230 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1205-2023
Date of Decision: 28.08.2024

Tehal Singh …Appellant

vs.

Harjit Singh and Anr. …Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. T.P.S Tung, Advocate
for the applicant-appellant.

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N.S.Shekhawat J.

1. The applicant/appellant has filed the present application under Section 378 (4) Cr.P.C with a prayer to grant leave to appeal against the judgment of acquittal dated 05.06.2023, passed by the Court of Judicial Magistrate Ist Class, Batala, whereby the respondents were ordered to be acquitted of the charge under Section 420 read with Section 34 of IPC.

2. The complaint in the present case was filed by the applicant/complainant by alleging that the respondent no. 1 was the owner in possession over the land bearing Khasra No. 41//16 (8-0) situated at village Ghanie Ke Banger, Tehsil Batala, District Gurdaspur. Respondent No. 1 agreed to sell the land in dispute in favour of the applicant and his brother Lakhwinder Singh vide agreement to sell dated 20.11.2004 and 29.04.2005 for Rs. 5,30,000/- and received Rs. 3,62,400/- i.e. Rs. 3,55,000/- on 20.11.2004 and Rs. 7400/- on 29.04.2005 as advance and earnest money and the date of execution of the sale deed was fixed as 15.06.2006. On stipulated date 15.06.2006, the respondent no. 1 failed to execute the requisite sale deed as per the agreement to

sell and the applicant and his brother filed a Civil Suit for possession by way of Specific Performance against the respondent no. 1 on the basis of the above said agreement to sell and the said suit was decreed exparte on 12.05.2011 passed by the Court of Sh. Baljinder Singh, PCS, the then Ld. Additional Civil Judge, Sr. Division, Batala. Applicant and his brother filed the execution application on the basis of judgment and decree dated 12.05.2011 and has also deposited the balance sale price of Rs. 1,67,600/- on 04.06.2011 for the payment to the respondent No. 1 in the State Bank of India but during the execution proceedings the respondent No. 1 appeared in the execution proceedings and moved an application for setting aside the judgment and decree dated 12.05.2011 on 26.11.2013 and the said application was dismissed by the Court of Sh. Raj Pal, PCS, the then Ld. Additional Civil Judge, Sr. Division, Batala on 02.12.2015 and a sale deed as per the judgment and decree dated 12.05.2011 has been executed in favour of the applicant and his brother Lakhwinder Singh on 17.02.2016 and Mutation No. 4731 has been sanctioned in the name of complainant and his brother qua the above said *Khasra* Number 41//16 (8-0). The possession of the land in dispute has been given by the respondent no. 1 to the applicant and his brother Lakhwinder Singh at the time of execution of the agreement to sell and since then they are also in possession of the above said land and at present, they have become absolute owners in possession over the land in dispute. Applicant has learnt that respondent No. 1 has got received a loan of Rs. 2,50,000/- against the present land i.e. 41//16 along with some other land from the State Bank of Patiala Branch, Batala and Rapat No. 357 dated 04.04.2003 is in existence in the revenue record in the *jamabandi* for the year 1999-2000 but at the time of execution of the sale deed dated 17.02.2016, the respondent No. 1 in connivance with respondent No. 2 removed the above said rapat on the *jamabandi* for the year 2014-15. Applicant has also learnt that respondent No. 1 in connivance with respondent no. 2 received a loan of Rs. 20 Lac from Punjab National Bank, Talwandi Bharath by mortgaging the land in dispute along with some other land. Respondent no. 1 had very much knowledge regarding the judgment and decreed dated 12.05.2011. At the time of taking the above said loan, Patwari Halqa Kewal Singh accused had also knowledge regarding the previous loan and had knowledge that the judgment and decree dated 12.05.2011 has been passed qua the above said land. Respondent No. 2 in connivance with Respondent No. 1 has prepared the said false, forged and fictitious revenue record and had not narrated the true facts about the land measuring 41//16 (8-0) and not mentioned the factum of previous loan in the *jamabandi* for the year 2014-15. Further, respondent No. 2 has not entered the rapat no. 390 dated 01.08.2016 in the *jamabandi* for the year 2014-15 regarding the attachment of land by the Hon'ble Court of Ms. Nidhi Saini, the then Ld. Civil Judge Jr. Division, Batala in the execution proceedings titled as "State Bank of Patiala Vs. Harjit Singh and Ors". Thus, the respondent caused wrongful loss to the complainant and his brother as well as with the bank authorities and themselves got wrongful gain. After having knowledge, the applicant reported the matter to the local police but all in vain.

3. After the preliminary evidence was led, the respondents were summoned to face trial under Section 420 of IPC. During the course of pre-charge evidence, the applicant examined CW-1 Navdeep Singh, Manager, Punjab National Bank, Branch Talwandi Bharath, CW-2 Bhagwan Singh, Record Keeper, Sadar Kanungo, CW-3 Guljinder Singh, Clerk, Judicial Record

Room, Batala and CW-4 Tehal Singh, applicant/complainant.

4. After the pre-charge evidence, the Trial Court found that there was a prima facie case under Section 420/34 of IPC against the respondents and charge was ordered to be framed against them. However, respondents pleaded not guilty and claimed trial.

5. In the post charge-evidence, the respondents again cross examined the four prosecution witnesses. After the closure of the prosecution evidence, the statements of the respondents were recorded by the Court under Section 313 Cr. P.C and they pleaded their innocence and claimed false implication.

6. Learned counsel for the appellant vehemently argued that in the present case, the respondents had executed an agreement to sell and had received the earnest money. Even the sale deed was to be executed or on before 15.06.2006, but the respondents failed to execute the sale deed in favour of the applicant. Consequently, the applicant and his brother filed a suit for possession by way of specific performance at Batala, which was decreed vide the judgment and decree dated 12.05.2011. During the execution application, the applicant deposited the balance sale price and the respondents again tried to delay the execution of the decree. Application for setting aside the judgment and decree dated 12.05.2011 was also filed on 26.11.2013, which was dismissed on 02.12.2015. Ultimately, in compliance of the judgment and decree dated 12.05.2011, the sale deed was executed in favour of the applicant and his brother on 17.02.2016 and mutation was also sanctioned in their favour. Learned counsel further contends that the respondents had already taken a loan of Rs.2,50,000/- on the land in question along with some other land from State Bank of Patiala, Batala and a rapat dated 04.04.2003 was entered into the

revenue record. However, at the time of execution of sale deed on 17.02.2016, the respondents No.1 and 2 got removed the said rapat from the *jamabandi* for the year 2014-2015. Apart from that, respondents No.1 and 2 had taken a loan of Rs.20,00,000/- from the bank before the execution of the sale deed in favour of the applicant and his brother. Respondent No.1 had the knowledge regarding the judgment and decree dated 12.05.2011 and the loan was obtained by fabricating the revenue record. Thus, the wrongful loss was caused to the applicant and his brother by the respondents. Learned counsel for the appellant further submits that even all the prosecution witnesses had supported its case and the respondents were liable to be convicted by this Court.

7. I have heard learned counsel for the applicant-appellant and perused the record carefully.

8. In the present case, as per the case set up by the complainant, Harjit Singh, respondent No.1 had entered into an agreement to sell dated 20.11.2004 and 29.04.2005 with the applicant and his brother Lakhwinder Singh regarding the property in dispute and the sale deed was to be executed and registered on 15.06.2006. However, respondent No.1 failed to get the sale deed executed in favour of the applicant and his brother. It has been alleged that before execution of the aforesaid agreement to sell, respondent No.1 had obtained a loan of Rs.2,50,000/- from State Bank of Patiala Branch, Batala and rapat No. 357 dated 04.04.2003 was also entered in the revenue record in the *jamabandi*. Still further, at the time of execution of the agreement, this fact was not discussed to the applicant by the respondents. However, it is apparent from the agreement to sell Ex.CX1 dated 29.04.2005 that the factum of loan had been mentioned by respondent No.1 in the said agreement. Moreover, the rapat dated 04.04.2003

was also exhibited as Ex.CW2/A. Even the applicant had admitted in his cross-examination that he had knowledge about this loan before the execution of the agreement to sell. Thus, the Trial Court is justified in holding that the applicant was well aware about the loan transaction at the time of execution of agreement to sell dated 20.11.2004 and it cannot be said that respondent No.1 had induced the applicant to enter into an agreement to sell dated 20.11.2004. Apart from that, it has also been alleged that when respondent No.1 failed to get the sale deed executed in favour of the applicant and his brother, they were constrained to file a suit for possession by way of specific performance against respondent No.1. The said suit was finally decreed vide Ex.CW1/B. Ultimately, the sale deed was executed in favour of the applicant and his brother on 17.12.2016 and they had become the lawful owners of the land in questions. However, from the record it is apparent that the respondent No.1 had taken a loan of Rs.20,00,000/- from Punjab National Bank, Talwandi Bharath on 11.09.2015 i.e prior to the execution of the sale deed dated 17.12.2016. Thus, the said loan was also obtained by the respondents prior to transfer of the ownership in favour of the applicant and his brother.

9. Still further, in the present case, as per the complainant, the loan was wrongly taken by the respondents from the bank and there is no iota of evidence to indicate that the applicant and his brother were cheated by the respondents in any manner. In order to constitute an offence of cheating, the intention to deceive should be in existence at the time, when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise to say that he had committed the cheated. In the present case, there was no inducement on the part of the

respondents to cheat the applicant or other members in his family.

10. Still further, the Hon'ble Supreme Court has held in the matter of ***"Mohammad Ibrahim and Others Vs. State of Bihar and Anr." 2009(4) RCR (Criminal) 369***, which is as follows:-

> *13.Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of 'cheating' as follows:- (i) (deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security).*
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> *14.. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit*

to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating us stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417,418,419 or 420 of the Code".

11. In the present case also, the factum of taking of loan was well within the knowledge of the applicant and his brother and even the second loan was obtained by the applicant from the bank prior to transfer of the property in favour of the applicant. Even, at the time of taking the loans, the applicant was the owner of the property and there was no mis-representation by him. Still further, in the present case, the bank could at the worst alleged that they had been defrauded by the fraudulent act of the vendor. However, the respondents were the owners at the time of taking the loans and the Trial Court rightly held that the ingredients of offence under Section 420 of IPC were completely missing in the peculiar facts and circumstances of the case.

12. In view of the above discussion and the law laid down by the Hon'ble Supreme Court in the matter of ***Mohammad Ibrahim (supra)*** there is no illegality or perversity in the findings recorded by the Trial Court and I find no reasons to set aside the same. The impugned judgment is based on correct appreciation of evidence and is liable to be upheld by this Court.

13. As a consequence, the application for special leave to appeal filed

by the present applicant/complainant is ordered to be dismissed.

(N.S.SHEKHAWAT)
JUDGE

28.08.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No