

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-707-2023 (O&M)

Date of decision:27.09.2024.

Satish Kumar

....Appellant.

Versus

Harbans Singh and another

...Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Argued by: Mr. H.S. Grewal, Advocate and

Ms. Raina S. Thakur, Advocate for the appellant.

Sukhvinder Kaur, J.

1. Appellant/ complainant-Satish Kumar has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 04.01.2023, passed by learned judicial Magistrate Ist Class, Kalka, vide which respondents have been acquitted of offences punishable under Sections 420, 467, 468, 471 and 120-B IPC.

2. Brief facts are that Complaint No.3321 of 2014 was filed by the complainant in the Court of learned Judicial Magistrate Ist Class, Kalka, alleging therein that accused No.1 Harbans Singh entered into an agreement to sell dated 30.05.2014 with the complainant regarding plot measuring 4 biswa situated at Islamnagar, Hadbast No.192, Tehsil Kalka, District Panchkula, for sale consideration of Rs.13,25,000/- and the last date for execution and registration of sale deed was fixed on or before 30.06.2014. This agreement was executed in the presence of accused No.2-Gamdoor, who appended his signatures as a witness on the said agreement. It was alleged that complainant paid a sum of Rs.11,25,000/- to the accused upto 30.05.2014 as part payment of said plot and only Rs.2,00,000/- were to be

paid by the complainant to the accused at the time of execution and registration of the sale deed and the same was duly acknowledged by accused in the agreement to sell. On the date fixed, complainant made a phone call to the accused for execution and registration of the sale deed but accused intentionally did not attend to complainant's phone call and failed to come forward to execute and register the sale deed. Then the complainant approached HUDA Office and checked the papers of the plot in question and it came to his knowledge that accused was not owner of the said plot and documents supplied by the accused were forged and fabricated. The complainant submitted a complaint at Police Station Pinjore regarding fraud committed by the accused upon the complainant, but no action was taken against the accused. It was alleged that accused have cheated the complainant and played fraud upon him by wrongly alleging to be owner of the plot in question. Complainant also filed a complaint before Police Commissioner, Ambala against the accused, but no action was taken by the police against the accused. Hence, present complaint was filed by complainant in the Court of learned Judicial Magistrate, Ist Class, Kalka.

3. On concluding preliminary evidence, accused were summoned to face trial under Sections 420, 471 and 120-B IPC vide order dated 23.08.2017 of learned Judicial Magistrate Ist Class, Kalka.

4. After appearance of the accused in the Court, complainant led pre-charge evidence. In pre-charge evidence, complainant examined himself as CW1 and deposed in detail on similar lines as per allegations made in the complaint.

CW2-Jagmohan Diwan, duly supported the case of the complainant regarding entering into an agreement for sale of plot measuring

200 square yards, situated near D.P.S. School, on 30.05.2014 by the accused person. He also deposed that complainant made payment of Rs.5,25,000/- to accused Harbans Singh and he had signed the said agreement to sell as a witness and the sale deed was to be executed on 30.06.2014, he identified his signatures at Point Ex.CW1/A1 upon agreement to sell Ex.C1. He further deposed that sale deed was to be executed on 30.06.2014 and on 30.06.2014, he along with complainant went to Sub Registrar's Office at Kalka, but accused did not turn up. Then he obtained *Fard*/ revenue record of the plot and came to know the land underneath the plot, which is subject matter of agreement to sell, had been acquired by the Government. Accused Harbans Singh asked him to get the matter compromised but the matter could not be compromised.

CW3-Som Nath Patwari, tendered into evidence certified copies of jamabandi for the year 2009-10 as Ex.C3/1, copy of mutation dated 24.04.2012 as Ex.C3/2 and copy of jamabandi for the year 2014-15 as Ex.C3/3. He stated that there was no entry in the name of accused Harbans Singh, as per jamabandi for the year 2009-2010 Ex.C3/1 and as per mutation No.2653 also there was no entry existing in the name of accused Harbans Singh. He further testified that as per revenue record land measuring 1 bigha and 14 biswas in Khewat No.218 Khasra No.15 had been acquired by the Government. Besides that, complainant also tendered into pre-charge evidence documents Ex.C1 to Ex.C10 and Mark A copy of jamabandi for the year 2009-10.

5. After appreciating the pre-charge evidence both accused were charged under Sections 420, 467, 468, 471 and 120-B IPC by the trial Court, to which they pleaded not guilty and claimed trial.

6. In after charge evidence, learned counsel for the complainant suffered a statement that pre-charge evidence be read in the after charge evidence and he was not to examine any other witness.

7. Learned counsel for the accused expressed that he wanted to further cross-examine CW1-Satish Kumar (complainant) and CW2-Jagmohan Diwan, who were called for further cross-examination in the after charge evidence and thereafter evidence was closed.

8. Statements of accused under Section 313 Cr.P.C. were recorded while putting incriminating evidence against them, to which they pleaded innocence and false implication. However, the accused did not examine any witness in defence evidence.

9. After considering the evidence on record, learned trial Court acquitted the accused of the offences for which they had been charge-sheeted, vide judgment dated 04.01.2023.

10. Aggrieved by the said decision, complainant Satish Kumar, seeks leave to appeal against acquittal of accused/ respondents No.1 and 2.

11. Learned counsel for the appellant/ complainant vehemently contended that complainant has proved on record that plot, which is subject matter of agreement to sell dated 30.05.2014, had already been acquired by the Government and was not under ownership of accused Harbans Singh, but the accused accepted huge amount as part sale consideration for the same. Thus, they deprived the complainant of a large sum of money by offering to sell a property which did not belong to them. It is a clear case of cheating for which sufficient evidence was on record to convict the accused but learned trial Court has not appreciated the evidence on record in its correct perspective. He urged that just because a case under Section 138 of

Negotiable Instruments Act, 1881 (for short, 'the Act'), had been filed, the same would not vitiate the trial and could not be a ground for acquittal and prayed that this appeal be accepted, judgment dated 04.01.2023 be set aside and accused be convicted for the offences charged and be punished accordingly.

12. After having heard learned counsel for the appellant/complainant at length and having perused the impugned judgment as well as other relevant record, we are of the considered opinion that prosecution in the instant matter was unable to prove its case against the accused beyond reasonable doubt.

13. In para No.17 of the impugned judgment, it has been categorically observed by learned trial Court that “on perusal of agreement Ex.C1, it transpired that this agreement was allegedly written/ executed on 07.05.2013, as mentioned on page 3 of this agreement. However, from bare perusal of reverse side of stamp papers on which this agreement is written, it is clear that both the stamp papers of Rs.100/- each were purchased vide Entry No.6759 and 6760 on 26.05.2014, as per Point-A and Point-B. However, the alleged agreement Ex.C1 was notarized/ attested by Notary Panchkula, on 30.05.2014, but in order to clarify typographical error in the date of execution of the alleged agreement to sell, if any, complainant has not examined the Notary to prove that agreement to sell Ex.C1 was in fact executed on 30.05.2014 and not on 07.05.2014. So first of all, genuineness of agreement to sell Ex.C1 is itself doubtful as an agreement cannot be executed much prior to purchase of stamp paper, on which this agreement is executed.” Thus when the date of purchase of stamp papers is not in consonance with the date of execution of agreement to sell as on the 3rd page

of agreement Ex.C1, this date has been mentioned as 07.05.2014 which is prior to purchase of stamp papers, it creates a strong doubt regarding genuineness of agreement to sell Ex.C1. It is also in contradiction with complaint and deposition of prosecution witness who allege that date of execution of agreement Ex.C1 as 30.05.2014, which has not been clarified.

14. The complainant has placed on record copy of judgment dated 23.08.2016 passed by Court of learned Judicial Magistrate Ist Class, Chandigarh, in complaint filed under Section 138 of the Act titled as 'Satish Kumar Vs. Harbans Singh'. This complaint was filed by the present complainant against accused No.1 on account of dishonour of cheque bearing No.98753 dated 10.06.2014 amounting to Rs.25,00,000/-, issued by accused No.1 in favour of complainant. As per this complaint, accused No.1 had issued cheque of Rs.25,00,000/- in favour of complainant on 10.06.2014, whereas the agreement to sell in dispute was executed on 30.05.2014 i.e. before issuance of the said cheque of Rs.25,00,000/-. It is quite improbable that any prudent person would pay an amount of Rs.11,25,000/- as earnest money to the person, who was liable to pay an amount of Rs.25,00,000/- to him. So it remained unexplained that when as per the aforesaid complaint under Section 138 of the Act, accused No.1 was liable to pay an amount of Rs.25,00,000/- to the complainant and had issued a cheque of Rs.25,00,000/- to discharge his liabilities, which was dishonoured, then why complainant opted to pay Rs.11,25,000/- to accused No.1 as earnest money, when he could have adjusted the said amount of earnest money against the said loan amount, which also creates doubt about the alleged transaction.

15. Furthermore, as per case of the complainant, he had paid the

amount of Rs.11,25,000/- up to 30.05.2014 and out of the said amount, he had paid Rs.5,00,000/- through cheque and Rs.6,25,000/- in cash. No evidence has been led by the complainant in order to prove the cash payment of Rs.6,25,000/- and it is pertinent to note that usually the consideration amount for sale and purchase even if not through a bank transaction would always be against some receipt. Furthermore, there is no evidence on record to even prove payment of Rs.5,00,000/- through cheque to accused No.1. No bank account statement or any other document to prove the said payment of Rs.5,00,000/- through cheque has been produced. Hence, sufficient evidence is not available on record to prove the payment of Rs.11,25,000/- to accused No.1 as earnest money by the complainant.

16. As per complainant's version, when accused No.1 did not come present for execution of the sale deed, he approached HUDA office to verify about the ownership of land in question. The land as mentioned in the agreement to sell is situated at village Islam Nagar comprising Khewat No.218, Khasra No.15 and as such the said land is either agricultural land or Abadi land, but the same is not a HUDA plot. So when the land subject matter of agreement to sell was not developed or allotted by HUDA then it does not make any sense that in order to verify about the ownership, complainant would straightaway approach the HUDA office.

17. It has also been alleged by the complainant that forged and fabricated documents were used by accused No.1 for entering into alleged agreement to sell, but neither any detail of such documents was given in the complaint nor any such detail was disclosed by the complainant while stepping into the witness box. It has not even been disclosed as to which false and fabricated documents were relied upon by accused No.1 to project

his ownership over the land subject matter of agreement to sell. There is nothing on record that when and how any such document was tampered with and who had tampered it. In fact, there is no allegation against the accused regarding tampering of documents. No such evidence has been led to prove that any revenue record or ownership documents, of the alleged plot were forged or fabricated. As such, there is not even an iota of evidence on record to prove the offence of forgery as alleged.

18. The alleged agreement to sell Ex.C1 is allegedly signed by two witnesses i.e. Gamdoor (accused No.2) and Jagmohan Diwan (CW-2), and one of them has been arrayed as accused and other has been produced as a material witness of the complainant.

19. There is material contradiction in the deposition of CW1-complainant and CW2-Jagmohan Diwan. CW-1 has stated in his cross-examination that when accused No.1 did not turn up before the Sub-Registrar Office for execution of the sale deed, then after inquiring from the HUDA office, he came to know that accused No.1 was not the owner of the land, whereas CW2 Jagmohan Diwan has stated in his testimony that he obtained the *Fard*/ revenue record of the plot and came to know that the land of plot, which is subject matter of agreement to sell, had already been acquired by the Government. He also stated that he talked with the complainant and accused No.1 for settlement of the matter but CW1 complainant is silent on this aspect.

20. From the evidence on record, it transpires that the parties were already in litigation with each other even before filing of the present complaint. The present complaint was filed on 03.12.2014 but from Ex.C3 to Ex.C7, it is revealed that the complainant had already filed one more

complaint against accused No.1 on 05.11.2014 under Section 138 of the Act. There is scant evidence to prove that the accused hatched any criminal conspiracy with each other to defraud the complainant and committed any cheating or forgery in order to grab an amount of Rs.13,25,000/- by way of agreement to sell dated 30.05.2014.

21. It is well settled that judgment of acquittal should not be interfered with lightly. In the case of Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319, the Hon'ble Supreme Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 04.01.2023 which calls for interference.

22. No other argument was addressed.

23. In view of the above, no ground is made out for grant of leave to appeal against acquittal of respondent No.1 and 2. Same being devoid of any merit is accordingly declined. Appeal is dismissed.

24. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

27.09.2024.

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