

CRR-2780-2018 (O&M)

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(244) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2780-2018 (O&M)
Date of Decision: 27.04.2023

GURMAIL SINGH

... Petitioner

Versus

STATE OF PUNJAB & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Tarun Sharma, Advocate
for the petitioner.

Ms. Ramta K. Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 20.01.2018 passed by the Additional Sessions Judge, Fatehgarh Sahib whereby the appeal filed against the judgment of acquittal dated 13.02.2014 passed by the Judicial Magistrate, 1st Class, Fatehgarh Sahib, has been upheld.

2. Briefly, the facts of prosecution case are that on 23.08.2007 an application was moved by the complainant/petitioner-Gurmail Singh (hereinafter known as the complainant) to the SSP Fatehgarh Sahib for registration of a case against the accused persons. The complainant stated that the accused Lal Dass and Mewa Dass had entered into an agreement to sell through one property dealer Dhanwant Singh s/o Vijay Singh resident of village Bakarpur District Mohali. They had received an amount of Rs.6 lac as earnest money in the Tehsil complex Fatehgarh Sahib. All the conditions were incorporated in the agreement to sell. After inquiry the complainant had

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come to know that the property which was sold was not the personal property of any person but under the ownership of Thakur Dwara and which could not be sold to anyone nor it could be leased out for a period of 99 days. However, the accused and his son in collusion with the property dealer had entered into the agreement and had received the earnest money. As per the agreement the date of execution was 23.06.2006 and he being the purchaser had kept on waiting on 23.06.2006 in the Tehsil Complex Fatehgarh Sahib but both the accused did not turn up. On 24-25 June, 2006 the Tehsil was closed due to holidays. On 26.06.2006, he again had kept on waiting but the accused did not turn up. When he (complainant) had called the accused, he was called to their (accused's) house for returning the amount but when the complainant reached the home the accused were not there. On 29.08.2006 the complainant had told the whole story to Harinder Singh Harji who was the Ex-Sarpanch of the village. On 14.10.2006 they were again called and a compromise was entered through the Panchayat that the accused would prepare a pro-note and Rs.6 lac was to be paid as per the compromise through two half yearly installments. The accused had assured to pay back the amount. As per this compromise on 30.10.2006 Jathedar Harinder Singh Harji had paid the amount of Rs.30,000/- to the complainant and they were again called on 31.05.2007 for returning the amount but because of some domestic problem he (complainant) could not go on 14.06.2007 to village Reona Niwan. On this accused Lal Dass sent back the complainant on the pretext that his son had gone out and they would again contact him on 18.06.2007. He (complainant) had adhered to the compromise of the Panchayat but on

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18.06.2007 the accused had flatly refused to pay back the amount. The original agreement to sell was lying in the custody of Jathedar Harinder Singh Harji. Thereafter, he (complainant) had decided to move a complaint. When he (complainant) reached Police Station Fatehgarh Sahib the officials told him that he should first move the complaint at Police Station Mulepur. After that he (complainant) contacted Sh. Suresh Kumar at Police Station Mulepur who forwarded the complaint to ASI Harjit Singh and told him (complainant) to come back on the next day at 10 am. On the next day the son of the accused Mewa Dass had appeared at the police station. He was in a drunken condition and had refused to pay back the amount and also backed out from the agreement to sell. Hence he (complainant) prayed for return of the amount which he had paid under the agreement to sell.

The application was forwarded for investigation to the Economic Offence Wing, Fatehgarh Sahib. From the investigation it was revealed that the accused had known that the land was of Thakur Dwara and it could not be sold nor it could be registered but knowingly the accused had entered into the agreement to sell in connivance with each other and had received an amount of Rs.6 lacs from the complainant. Hence, he wanted legal action against the accused. Thereafter, the FIR came to be registered and investigation was carried out.

3. On finding a *prima facie* case, the accused were charge sheeted under Sections 420,120-B, 201 of IPC. On recording of the plea, the accused did not plead guilty and claimed trial.

4. In support of its case, the prosecution examined the following witnesses:-

Name of witness	Serial number of witness
Gurmail Singh (complainant)	PW1
Harminder Singh @ Hari	PW2
Bharpoor Singh	PW3
Narinder Singh Sandhu Patwari	PW4
Mani Singh (attesting witness)	PW5
Gurinder Kaur from SDM Office, FGS	PW6
Daljit Singh Rana, Sp. City	PW-7
SI Harnek Singh IO	PW8

On the basis of the testimonies of the above named witnesses, the prosecution proved on record the following documents:-

Description of Document	Serial No. of Exhibit
Application of Gurmail Singh moved before SSP Fatehgarh Sahib	Ex.PW1/A
Agreement to sell	Ex.PW1/B
Affidavit	Ex.PW1/C
Jamabandi	Ex.PW3/A
Investigation report	Ex.PW7/A
Cash Receipt of RPO Chandigarh	Ex.PW4/A
Record regarding issuance of passport	Ex.PW4/B
FIR	Ex.PW8/E
Arrest memo and personal search memo	Ex.PW8/A to Ex.PW8/D

Thereafter, the APP for the State closed the prosecution evidence vide separate statement dated 20.11.2013.

5. The statements of the accused were recorded under Section 313 Cr.P.C. wherein they denied all the allegations levelled against them and also

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pleaded false implication. They stated they had never entered into any agreement to sell and the said agreement was a forged one. No defence evidence was led by the accused despite opportunity.

6. Based on the evidence led, the accused were acquitted by the Court of the Judicial Magistrate, 1st Class, Fatehgarh Sahib vide judgment dated 13.02.2014.

7. The State of Punjab filed an appeal bearing Nos.CRL. Appeal No.58 of 05.05.2014/19.08.2014. The complainant-Gurmail Singh also filed an appeal bearing No.CRL. Appeal No.38 of 2014. During the pendency of the appeal, Lal Dass (accused No.1) passed away because of which proceedings abated qua him. However, the Court of Additional Sessions Judge, Fatehgarh Sahib vide judgment dated 20.01.2018 dismissed both the appeals of the State and the complainant.

8. The aforementioned judgments are under challenge in the present case.

9. The learned counsel for the petitioner contends that the offence against respondent No.2-Mewa Dass @ Gorakh Dass son of Lal Dass and his deceased father Lal Dass stood established beyond any reasonable doubt. Merely because a suit for specific performance had not been filed would not be a ground to acquit the accused. In fact, a suit for recovery had been filed by the complainant and the said suit was decreed vide judgment dated 15.02.2016 and the petitioner/complainant was held to be entitled to the recovery of Rs.6 lakhs along with interest. Therefore, in view of the findings

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of the Civil Court, the accused/respondent No.2 ought to have been held guilty.

10. The learned State counsel has supported the case of the petitioner/complainant and contends that the offence was well-established and therefore, respondent No.2 ought to be convicted for having committed the offence in question.

11. I have heard the learned counsel for the parties.

12. It is the case of the complainant/petitioner that he had been cheated by Lal Dass (deceased) and respondent No.2-Mewa Dass on the basis of an agreement to sell dated 25.05.2006 for the sale of land measuring 34 kanals 15 marlas. In fact, the accused could not have sold the land in question as it belonged to a Trust. It may be pointed out that as per record, the property was in the ownership of Thakur Dwara of which Lal Dass (since deceased) accused was the Mahant and shown to be in possession of the property. On the date when the agreement to sell was entered into Lal Dass, Mehant was having the capacity to enter into an agreement to sell. Therefore, the requisite *mens rea* which is required to be seen at the time of the execution of the agreement to sell is missing in the instant case. Thus, it cannot be establish beyond doubt that the accused had fraudulent or dishonest intention at the very inception.

Further, a perusal of the cross-examination of the complainant would reveal that he was aware even at the time of the execution of the agreement to sell that the property in question belong to the Thakur Dwara. It is the case of the complainant that he had been cheated because the accused

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Lal Dass being a Mahant could not have transferred the title of the property. If that be so, then the complainant was well-aware of the fact that the property belong to the Thakur Dwara and therefore, he should not have entered into agreement to sell in the first place.

Even otherwise, the complainant does not appear to be a trustworthy witness. As per his case, the agreement was entered into in the presence of witnesses Bharpur Singh and Mani Singh and the agreement along with an affidavit was thereafter handed over to Jathedar Harjinder Singh Harji being Sarpanch of the Village. Subsequently, the agreement was handed over to Lal Dass accused (since deceased). However, in cross-examination the complainant stated that the original agreement was handed over to Harjinder Singh Harji in whose presence the compromise was effected. PW5-Mani Singh has stated that the agreement to sell was a hand written document whereas it was a typed document.

Undoubtedly, Lal Dass had died during the pendency of the appeal. As far as respondent No.2/accused Mewa Dass is concerned, there is no evidence available against him that he had induced the complainant to part with the consideration of Rs.6 lakhs. In fact, the case of the complainant itself is that respondent No.2-Mewa Dass was a signatory to the agreement. Merely being a signatory to the agreement to sell would not establish that Mewa Dass was an accomplice of his deceased father Lal Dass in the alleged fraud by him (Lal Dass).

There are also multiple discrepancies regarding who was in possession of the agreement to sell. The complainant on the one hand states that the original agreement to sell was destroyed by the accused whereas on the other hand, it is case his that the agreement along with an affidavit was handed over to Jathedar Harjinder Singh Harji, Sarpanch of the village. Interestingly, PW2-Harjinder Singh Harji has not corroborated the version of the complainant on material particulars. He has stated that no compromise had been entered into between the parties nor was any pro-note written or any agreement to sell destroyed.

13. Keeping in view the aforementioned discussion, I find no reason to interfere with the well-reasoned judgments of the Trial Court and the Lower Appellate Court. Hence this revision petition is dismissed.

(JASJIT SINGH BEDI)
JUDGE

27.04.2023

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No