

CRR No. 4468-2017 and
CRR-1245-2023

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

1. **CRR No. 4468 of 2017 (O&M)**
Reserved On: 25.05.2023
Pronounced On: 17th AUGUST, 2023

OM PARKASH

.....PETITIONER

VERSUS

DHANI RAM AND OTHERS

.....RESPONDENTS

AND

2. **CRR-1245-2023 (O&M)**

RAJENDER KUMAR AND ANOTHER

.....PETITIONERS

VERSUS

DHANI RAM AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Ms. Shikha Charak, Advocate
for the petitioner (in CRR-4468-2017).
for respondent No.2 (in CRR-1245-2023).

Mr. Karan Pathak, Advocate
for respondent No.1-Dhani Ram in both the petitions.

Mr. Raj Kumar Gupta, Advocate
for the petitioners (in CRR-1245-2023).
for respondents No.3 and 4 (in CRR-4468-2017).

SANDEEP MOUDGIL. J.

1. Vide this common order, I shall be disposing of both the afore-said criminal revision petitions, as they have arisen out of the same order/judgment dated 15.11.2017 and for the sake of reference, the facts are being taken from CRR-4468-2017.

2. The present revision petition came up before this Court against the judgment dated 15.11.2017 passed by Additional Sessions Judge, Hissar

CRR No. 4468-2017 and

CRR-1245-2023

whereby, the order dated 10.06.2016 passed by Judicial Magistrate Ist Class, Hissar dismissing the complaint filed by Dhani Ram at summoning stage, has been set aside.

3. Case of the prosecution in brief can be summoned as under:-

“The present complaint has been filed by complainant Dhani Ram with the averments that complainant is husband of Prem Kumari and Prem Kumari had given a general power of attorney to the complainant dated 07.04.2008 by which complainant has been given power on behalf of Prem Kumari to do any work. It was further alleged that in the first week of November 1998, the accused No.1 and 2 approached the wife of the complainant and asked her to invest money in land and assured that in the few years, this land gives much profit to her. Accused No.1 and 2 are of father-in-law and brother-in-law of the complainant. In the second week of November, the accused No. 1 and 2 came to the complainant and told her that they have paid a sum of 11.1998 the said land was given to accused No. 1 on a lease of 99 years and the lease deed has already been executed in favour of accused No.2 vide lease deed No.3873 of 6.11.1998 in the office of Sub-Registrar, Hissar. It was further alleged that thereafter accused No.2 in connivance of accused No.1 and 3 got executed another lease deed in favour of accused No.3. the accused No.3 is the brother of complainant and between them civil and criminal litigation was pending. That even after knowing the strained relation between the complainant and accused No.3, accused no.2 got executed lease deed in favour of accused No.3 on 25.1.2010. Accused No. 1 and 3 after hatching a conspiracy with each other and with accused No.4, got another lease deed executed in the name of accused No.4 on 10.5.2010. Though, the land in question was already sold by accused No.1 as a general power of attorney to the wife of the complainant. Thereafter, complainant went to the place of disputed property and found that no one has taken the possession of this land and the possession of the land is still with

CRR No. 4468-2017 and
CRR-1245-2023

the complainant and his wife. After 20.9.2004 when the said land was sold to the wife of the complainant, the mutation has been sanctioned in favour of the wife of complainant in the year 2004 itself and is still in her name as well as name of complainant. When the complainant came to know about the forgery done by the accused person, he application for mutation of the and in question and also for girdawari of the land and after obtaining the same, he came to know that Birdawart of the land is sult in the name of the wife of the complainant in the year 2001 to 2010 and no change has been made be the Halgua Patward in that till today. It was further alleged that in this manner all the accused in connivance with each other in order to grab the land from the wife of the complainant got executed lease deed and other documents and in that manner they have committed the aforesaid offence. Thereafter, complainant and his wife moved several applications to the police of P.S.Civil Line, Hisar as well as S.P. Hisar but no action was taken against the accused persons. Hence, this complaint."

3. It is asserted by learned Senior counsel for the petitioner(s) that the petitioner is a *bona-fide* purchaser and it is not in dispute that mutation Nos. 11393, 11587 and 11673, dated 19.03.2009, 06.05.2010 and 25.05.2010 were sanctioned in favour of respondents No.3, 4 and the petitioner respectively. He further asserts that revisional court has not only misread the facts on record and law but has also travelled without jurisdiction and it has completely ignored the facts on record loosing sight of the fact that there is already a judgment of the Civil Court disbelieving the version of the complainant-Dhani Ram. The argument is that from the perusal of the complaint, it is crystal clear that no offence under Sections 420, 467, 468, 471 and 120-B IPC is made out against the petitioner(s), as all the registered documents are executed by the authorized persons.

CRR No. 4468-2017 and
CRR-1245-2023

4. At the same time the complainant refuting the arguments of the petitioner, argues that the statements of PW-1/Rajbir and PW-2-Dhani Ram-complainant as well as documents Ex.PW1/A to Ex.PW1/D *prima-facie* proved that accused-Rajender Kumar in connivance with accused Maman Chand Verma and Bhagat Singh got executed a lease deed of land in question in favour of accused Bhagar Singh and accused Rajender Kumar and Bhagat Singh hatched criminal conspiracy with the accused Om Parkash (petitioner in CRR-4468-2017). He has also referred recitals, to which are alleged to be forged to show the delivery of actual and physical possession of the land in question despite the fact that the accused Rajender Kumar had already sold the land in question to the wife of the complainant-Dhani Ram vide registered sale deed No. 7440 dated 20.09.2004.

5. Having perused the narrated part of complaint including the role qua the petitioner(s) and the submissions made by counsel for respective parties, this Court has to examine the attraction of Section 420 of IPC, as to whether any such offence is made out against the petitioner , which would be conclusive without looking at Section 415 of IPC.

6. Before culminating the view, it would be appetite to have a glance at the definition of Section 420 IPC, which reads as under:-

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

CRR No. 4468-2017 and

CRR-1245-2023

7. The ingredients of an offence of cheating have been crystallized by the Apex Court in ‘SW PalaNitkar versus State of Bihar2002 SCC(Cri.) 129’, wherein, it has been observed, as under:-

“(i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; an (iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm .to the person induced in body, mind, reputation or property.”

8. In fact the definition of cheating under Section 420 IPC is derived from Section 415 IPC and therefore, both the sections are to be read in consonance with each other and therefore, it mandates this Court to have a glance on this provision as well, which reads as under:-

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

9. Mr. Rajbir Halqa Patwari, who appeared as PW-1 and proved the copies of revenue record Ex.P1 and P-2, to show that accused No.1 and 3 in connivance with accused No.4 got executed lease deed in favour of accused No.4 on 10.05.2010 and false recitals were also made while executing the sale deed dated 20.09.2004.

CRR No. 4468-2017 and
CRR-1245-2023

10. In view of above, this Court is of the view that there are *prima-facie* ingredients for commissioning of offence punishable under Section 420, 467, 468, 471 and 120-B IPC clearly made out qua the petitioner(s). This Court does not find any infirmity or illegality in the judgment/order dated 15.11.2017 passed by learned Additional Sessions Judge, Hisar.

11. As far as CRR-1245-2023, is concerned, there is inordinate and unexplained delay of 1190 days in filing the petition. The explanation given by the applicant is not sufficient to condone the delay. Reasonable time generally means any time which is not manifestly unreasonable and which is fairly necessary for approaching the Court. Reasonable time would mean a time required by a prudent litigant to approach the Court in the given facts and circumstances of the case.

12. The Apex Court in “***Basawaraj and Another versus Special Land Acquisition Officer***”, (2013) 14 SCC 81, while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to

CRR No. 4468-2017 and
CRR-1245-2023

prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

13. It is to be borne in mind that the power given to the Court, to condone the delay has to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood and delay in filing an appeal ought not to be excused unless there are special circumstances.

14. Analyzing the facts of the instant case in the backdrop of aforesaid legal position, it is absolutely clear that the petitioner has approached this Court at a highly belated stage after about 6 years. The petitioners after waking up from deep slumber, approached this Court without any iota of explanation for the delay as per his choice, vagary and crotchet. Thus, it can by no means can be believed that the petitioners have approached this Court within a reasonable time.

15. In view of afore-said discussion, both the criminal revision petitions are dismissed and the judgment dated 15.11.2017 passed by Additional Sessions Judge, Hissar is upheld. Learned trial Court is directed to proceed further in accordance with the law.

17th AUGUST, 2023

sham

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No