



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-50446-2025 (O&M)

Date of decision: 25.09.2025

Ishwar @ Ishwar Sharma

...Petitioner(s)

VERSUS

Kishanlal Sharma

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Jai Bhagwan Sharma, Advocate for the petitioner(s).

VINOD S. BHARDWAJ, J. (Oral)

CRM-38821-2025

Application is allowed as prayed for subject to all just exceptions. Photocopies of agreement to sell dated 01.01.2019, receipts dated 24.01.2019 as well as statements dated 16.02.2020 and 20.12.2020 are taken on record as Annexures P-5 to P-9.

Main case:

1. Prayer in the present petition is for setting aside of the order dated 25.07.2023 passed by the Judicial Magistrate 1st Class, Palwal whereby the criminal complaint case bearing No.COMI-216-2021 under Sections 415/471/418/420/422/465/467/468/471/506 of the Indian Penal Code, 1860 has been dismissed as well as the order dated 21.02.2025, whereby criminal revision bearing No.CRR/104/2023 preferred against the said order has also been dismissed by the Additional Sessions Judge, Palwal.
2. Learned counsel appearing on behalf of the petitioner submits



that the respondent-accused, namely Shri Kishanlal Sharma, executed an agreement to sell dated 01.01.2019 in favour of Rohit, son of the petitioner, in respect of a disputed property measuring 75 square yards situated in the revenue estate of Village Baghpurkalan, Tehsil and District Palwal. The agreed total sale consideration was ₹6,50,000/- and the transaction being ostensibly executed out of love and affection. It is contended that on the date of execution of the said agreement, an amount of ₹5,00,000/- was paid in cash by way of earnest money to the respondent-accused for which a proper receipt was duly executed. The balance amount of ₹1,50,000/- was agreed to be paid at the time of execution of the sale deed fixed for 10.01.2019. However, prior to the date so fixed, the respondent-accused expressed his inability to execute the sale deed on the said date and sought an extension of time. A fresh date was thereafter fixed. Learned counsel further submits that on 24.01.2019, the respondent-accused demanded the balance consideration of ₹1,50,000/- on an assurance that the sale deed would be executed on or by 20.02.2019. Relying on the assurance, the petitioner paid the said amount on 24.01.2019 for which a receipt was duly issued by the respondent-accused. Thereafter, on 10.02.2019, the respondent-accused demanded an additional sum of ₹50,000/- towards registration expenses. Reposing faith in the assurance of the respondent-accused, the petitioner paid the said amount as well. In this manner, a total amount of ₹7,00,000/- was paid to the respondent-accused towards sale consideration and registration charges.

3. Despite receipt of the entire amount, the respondent-accused failed to execute the sale deed on the agreed date, i.e., 20.02.2019, and



started procrastinating on one pretext or the other. Upon further inquiry, the petitioner discovered that the respondent-accused was not, in fact, the owner of the disputed property. When confronted with this fact, the respondent-accused assured repayment of the amounts received by him and, in that regard, issued three cheques in favour of the petitioner. However, upon presentation, the said cheques were dishonoured on 27.11.2019 with the remark "FUNDS INSUFFICIENT." In these circumstances, the petitioner initiated criminal proceedings by filing a complaint under Sections 415, 417, 418, 420, 422, 465, 467, 468, 471, and 506 of the Indian Penal Code, 1860. The learned Judicial Magistrate First Class, Palwal, however, declined to exercise jurisdiction under Section 156(3) Cr.P.C. for referring the matter to the police for registration of an FIR, and instead took cognizance of the complaint.

4. After recording of evidence, the complaint was dismissed by the learned Judicial Magistrate First Class. Aggrieved thereof, the petitioner filed Criminal Revision No. CRR/104/2023, dated 22.08.2023, before the learned Sessions Judge, Palwal. Vide judgment dated 21.02.2025, the said revision petition was also dismissed. Hence, the present criminal revision petition has been instituted before this Court.

5. Learned counsel appearing on behalf of the petitioner vehemently contends that both the Courts have erred in failing to appreciate the dishonest intent underlying the conduct of the respondent-accused. It is contended that the respondent-accused, while falsely proclaiming himself to be the owner of the property measuring 75 square yards, deceitfully entered



into an agreement to sell the same with the petitioner. Despite having received the entire sale consideration, the respondent-accused neither executed the sale deed nor refunded the amount, thereby dishonestly retaining the petitioner's money. It is further submitted that the entire transaction was founded upon the dishonest and false representation of ownership made by the respondent-accused. But for such false representation, known to the respondent-accused, the petitioner would have neither entered into the agreement to sell nor would he have parted with the entire consideration amount. Learned counsel asserts that these critical aspects, which go to the root of the matter, have been completely overlooked by the learned Trial Court as well as the learned Revisional Court, thereby occasioning a grave miscarriage of justice.

6. No other argument has been raised nor any precedent judgment has been cited.

7. I have heard the learned counsel for the petitioner at length and have gone through the documents appended with the present writ petition with his able assistance.

8. The entire case of the petitioner hinges upon an argument the contention that the respondent-accused made a dishonest representation pertaining to his ownership over the disputed property. It is urged that, but for such proclamation of ownership, there would have been no occasion for the petitioner either to part with the sale consideration or to enter into the proposed transaction for purchase of the said property. However, both the Courts have specifically adverted to the agreement to sell, exhibited as Ex.



C-15, which unequivocally records that the respondent-accused had asserted his possession and ownership rights, not as an absolute owner but on the basis of an agreement to sell executed in his favour by the prior owner of the property. The recital in the document itself discloses the limited nature of his title by the respondent. It cannot, therefore, be construed as a false declaration of absolute ownership and rather there was a fair disclosure of the transaction under which the respondent-accused derived his right to deal with the property. This aspect having been duly noticed, both Courts concurrently held that the essential ingredients of the offence of “cheating” as defined under Section 415 of the Indian Penal Code, 1860, were not satisfied. The Courts reasoned that there was no deceitful intent at the inception of the agreement to sell, inasmuch as the respondent-accused had made candid disclosures of the nature of his interest in the property at the very stage of entering into the transaction. The Courts further observed that it was also incumbent upon the petitioner to exercise due care and caution and to undertake proper due diligence with regard to the property he intended to purchase. Once it stood revealed from the agreement itself that the respondent-accused did not hold an absolute, encumbrance-free title but was merely a holder of an earlier agreement to sell executed by the owner in his favour, the risk inherent in the transaction was apparent.

9. Moreover, when the sale deed was not executed, the respondent-accused proceeded to issue cheques towards repayment of the amount, thereby acknowledging his liability. The dishonour of those cheques gave rise to a separate cause of action under the law relating to negotiable



instruments. All the aspects with respect to culpability were examined and offences were not found to be made out. It would be appropriate also to refer to the specific findings recorded by the Judicial Magistrate 1st Class while dealing with the various issues espoused by the petitioner herein. The operative part of the said judgment reads thus:-

“6. Hence, after the careful scrutiny of the preliminary evidence (in the form of oral as well as documentary evidence) brought on record by the complainant in the present case and after considering the police report filed by the police, this court has bestowed its thoughtful consideration to the arguments of learned counsel for the complainant and reached to the conclusion that the complainant has miserably failed to make out even a prima facie case against the above named accused persons in the present case. That the version as stated by the complainant is that the accused person has cheated him by showing himself to be owner of the 75Sq. yards of land and by taking the sale consideration of Rs. 7 lakh from him and that further by issuing the multiple cheques in favour of complainant to return the sale amount back to the complainant and the subsequent dishonor of such cheques. The Ex. C1 to C4 is the postal receipts, Ex. C5 to Ex. C8 are the delivery reports of postal receipts, Ex. C8 colly. is Copy of Application to SP, Palwal, Ex. C10 is Copy of Cheque no. 000126, Ex. C11 is copy of return memo dated 28-11-2019, Ex. C12 is the photocopy of



hand writing receipt, Ex. C13 is the copy of another hand writing receipt, Mark C-A are the photocopies of Cheques no. 000117, 000119, and another cheque, Ex. C14 is the copy of receipt dated 01-01-2019, Ex. C15 (colly.) is the copy of agreement dated 01- 01-2019, Ex. C16 is the copy of receipt dated 24-01-2019, Ex. C17 is the copy of aadhar card of Ishwar. The complainant has not put on record any such record showing his signature or signature of any other on any document which are allegedly forged and merely by way of stating that he has been cheated by the accused and that the accused posed him as owner of the 75 Sq. yards of the land is of no avail to complainant as the Ex. C15 (colly.) is the copy of agreement dated 01- 01-2019 in itself on the very first page shows that Kishan Lal S/o Dalchand Sharma has been coming as owner over the said 75 sq. yards by way of an agreement. So, when the Kishan Lal S/o Dalchand Sharma has posed himself as owner of the 75 Sq. yards of piece of land as per the Agreement then how can it be said by the complainant that the accused posed himself as full owner of 75 sq. yards of land and then he took the money for the same. It is incumbent on the buyer of the property to get the whereabouts of the real owner of the land and from the revenue record as to who is the real owner of the land he is purchasing and if he makes an agreement with another person who is not the owner of the



property and is alleging himself as owner by way of agreement then the principle of BUYER BEWARE will come in to play and the instant complainant has also not done his part and has approached this court not with clean hands. Further by stating that the cheques were got bounced which were issued is of no avail to the complainant as neither the original cheques are on record and even the return memos are also not in original on case file. The documents tendered without proving them on record are mere photocopies and on the photocopies the complainant has tried to build his castle of getting the order of summoning the accused from the Court. Further the complainant has only placed on record the copy of application to SP, Palwal and has not even bothered to tender on record any evidence when he has all the opportunity to do so and the Ld. Counsel for the complainant though has tendered Mark CA in the case file however, the same is not proved as per law and are of no avail to him. Though the forgery has been stated to have been committed by the accused person but no such evidence has been produced on record. No such hand writing expert or any other independent witness has been got examined by the complainant in this case. There are only the bald averments by the Ld. Counsel for the complainant to this effect. Furthermore, no witness has been got examined by the complainant to support his allegations that the accused person



has forged any signature or other thing/document. No bank statement or the writing to this effect or no oral evidence has been brought on record to this effect. The instant case seems more of a case which has been filed to settle old scores. Further that except the bald averments of the complainant there is no iota of evidence on record to justify the summoning of the accused person at first hand itself. So, from the afore said discussion, the hollowness of the whole complaint and the complainant witnesses goes to the root of the case itself.

7. *At the stage of summoning, the Court is not bound to see whether a sufficient case for conviction against the accused is made out or not. At the stage of summoning of the accused only a prima-facie case has to be seen. But the Hon'ble Constitutional Courts in plethora of authorities has held that, in a criminal complaint summoning of an accused is a serious matter. The order of Magistrate summoning the accused must reflect application of mind. Mere examination of few witnesses to support the allegations in the complaint, not enough. Magistrate has to carefully scrutinize the evidence on record. In this connection, the law regarding the requirement of application of mind to the material on record at the stage of summoning by the Magistrate is succinctly laid down by their Lordships of the Supreme Court in “Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749”, where it is held:*



"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

8. *Hence, in these circumstances, this court is of the confirmed and considered view that the complainant has miserably failed to make out even a prima-facie case against the above named accused persons and therefore no offence under any section of IPC is made out in the present case. Therefore, in consonance with the aforementioned discussion*



Criminal Complainant being meritless hereby stands dismissed and disposed of accordingly and file after necessary compliance be consigned to the record room as per law.”

10. The arguments have been duly noticed yet again by the Additional Sessions Judge, Palwal, while dismissing the revision petition preferred by the petitioner. The operative part of thereof reads thus:-

“8. *It is the case of the complainant that the accused executed an agreement to sell dated 01.01.2019 in favour of complainant’s son by showing himself as owner in possession of the property and inspite of receiving Rs. 7 lacs, he did not execute the sale deed in favour of his son and also did not return the money.*

9. *A perusal of the complaint and the documents attached therewith shows that the matter in dispute between the parties is of civil nature and prima facie, it is mere breach of agreement vide which the accused agreed to execute the sale deed in favour of the complainant which subsequently, was not performed by the accused. To constitute an offence of cheating under section 420,406 IPC, fraudulent or dishonest intention has to be shown right at the beginning of the transaction. However, no document has been placed on record by the complainant so as to show that accused was not competent to execute agreement in question right from the beginning and some other person was actual owner of the disputed property. It*



seems that the only intention behind filing the present complaint is to make pressure upon the accused to make the payment, which is not permissible in law. So, on the basis of discussion, it can be said that the trial court has rightly held that the complainant has failed to make out a prima facie case against the accused and therefore no offence under any section of IPC is made out against the accused. Consequently, the impugned order dated 25.07.2023 is upheld & present criminal revision petition stands dismissed. Trial court file along with copy of this order be sent to Trial Court. File be consigned to the record room, after due compliance.”

11. It is thus evident that the contentions advanced by the petitioner have been duly considered by both the Courts. Upon such consideration, it was held that the essential ingredients of a criminal offence were not made out, and consequently, the complaint was dismissed.

12. The petitioner cannot seek summoning of a person on mere self-serving bald assertions. Summoning in a criminal case has severe ramifications on the civil liabilities of an individual. The evidence is required to be considered to ascertain whether it is sufficient, if unrebutted, to lead to conviction. The primary ingredients of offence not being satisfied and original of the dishonoured cheques or memo not being produced, the allegations were held to be not proved and substantiated.



13. The petitioner has failed to point out any illegality, perversity, or misappreciation of evidence that would warrant interference by this Court. No material has been placed before this Court to demonstrate that the findings recorded by the learned Trial Court and the learned Appellate Court were based on an incorrect interpretation or improper appreciation of the evidence led by the parties. Once the conclusions arrived at by the Courts are probable and tenable upon the record, the High Court, in exercise of its revisional jurisdiction, would not ordinarily It is also well settled that criminal proceedings cannot be treated as a panacea for the resolution of civil disputes. A litigant is obliged to seek remedy through the appropriate civil forum and not to convert a civil dispute into a criminal controversy to obtain a shortcut for redressal of his grievance. The present petition appears to be an instance of such an attempt, which cannot be countenanced in law.

14. Finding, no illegality and perversity, the present petition is *dismissed*.

(VINOD S. BHARDWAJ)
JUDGE

25.09.2025

Mangal Singh

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