**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR-1620-2015(O&M)
Reserved on: 08.01.2025
Pronounced on: 14.01.2025**

Des Raj Mangla

...Petitioner

versus

Kailash Chand @ Kailash Jai Aeren and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harsh Aggarwal, Advocate
for the petitioner.

Mr. Hemant Saini, Advocate
for respondents No. 1 to 3.

Mr. Ramesh Kumar Ambavta, AAG Haryana.

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HARPREET SINGH BRAR J.

1. This present revision petition has been preferred for setting aside of judgment dated 22.01.2015 passed by learned Additional Sessions Judge, Yamunanagar whereby the order dated 16.04.2013 passed by learned Additional Chief Judicial Magistrate, Jagadhri vide which charges were framed against respondents No.1 to 3, was set aside in the case stemming from FIR No. 350 dated 10.09.2012 registered under Sections 420, 406, 120-B IPC at Police Station City Jagadhri.

2. Briefly, the facts are that the respondents are office bearers of a company called Aerens Jai Realty Pvt. Ltd. (hereinafter 'the company'). On his retirement, the petitioner approached the company and he was induced to

purchase a plot bearing No. F-13 measuring 250 sq. yards. The petitioner paid Rs. 3,85,656/- to Varinder Kaur, who owned the said plot and it was allotted to him. On 19.05.2007, the company sent a letter for the payment of Rs. 1,60,187.75/- and asked the petitioner to pay the same. The petitioner paid the same through a banker cheque dated 26.05.2007. Thereafter, no other notice for payment was received. However, the petitioner came to know that the said plot has been allotted to Veena Rani for construction of multi-story building. The petitioner agitated the same and to pacify him the respondents agreed to allot him another plot bearing No. J-16 measuring 340 sq. yards on same terms and conditions with extra premium for extra 90 sq. yards. On investigation, the petitioner found out that plot number J-16 has already been sold by respondents to one Dariyo Singh Yadav on 22.06.2007.

3. The petitioner moved a complaint under Section 156(3) Cr.P.C. and consequently FIR No. 350 (supra) was registered. Subsequently, charges were framed under Sections 406, 420 IPC against respondents No.1 to 3 by the learned trial Court. Aggrieved by the same, the respondents preferred a revision before the learned Revisional Court wherein the respondents were discharged of the charges framed against them.

4. The learned counsel for the petitioner argued that there is a prima facie case under sections 406, 420 read with section 120-B made out against the accused. The complainant paid Rs. 5,45,843/- in two installments for the plot and the amount was misappropriated for their own gain. The counsel of petitioner further argued that the respondents induced the petitioner to invest in their own company in the name of allotment of plot and the amount for the same was paid by the petitioner.

5. Per contra, learned counsel for the respondents argued that the plot no F-13 was allotted by the company in favour of the complainant and after making initial payment, the complainant regularly and persistently defaulted in making the timely payment of the installments due in spite of many reminders. Hence, the company was left with no option other than to cancel the allotment. The counsel for the respondents further argued that since the complainant himself is at fault by not complying with the conditions of agreement of contract with the company so, in this manner the complainant lost all the rights vested in the plot. Learned counsel for the respondents further submits that the learned Court below has passed a well-reasoned order which clearly reflects application of judicial mind. The said order has been passed on correct appreciation of the facts and the law and as such there is no perversity that would warrant interference by this Court.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner has already availed the civil remedy available to him before the Haryana Real Estate Regulatory Authority, Panchkula (hereinafter 'RERA'). A perusal of order dated 26.09.2018 (Annexure P-7) passed by RERA indicates that the petitioner has already been refunded for the amount of Rs. 5,45,844/-, i.e. the entire amount paid by him in pursuance of the purchase of the Plot F-13 under Rule 15 of HRERA Rules. In fact, he has also been granted interest on the said amount at State Bank of India highest marginal cost landing rate plus 2%. Further still, the petitioner has admitted that entering into a settlement and accepting allotment of Plot No. J-16, he made any further payments. As such,

by not paying any further installments, the petitioner has failed to keep up his end of the bargain. Moreover, neither the ingredients of the offence of the offence under Sections 406 or 420 IPC are made out against the respondents as the intention to cheat from the conception are conspicuously missing.

7. Under Section 239 of Cr.P.C., a remedy is provided to the accused to seek discharge of the alleged offence if he is found to be falsely implicated and sufficient material to prove his culpability is not available on record for the purpose of framing of charges. After completion of investigation, a report under Section 173 of Cr.P.C is filed and the accused has a right to seek his discharge before the commencement of the trial by taking a recourse to the provisions of Section 227 and 239 of Cr.P.C. If upon due consideration of the police report and all the documents attached with the final report under Section 173 Cr.P.C, the learned Sessions Court finds the charges leveled against the accused to be groundless, it shall discharge them by recording the reasons for doing so under Section 227 of Cr.P.C. A similar recourse is provided under Section 239 of Cr.P.C in trial of warrants case by Magistrates.

8. The law on the issue of nature and degree of evaluation of the evidence presented by the investigating agency before the trial Court at the time of framing of charge is well settled. The trial Court at this stage is only required to form a presumptive opinion with regard to the existence of the factual ingredients breaching the threshold of the offence alleged. At the stage of formation of opinion under Section 227, 239 and 240 of Cr.P.C, the trial Court is not required to weigh the probative value of the material brought on record in the golden scale or to presume the prosecution story as gospel truth. The nature and degree of evaluation at this stage is limited to determine

whether a prima facie case exists depending upon. Reliance in this regard can be placed on the judgment rendered by this Court in ***Narinder Sharma vs. State of Punjab in CRM-M-57578 of 2023*** decided on 21.11.2023.

9. Recently, the Hon'ble Supreme Court examined the issue involved in the present case in ***State through Deputy Superintendent of Police vs. R.Soundirarasu etc. 2023 (2) RCR Criminal 206*** where a two Judge Bench, speaking through Justice J.B. Pardiwala, concluded that the primary consideration at this stage of framing of charges is the test of existence of a prima facie case and the probative value of the material available on record is not to be gone into. The discharge of the accused under Section 239 of Cr.P.C is permissible only when the case set up by the prosecution after the completion of investigation is found to be 'groundless'.

10. In view of the discussion above, the present petition is dismissed and the judgment dated 22.01.2015 passed by learned Additional Sessions Judge, Yamunanagar is upheld. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

14.01.2025
manisha

(i) Whether speaking/reasoned Yes/No

(ii) Whether reportable Yes/No