

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

237

CRM-A-10876-MA of 2018
Date of Decision: 22.03.2024

Vishal Kumar Narang

Versus

Inderjit and others

...Applicant

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. L.M. Gulati, Advocate, for the applicant.

N.S.SHEKHAWAT, J. (Oral)

1. The applicant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant leave to appeal against the judgment dated 08.10.2018 passed by the Judicial Magistrate 1st Class, Amritsar, whereby, the respondents were ordered to be acquitted of the charge under Sections 420/34 IPC in a complaint bearing No. 108 dated 02.01.2013 titled as “**Vishal Kumar Narang Vs. Inderjit and others**”.
2. The complaint in the present case was filed under Sections 420 and 34 IPC by the applicant against respondents No. 1 to 3. The respondents No. 2 and 3 are sons of respondent No. 1 and it was alleged that the respondents/accused owned a property bearing building khanashumari No. 3376/9, measuring 100 sq. yards, situated at Gali Pipian Wali, Katra Karam Singh, Amritsar. Respondent No. 1 represented to the applicant that since he was running short of money on account of the big loan liabilities to the bank as well as to the

private individuals and, as such, he wanted to sell the property stated above and agreed that he would get the property redeemed from the bank and would take no objection certificate and would execute the sale deed in favour of applicant on or before 04.09.2011. He also agreed that he would hand-over the possession to the applicant if the applicant paid a good amount to the respondents. Believing upon the above said assurance made by the respondents no. 1 to 3, who all had come to the applicant for the sale of the property and in fact had been intentions from the day one in their mind and with a conspiracy and cheating in their mind right from the beginning day one, all the respondents allured the applicant and enticed him to handover the amount of Rs. 10,00,000/- to the respondent No. 1 and promised that they would execute the sale deed after getting the property redeemed from Bank of India. It was further stated in the complaint that applicant believed the words of the respondents and could not see their bad intentions and, as a result thereof, the applicant handed over a sum of Rs. 10,00,000/- to the respondents. The applicant insisted upon making the payment of cheque but the respondents insisted that they would receive the amount in cash and they have paid the same in the bank for redeeming the property and a sum of Rs. 10,00,000/- was paid to the respondents, which was duly reflected in the balance sheet of the firm of the applicant. Even, the respondents entered into an agreement to sell on 05.07.2011, which was signed and thumb marked by respondent No. 1 and was signed by the applicant also. In the

presence of Vijay Kumar and Ram Lal, a sum of Rs. 10,00,000/- was paid in cash and the applicant was handed over the possession of the property, which was duly mentioned in the agreement to sell dated 05.07.2011. Even the last date for execution of the registered sale deed was fixed as 04.09.2011 and it was agreed that a sum of Rs. 5,00,000/- shall be paid to respondent No.1 at the time of the execution of the sale deed. Since 04.09.2011 was holiday, the applicant appeared before the Sub-Registrar on 05.09.2011 alongwith the handed over cash amount and the registration charges. However, the respondent No. 1 did not appear for the execution of the sale deed nor get the property redeemed, nor obtained 'NOC' from the bank. Thus, even after receipt of Rs. 10,00,000/- from the applicant and making false assurances, the property was not transferred to the applicant. Thereafter, the applicant got a legal notice dated 06.12.2011 served upon the respondents, but to the utter surprise of the applicant, the respondent No. 1 had denied the existence of the agreement to sell itself and, thus, it was apparent that the respondents had the bad intention to cheat from day one and induced the applicant to part with the valuable security in the shape of the money and a false compromise was made that the respondents would execute a sale deed in favour of the complainant/applicant, after getting the property redeemed from the bank. However, the respondents had hatched a criminal conspiracy and had no intention to transfer the property in favour of the applicant and with a view to cheat the applicant, they

had induced him to deliver a sum of Rs. 10,00,000/- to the respondents.

3. Learned counsel for the applicant submits that in the present case, the ingredients of offence under Section 420 IPC were fulfilled and the trial Court overlooked the evidence led by the applicant in the shape of exhibits Ex.P-1 to Ex.P-26. Even, apart from the sufficient documentary evidence, the witnesses had appeared to support the case of the prosecution and the intention of the respondents was to cheat the present applicant. Further, the trial Court had wrongly observed that it was a case of civil dispute between the parties and had been wrongly projected as a criminal offence and the said findings has resulted into manifest failure of justice.

4. I have heard the learned counsel for the applicant and perused the entire record.

5. While dismissing the complaint, the trial Court observed as under:-

“In the instant allegations of case, as per complainant the Vishal Kumar Narang and his deposition as CW-1, accused no.1 Inderjit had entered into agreement to sell his property vide agreement Ex. P1 and received Rs.10 lac being earnest money from the complainant. It was also agreed inter se them that remaining amount of Rs.5 lac will be paid by the complainant to the accused No.1 at the time of registration of sale deed i.e. on 4.9.2011. But the accused has never turned up for the registration of sale

deed in favour of the complainant despite service of legal notice Ex.C4. However, in order substantiate the fact that the accused No.1 has entered into an agreement to sell dated 5.7.2011 Ex. P1 with him and he has parted with money to the tune of Rs.10 lac, the complainant has placed on record certified copy of judgment and decree dated 21.2.2017 Ex. C27 and Ex.C28 passed by Sh. Satish Kumar, learned Civil Judge (Jr. Division), Amritsar, whereby the suit of the complainant/ plaintiff for Possession and Specific Performance of agreement to sell dated 5.7.2011 was decreed. Accordingly, the crucial aspect to be noted in the law relating to cheating is the intention of the person accused of cheating. Most often, especially in issues relating commercial transactions, the disputes are difficult to separate in terms of their civil and criminal liabilities. As stated earlier, the crucial difference between a criminal cause of action as against a purely civil transaction is the intention of the person at the time when the cause of action arose or the alleged offence commenced. The important aspect is to examine whether at that stage, the accused deliberately or intentionally induce the other person to part with property or to do an act or desist from doing an act, or whether it was only subsequently that the dispute arose. No clear cut rule can be evolved in this regard, and the fact and circumstances of each case will determine the way in which a particular issue can be address by the Courts.

In the present case notice dated 6.12.2011 Ex.C4, which was served upon the accused by the complainant, reveals that the accused have no such criminal intention

to cheat the complainant from very inception of the transaction, as alleged by the complainant, which is key ingredient to attract the provision of section 420 of IPC. If the accused was (were) having any such kind of intention at the relevant point of time i.e. from the very inception, the contents of notice dated 6.12.2011 Ex.C4, would have certainly spoken about the same. But no iota of fact regarding the offence of cheating allegedly committed by the accused with requisite intention has been pleaded by the complainant in the said notice Ex.C4 and the complainant has also failed to prove the said fact during his entire evidence”.

6. In the present case, the trial Court had correctly held that from the allegations levelled by the applicant, it was established that the dispute between the parties was of civil nature; however, by twisting the facts of the present case, the applicant had wrongly filed the criminal complaint by projecting the case to be of criminal nature. Even, there was no evidence on record to hold that the respondents had deliberate intention to cause wrongful gain or wrongful loss to either side and such intention existed from the very inception. It is apparent from the nature of transaction between the parties that it was a case of simple breach of terms of the contract by the respondents and the applicant had the liberty to move to the Civil Court for an appropriate relief. However, instead of filing a civil suit, the applicant chose to file a criminal complaint by concocting a spurious story and the complaint itself was not maintainable. Apart from that, the ingredients of the offence under Section 420 IPC were not fulfilled.

7. While discussing the scope of interference by the Appellate Court, while dealing with the judgment of acquittal, the Hon'ble Supreme Court held in the matter of **Bhaskar Rao and others Vs. State of Maharashtra AIR 2018 SC 2222:2018 (5) RCR (Criminal 288)** as follows:-

*“14. As the trial Court and High Court, having appreciated the evidence on record has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this Court as expressed in **Tota Singh and Anr. Vs. State of Punjab, 1987 (2) RCR (Criminal) 35:1987 CriLJ 974.***

The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW-2 and PW-6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in

dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such, which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse: Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62: 1996 CrilJ 2867**, this Court observed as under:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court

answers the above question is the negative the order of acquittal is not to be disturbed."

8. Keeping in view the above discussion, this Court is of considered opinion that the applicant had miserably failed to prove the case beyond reasonable doubt and the learned trial Court had correctly acquitted the respondents. As a consequence, the impugned judgment dated 08.10.2018 passed by the Judicial Magistrate 1st Class, Amritsar is upheld and affirmed.
9. Consequently, the application seeking leave to appeal sans merit and is accordingly ordered to be dismissed.
10. All pending applications, if any, are disposed off, accordingly.

22.03.2024

amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No