filing of a civil suit for specific performance. There is no merit in the present complaint and same stands dismissed accordingly.”

10. The appellate Court in the revision filed by the complainant-petitioner, had affirmed the same by observing thus:

“7. The complainant in support of his case has appeared as PW1 and has reiterated the facts of the complaint. His testimony is further corroborated by PW2 Sajjan Singh. The case of the complainant is that on 12.12.2012 the accused no.1 had executed an agreement to sell his land as referred above with him as per oral agreement and he had received Rs.1 lac from him as earnest money. From the perusal of the evidence available on record, it is established that the claim of the complainant is nowhere supported with any documentary evidence. The complainant has neither produced any receipt of payment of Rs.1 lac given, to, the accused no.1 as earnest money as alleged

nor he has produced any affidavit regarding marking his presence before the Sub Registrar Hisar for getting the sale deed executed in his favour. In absence of any documentary evidence, the dishonest intention of the accused is not proved. Moreover, the allegations as alleged in the complaint are of civil nature. If there had been any violation of an agreement to sell, proper remedy available to the complainant to file suit for specific performance or approach other appropriate forum....

8. From the aforesaid facts and circumstances of the case and case law referred above, it can be safely concluded that there is no illegality in the impugned order. Ratio of law as referred on behalf of the revisionist shall not apply to the facts of the present case being distinguishable and as such the learned trial court is perfectly justified in dismissing the present complaint.”

11. This Court considers it necessary to remind itself of the limited scope of revisional jurisdiction. In **Ram Partap vs. Rajesh Kumar**, 2014 SCC OnLine P&H 8659, the revision challenging the judgments of Courts below was dismissed, while relying upon the dictum of law laid down in **Jagannath Choudhary vs. Ramayan Singh**, (2002) 5 SCC 659, wherein Hon’ble The Supreme Court held that, “Incidentally object of revisional jurisdiction of the High Court as envisaged under Section 401 CrPC, is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, aimed at correcting miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which result, on the one hand, in some injury to the due maintenance of law and order, or, on the other, in some undeserved hardship to individuals.”

12. Hon'ble The Supreme Court in the case of **Hydru vs. State of Kerala**, (2004) 13 SCC 374, discussed the ambit of powers of revisional Court in revision against acquittal by a private party and held the same to be very limited. It was observed that interference can only occur if there is any procedural irregularity or material evidence has been overlooked or misread by the trial Court.

13. A gainful reference made to the judgment of Hon'ble Supreme Court in **Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke**, (2015) 3 SCC 123, which reads thus:

"14..... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court Under Sections 397 to 401 Code of Criminal Procedure is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction."

14. The Courts below after meticulous examination of the evidence and statements of witnesses, have rightly arrived at the conclusion as the complainant was unable to establish that the accused-respondent had dishonest intention from the very inception as

also failed to prove that the ingredients of the offence were made out. The case being one of breach of contract, was primarily civil in nature, as was rightly held, the element of criminality being completely absent. No glaring defect in the procedure or any patent error has shown to be committed, which may have resulted in flagrant miscarriage of justice. There is not even an iota of evidence against the respondents, which would lead to their conviction and a perusal of the judgments show that no other view is possible. In this regard, it would be worthwhile to make a reference to **Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr**, (2000) 4 SCC 168, wherein Hon'ble The Supreme Court had observed that, "....that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise..."

15. Applying the enunciation of law to the facts and circumstances of the present case, this Court finds no extraordinary circumstances in the immediate matter to invoke its inherent power under Section 482 CrPC and accede to the prayer of the petitioner. As such, the present petition is dismissed being devoid of merit.

16. Nothing herein shall be treated as an expression on the merits of the case and the trial Court shall proceed and decide the matter, independent of any observation made in the present judgment, which was only for the purpose of adjudicating the present petition.

20.09.2023
Ankur

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No