

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

CRR-394-2008 (O&M)
Date of Decision:-4.7.2023

Subhash

... Petitioner

Versus

Ajmer Singh and Another

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Vipul Aggarwal, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

KARAMJIT SINGH, J.

1. The present criminal revision petition has been filed by the petitioner/accused against the judgment dated 1.2.2008 passed by the Court of Additional Sessions Judge, Jind in criminal appeal No.18 of 9.5.2005 titled as Subhash vs. Ajmer Singh and Another whereby the appeal filed by the petitioner/accused against the judgment and order dated 12/22.4.2005 passed by the Court of Sub-Divisional Judicial Magistrate, Safidon (Jind), whereby the petitioner/accused was sentenced to rigorous imprisonment for 1 year and pay fine of

Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for 2 months under Section 420 IPC and rigorous imprisonment for 1 year and pay fine of Rs.5,00/- and in default of payment of fine to further undergo rigorous imprisonment for 2 months under Section 406 IPC, was dismissed.

2. Being aggrieved the petitioner has filed the present criminal revision petition challenging both the abovesaid judgments/orders.
3. The revision petition was admitted and the petitioner was granted bail by this Court vide order dated 27.2.2008.
4. The brief facts of the prosecution case are that the petitioner/accused entered into an agreement to sell his three-wheeler with complainant-Ajmer Singh on 4.7.1996 for total consideration of Rs.26,000/- and the petitioner/accused received Rs.4,000/- as an earnest money and also handed over the possession of three wheeler to the complainant and the complainant agreed to make the payment of balance sale consideration in monthly installments of Rs.3,000/- each along with interest at the rate of Rs.2% per month. The said agreement to sell was reduced into writing on the same very day, in the presence of attesting witnesses Ram Niwas, Inder and Gopi Ram. Thereafter the accused failed to transfer the aforesaid vehicle in the name of complainant and in this regard legal notice was also served to him but the accused did not pay any heed to the said notice. Resultantly complainant Ajmer Singh filed private criminal complaint under Sections 420 and 406 IPC against the accused in the Court of concerned Illaqa Magistrate.

5. In preliminary evidence complainant himself stepped into the witness box as PW-1 and also examined Ram Niwas as PW-2 and also placed on record copy of judgment Ex.C1 and decree-sheet Ex.C2. After going through the aforesaid preliminary evidence the learned trial Court summoned the accused vide order dated 4.12.2001. In response to the said summoning order, the accused appeared before the learned trial Court and was granted bail.
6. In pre-charge evidence the complainant examined himself as PW-1 and closed the evidence. After hearing both the parties, the learned trial Court dismissed the complaint and the accused was discharged vide order dated 16.10.2002. However, the said order was upturned by the Revisional Court vide order dated 25.8.2004. On the basis of the said order, the learned trial Court framed charges under Sections 420 and 406 IPC against the accused and thereafter the complainant examined PW-1 Ram Niwas, PW-2 Joginder Singh (Ahlmad) and PW-3 Ajmer Singh and closed his evidence.
7. The accused was examined under Section 313 Cr.P.C. wherein he pleaded innocence and false implication. However the accused had not led any evidence in his defence.
8. After hearing both the sides, the learned trial Court convicted the accused under Sections 420 and 406 IPC and sentenced him to imprisonment as detailed in the opening paragraph of this judgment.
9. The accused preferred an appeal against the judgment and order passed by the learned trial Court. The said appeal was dismissed by

the Court of Additional Sessions Judge, Jind vide judgment dated 1.2.2008 and the judgment of conviction and order of sentence passed by the learned trial Court were upheld.

10. I have heard the counsel for the petitioner and the State counsel.
11. The counsel for the petitioner has *inter alia* contended that the impugned judgments/order passed by the Courts below are not sustainable in the eyes of law. The counsel for the petitioner has further contended that there was no dishonest intention on the part of the petitioner to deceive the complainant. That in case the petitioner committed any breach of contract, the complainant could have claimed damages. It has been further contended that on the basis of the agreement to sell dated 4.7.1996, the complainant filed civil suit for recovery of Rs.23,980/- and the same was decreed against the petitioner vide judgment dated 22.1.2001 (Annexure C-1) by the Court of Additional Civil Judge (Senior Division), Safidon and the appeal preferred against the said judgment and decree by the accused was also dismissed by the 1st Appellate Court. The counsel for the petitioner has further contended that in this manner, the complainant has been properly compensated by the petitioner.
12. The counsel for the petitioner has further contended that the agreement to sell in question was vague and the registration number of the three wheeler which was proposed to be sold, was not mentioned in the said agreement and in the present case the complainant failed to examine the official of the concerned

registration authority to prove as to who was the registered owner of vehicle at the time of execution of the agreement to sell.

13. The counsel for the petitioner in the end has submitted that no offence under Sections 406 and 420 IPC is made out against the petitioner as he was having no *mala fide* intention to cheat the complainant, when the agreement to sell dated 4.7.1996 was executed by him in favour of the complainant. So prayer is made that the present criminal revision petition be allowed.
14. The present revision petition is resisted by the State counsel, who while supporting the impugned judgments/order, has submitted that the petitioner misappropriated amount of Rs.4,000/- which was received by him as an earnest money at the time of execution of agreement to sell dated 4.7.1996. It has been further contended that the petitioner entered into said agreement to sell dated 4.7.1996 with intention to deceive the complainant as later on the petitioner failed to get the three-wheeler in question, transferred in the name of the complainant.
15. I have considered the submissions made by the counsel for the parties.
16. The Hon'ble Apex Court has time-and-again reiterated that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of transaction. In this context reference is made to ***Hridaya Ranjan Pradesh Verma and Ors. Vs. State of Bihar and Anr.***

(2000)4 SCC 168 and Mitesh Kumar J. Sha vs. State of Karnataka and Ors, 2021(4) RCR (Criminal) 573.

17. In the instant case there is nothing on the record to prove that the petitioner was having *mala fide* intention to cheat the complainant, since the very beginning when the agreement to sell dated 4.7.1996 was executed by the petitioner in favour of the complainant with regard to a three-wheeler.
18. As per the prosecution case, there was breach of contract on the part of the petitioner as he failed to get transferred the three-wheeler in the name of the complainant on the basis of agreement to sell dated 4.7.1996. Admittedly for any such breach of contract, the complainant was entitled to claim compensation. It appears on the record that the suit for recovery of Rs.23,980/- as damages filed by the complainant was decreed by the Court of Civil Judge, Safidon and the appeal filed by the petitioner against the said judgment/decreed was also dismissed by the 1st Appellate Court.
19. In the instant case the complainant has also failed to prove that there was any dishonest intention on the part of the petitioner to misappropriate amount of Rs.4,000/- which was received by him as an earnest money or to dishonestly use or dispose of the same.
20. Further, in the recent past, the Hon'ble Apex Court has expressed its disapproval for imparting criminal flavor to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. In this regard reference is

made to *G. Sagar Suri vs. State of U.P. 2000(1) RCR (Criminal) 707*.

The same view has been reiterated by the Hon’ble Supreme Court in *Mitesh Kumar J. Shah Kumar’s* case (supra) wherein criminal proceedings were initiated under Section 406, 420 read with Section 34 IPC against the accused persons on the basis of breach of agreement. The Hon’ble Supreme Court while quashing the said FIR specifically observed that such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.

- 21. In the given circumstances of the present case, it could be easily inferred that the complainant gave criminal colour to a civil dispute arising out of breach of contract.
- 22. In the light of the above discussion, this Court is of the view that the prosecution/complainant has failed to prove its case against the petitioner under Sections 420 and 406 IPC. Accordingly the impugned judgments/orders passed by the Court of Additional Sessions Judge, Jind and Court of Sub-Divisional Judicial Magistrate, Safidon are set aside and the petitioner is acquitted of the offences punishable under Sections 420 and 406 IPC.

4.7.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No