

CRM-A-1186-2019 (O&M)
Date of decision:16.03.2023

Shamsher Singh ...Appellant

Vs.

State of Haryana & another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

Present: Mr. Ram Kumar Saini, Advocate for the applicant/appellant.

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MANJARI NEHRU KAUL, J. (ORAL).

CRM-19525-2019:

Instant application has been filed under Section 5 of the Limitation Act seeking condonation of 33 days delay that has occurred in filing the accompanying appeal.

In view of the averments made in the application, delay of 33 days in filing the accompanying appeal is condoned.

Application is disposed of.

Main case:

The applicant/appellant is impugning the judgment dated 13.02.2019 passed by the learned Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhari vide which the accused/respondent was acquitted of the charges framed against him under Sections 420, 506 IPC.

As per allegations levelled in the complaint instituted by the applicant (hereinafter referred to as 'complainant'), the respondent (hereinafter referred to as 'accused') was in cultivating possession of land measuring 16 kanals 7 marlas, detailed in paragraph 2 of the complaint. A

civil suit for declaration was pending qua the aforesaid land. In the civil suit, the parties had suffered their statements as per which the land under the ownership and possession of the accused came out to be 10 kanals and 7 marlas. However, the accused while claiming himself to be the owner in possession of land measuring 10 kanals 7 marlas entered into an agreement to sell (Ex.C1) dated 22.06.2012 with one Bhag Singh with respect to land measuring 9 kanals and 12 marlas for a total sale consideration of Rs.1 crore. The accused received Rs.10 lakhs as earnest money. Thereafter, several part payments were made by the complainant and receipt was also issued qua the same by the accused in the presence of marginal witnesses. Even though, the complainant repeatedly requested the accused to perform his part of the contract, by executing a sale deed, in favour of the complainant and also issued a legal notice to the accused on 01.09.2014. However, the accused with a malafide and dishonest intention got a release deed dated 12.09.2014 executed in favour of his daughter, namely, Gunjanjit Kaur and resultantly cheated the complainant.

The Court below acquitted the accused by holding that there was no dishonest intention on the part of the accused and the dispute between the parties was essentially civil in nature.

Learned counsel appearing for the complainant has vehemently argued that the Court below had fallen into an error by holding that the accused had no dishonest intention to cheat him even though there was enough material on record to show to the contrary. He argued that the dishonest intention of the accused was clearly discernible from the fact that not only had the accused swallowed the amount of money which was paid to

him by the complainant but still further in order to frustrate the rights of the complainant, he had gone ahead and executed a release deed dated 12.09.2014 in favour of his own daughter. It was further argued that the trial Court had gravely erred in observing that since possession of the property in dispute had been handed over to the complainant hence it could not be said that the accused had any dishonest intention at the initial instance to cheat the complainant. It was urged that the Court below failed to appreciate that the the possession as per the agreement to sell also was only symbolic in nature and the actual possession had never been handed over to the complainant.

I have heard learned counsel for the petitioner and perused the relevant material on record.

In order to attract the mischief of offence under Section 420 IPC, one of the essential ingredients should be a dishonest intent of cheating from the very inception of the alleged transaction. On a perusal of the material on record, it stands revealed that the transaction between the complainant and the accused on the face of it, without doubt, is purely civil in nature and as rightly observed by the Court below it has been given a cloak of criminality by the complainant. Even in the agreement to sell, it was specifically agreed upon between the parties that in case accused did not execute the sale deed in favour of the complainant and Bhag Singh, then both the buyers i.e. the complainant and Bhag Singh would have the right to get the sale deed executed through a Court of law. No doubt, criminal and civil proceedings are distinct and the complainant has a remedy to pursue both of them simultaneously, however, this Court finds it difficult to

comprehend that when a remedy is available to the complainant for redressal of his grievance in the agreement to sell itself, why has he desisted from pursuing the same. No doubt, learned counsel has argued that the possession delivered to the complainant was only symbolic and not actual, however, even if, this contention of the learned counsel is accepted, the factum of the complainant having been given possession only on papers, would not come to his rescue because no malafide intention can be imputed to the accused on this basis.

As a sequel to the above, prayer for grant of leave to appeal made by the applicant is declined. Accordingly, the present application stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

16.03.2023

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |