

241 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) CRR-2650-2019 (O&M)
Date of decision: 19.03.2024

Amit ...Petitioner

Versus

Samey Ram and another ...Respondents

2) CRR-1743-2019 (O&M)

AmitPetitioner

Versus

Dhani Ram and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harsh Jain, Advocate
for the petitioner(s)

HARPREET SINGH BRAR, J.

CRM-22238-2019 in CRR-1743-2019

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 18 days in filing the instant revision petition.

For the reasons mentioned in the application, the same is allowed and the delay of 18 days in filing the revision petition, is condoned.

CRR-2650-2019 and CRR-1743-2019

1. This common order shall dispose of both the above-mentioned cases as they arise from identical factual matrix. However, for the sake of brevity, the facts are taken from CRR-2650-2019.

2. The present revision is preferred against judgment dated 12.02.2019 passed by learned Sessions Judge, Panipat vide which the judgment of conviction dated 22.04.2015 passed by learned Sub Divisional Judicial Magistrate, Samalkha in FIR, bearing no. 451 dated 21.12.2006 under Sections 420, 34 of the IPC, was set aside and the respondents-accused were acquitted of charges framed against them.

3. The facts, in brief, are that respondents-accused entered into an agreement with the petitioner-complainant to sell 9 Kanal and 14 Marlas of their land for Rs. 1,57,62,000/- vide agreement to sell dated 08.02.2006 and received Rs. 10 lacs as earnest money from the latter. The remaining amount was agreed to be paid at the time of execution of the sale deed which was to take place by 07.02.2007. However, the petitioner-complainant discovered that the respondents-accused had already sold the front portion of the said land to someone else and litigation with regard to the same was also pending. As a result, the petitioner-complainant alleged that the respondents-accused defrauded him.

4. On finding a prima facie case for the commission of offence punishable under Section 420 read with Section 34 of the IPC, the respondents-accused were charge sheeted accordingly vide order dated 21.09.2007. They pleaded not guilty to the charge and claimed trial. The prosecution examined 5 witnesses to in order to substantiate its case. Thereafter, the evidence of the prosecution was closed by order of the learned trial Court due to its failure to conclude the same despite availing last opportunity. All the incriminating material was put to the accused and their respective statements under Section 313 Cr.P.C. were recorded wherein they pleaded innocence and examined 5

witnesses in their defence. On assessing all the material available on record, the learned trial Court convicted the respondents-accused vide judgment dated 22.04.2015 and sentenced them to undergo rigorous imprisonment of 3 years. Aggrieved by the same, the respondents preferred an appeal before the learned lower Appellate Court which was allowed vide judgment dated 12.02.2019 and the respondents-accused were acquitted of the charges framed against them.

5. Learned counsel for the petitioner assails the impugned judgment on the ground that the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record. Further, the learned Sessions Court failed to appreciate the fact that the land which was allegedly sold to the petitioner had already been sold to one Angoori Devi. Accordingly, the recital contained in the document does not hold good on 08.02.2006, when the agreement was deliberately executed by the accused in favour of the petitioner. As per the requirement of Section 420 of the IPC, the petitioner acted upon the dishonest inducement, on the part of the accused, to purchase the land which the accused knew was not available on the date of execution i.e. 08.02.2006. This clearly depicts that the accused deliberately entered into an agreement for a piece of land which was not available with them at the time and therefore, it caused wrongful loss to the complainant and a wrongful gain accrued to the accused, since the petitioner would never have entered into an agreement if the front portion of the said land was not agreed to be sold to him or he knew that the accused were not the owners.

6. Learned counsel further contends that the recovery suit (Ex. PA to PD) which was decided in favour of the petitioner and against the accused, vide which the earnest money paid by the petitioner to the accused for purchasing

the land, was ordered to be refunded, shows the truthfulness of the prosecution version and evidently imputes guilt to the accused.

7. Having heard the learned counsel for the petitioners and after perusing the record with his able assistance, it appears that there is nothing in the judgement of the lower Appellate court to indicate perversity or misreading of evidence in the judgement of acquittal. It is true that the respondents had already sold some share of the land, which was subject matter of agreement, to Angoori Devi, but at the same time, it is also revealed that mutation, bearing no. 1832 (Mark-DA/2) had been sanctioned with regard to the sale made in her favour, on 07.05.1998 and resultantly, the name Angoori Devi was recorded as co-sharer in the jamabandi entries for the year 2001–2002 (Ex. DA/8). As per the petitioner's own case, he checked the entire revenue record. Thus, it can be reasonably presumed that he must have had knowledge of the fact that mutation in the name of Angoori Devi had been sanctioned and her name was incorporated in the revenue record as a co-sharer, especially when such a huge amount of money was to be paid by the petitioner. Moreover, it is not the case of the prosecution that the accused tried to conceal the revenue records or did not allow the petitioner to examine the same or practiced any kind of deception in this regard. Thus, the prosecution failed to prove that there was any dishonest concealment of any fact within the meaning of "deception" on the part of the accused while entering into the agreement.

8. Further, it is established that the petitioner had parted with an amount of Rs.10 lakhs and gave the same to the accused as earnest money, but nowhere has it been proven that the accused were not willing to honour the terms of the agreement or that no efforts were being made by the accused to

transfer the property owned by them to the petitioner. Exhibit DA/5 shows that the accused were present in the office of the Sub Registrar, Samalkha on 07.02.2007 for executing the sale deed in favour of the petitioner yet, it was the petitioner who did not show up.

9. This Court is of the considered opinion that the present case is an instance of a civil dispute being given the cloak of a criminal offence. The sole test to ascertain whether the initiation of criminal proceedings in a cheating case is merited is to assess whether a culpable intention can be attributed to the accused since the very beginning. Unless and until the dishonest intention right at the inception for the performance or the entrustment in terms of any transaction of civil nature is present, the criminal proceedings are totally unwarranted and the remedy lies in civil law. A two Judge bench of the Hon'ble Supreme Court in **Vesa Holdings P. Ltd. v. State of Kerala (2015) 8 SCC 293**, speaking through Justice C. Nagappa, observed as follows:

“ 9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 I.P.C. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.”

10. In view of the facts and circumstances of the case, this Court finds no perversity or illegality in findings recorded by the learned Sessions Judge,

Panipat in the impugned judgment dated 12.02.2019 which warrants interference. Hence, the instant revision petition stands dismissed.

11. The connected revision petition is also disposed of in the aforementioned terms. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

19.03.2024
Neha

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