



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

239

CRR-635-2020 (O&M)

Date of decision: 07.05.2026

Namender Nath

...Petitioner(s)

VERSUS

Mahender and others

...Respondent(s)

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

Present :- Mr. Sudhanshu Makkar, Advocate for the petitioner(s).

VINOD S. BHARDWAJ, J. (Oral)

1. The above petition has been preferred against the judgment dated 08.05.2018 passed by the Judicial Magistrate 1st Class, Faridabad in case bearing No. CHI-24785-2014 (Criminal Case No.RBT-522) arising out of FIR bearing No.277 dated 16.11.2012 registered under Sections 406, 420, 506, 120-B of the Indian Penal Code, 1860 at Police Station NIT Faridabad, District Faridabad as well as against the judgment dated 09.12.2019 passed by Additional Sessions Judge, Faridabad in Criminal Appeal No.25C of 2018, whereby the accused/respondents have been acquitted concurrently, by both the Courts.

2. Briefly summarised, the facts of the present case, as emerging from the record, are that complainant Namender Nath submitted a complaint alleging therein that on 26.11.2010 he had entered into an agreement for purchase of Flat No. 5-D/61A, Ground Floor, NIT, Faridabad for a total sale consideration of Rs.16 lakhs with accused Mahinder Kapoor and Sonu Arora. According to the complainant, at the time of execution of the

agreement, accused Mahinder Kapoor and Sonu Arora represented to him that the plot in question belonged to Ajay Khurana and Yogesh Khurana and that the said owners were raising construction over the property. It was further represented that, pursuant to an arrangement under the memorandum between the parties, the ground floor portion of the building would fall to the share of Mahinder Kapoor and Sonu Arora, whereas the remaining floors would belong to Ajay Khurana and Yogesh Khurana. The complainant further alleged that Mahinder Kapoor and Sonu Arora had also shown him an agreement seemingly evidencing the said arrangement amongst themselves. Believing the representations so made, the complainant agreed to purchase the ground floor flat and paid an amount of Rs.3 lakhs as earnest/advance money to Mahinder Kapoor and Sonu Arora, while the remaining sale consideration was agreed to be paid within the stipulated period of six months. It was further alleged that receipts acknowledging the said payment were issued by Mahinder Kapoor and Sonu Arora and that Mahinder Kapoor also executed an agreement pertaining to the ground floor flat in favour of the complainant. He further alleged that when he subsequently approached Mahinder Kapoor and Sonu Arora for delivery of possession of the flat, he came to know that the said flat was actually in possession of Ajay Khurana and Yogesh Khurana. According to the complainant, at that stage all the accused persons, namely Mahinder Kapoor, Sonu Arora, Yogesh Khurana and Ajay Khurana, met him and turned him out from the property while declaring that neither would the flat be handed over to him nor would the money paid by him be returned. It was further alleged that all the accused persons, acting in connivance with one another,

had dishonestly induced the complainant to part with an amount of Rs.15,75,000/- towards the sale transaction and had thereafter misappropriated the same. The complainant specifically alleged that the agreement executed in his favour as well as the receipts acknowledging payment were signed by accused Mahinder Kapoor and Sonu Arora.

3. On the basis of the aforesaid allegations, the present FIR came to be registered under Sections 420, 406, 506 and 120-B of the Indian Penal Code.

4. During the course of investigation, the accused persons were arrested and statements of witnesses were recorded by the Investigating Agency. Upon completion of investigation and other formalities, the final report under Section 173 Cr.P.C. was presented before the competent Court.

5. After supply of copies of challan to the accused, they were charge sheeted under Section 420 read with Section 120B of IPC, to which accused pleaded not guilty and claimed trial.

6. In order to prove its case, prosecution examined the following witnesses:

PW1	Naminder Nath, complainant;
PW2	Retired SI Suresh Kumar;
PW3	Darshan Singh;
PW4	Ajay;
PW5	Retired SI Sube Singh;
PW6	ESI Rohtash;
PW7	Retired SI Suresh Chand; and
PW8	Prem Chand Chawla.

7. The prosecution also tendered the following documents:

- Ex.PW1/A : Complaint;
- Ex.PW1/B : Recovery memo of agreement and receipt;
- Ex.PW1/C : Original agreement to sell;
- Ex.PW1/D : Original receipt;
- Ex.PW1/E : Recovery memo of collaboration agreement;
- Ex.PW1/F : Original collaboration agreement;
- Ex.PW1/G & H : Receipts;
- Ex.PW1/I & J : Disclosure statements;
- Ex.PW1/K : Recovery memo of photographs;
- Ex.PW1/L to N : Photographs;
- Ex.PW1/O : Statement of complainant;
- Ex.PW1/P : Statement in Urdu;
- Ex.PW2/A : FIR;
- Ex.PW2/B : Endorsement;
- Ex.PW3/A&B : Endorsements;
- Ex.PW3/C : Rough site plan;
- Ex.PW5/A&B : Disclosure statements;
- Ex.PW5/C : Rough site plan;
- Ex.PW6/A&B : Disclosure statements;
- Ex.PW7/A : Application to Sub Registrar;
- Ex.PW7/B&C : Statements of Mahender;
- Ex.PW7/D : Recovery memo of documents;
- Ex.P1 : Copy of collaboration agreement;
- Ex.P2 : Copy of receipt;

- Ex.P3 : Rough site plan;
- Ex.P4 : Copy of electricity bill;
- Ex.P5&6 : Copies of cheques;
- Ex.P7 : Copy of electricity bill;
- Ex.P8 : Copy of legal notice;
- Ex.P9 : Copy of complaint;
- Ex.P10 : Copy of plaint;
- Ex.P11 : Copy of inspection report.

8. After conclusion of prosecution evidence, statements of accused under Section 313 Cr.P.C. recorded. The incriminating evidence was put to the accused but they denied the same and pleaded false implication. No evidence was however led by the accused persons in their defence.

9. After hearing the learned Assistant Public Prosecutor, learned defence counsel and perusing the record, the trial court acquitted both the accused vide impugned judgment dated 08.05.2018.

10. Aggrieved of the judgment dated 08.05.2018 passed by the Judicial Magistrate 1st Class, Faridabad, the petitioner herein preferred an appeal bearing Criminal Appeal No.25C of 2018. The said appeal was also dismissed by the Additional Sessions Judge, Faridabad vide its judgment dated 09.12.2019. Hence, the present revision petition.

11. Learned counsel appearing on behalf of the petitioner submits that the respondent-accused persons had falsely projected and represented themselves to be owners competent to transfer the property in question, despite the fact that, as is evident from the very agreement to sell relied upon by them, they did not possess any absolute ownership rights over the said

property. It is contended that the material on record itself reveals that the respondents had merely entered into a collaboration agreement with the actual owners of the property, namely Ajay Khurana and Yogesh Khurana and therefore had no independent or unfettered title enabling them to lawfully transfer ownership rights in favour of the petitioner.

12. Learned counsel further submits that despite being fully aware of the limitations upon their rights and title, the respondent-accused persons induced the petitioner to enter into the transaction by representing that they were competent to sell and deliver possession of the ground floor portion of the property. It is submitted that acting upon such representations, the petitioner parted with substantial amounts towards sale consideration in respect of the ground floor qua which the respondents had undertaken to transfer rights in his favour.

13. It is further contended that after receipt of the sale consideration, disputes arose inter se between the respondents and the actual owners of the property, namely Ajay Khurana and Yogesh Khurana, as a consequence whereof the petitioner was neither delivered possession of the property nor refunded the amount paid by him. Thus, the petitioner has been left remediless, having been deprived both of the property agreed to be sold as well as of the substantial money paid by him pursuant to the transaction. Learned counsel thus submits that the conduct attributed to the respondents clearly discloses dishonest inducement and deception from the very inception of the transaction and that the ingredients constituting offences punishable under Sections 406 and 420 IPC are fully attracted in the facts and circumstances of the present case.

14. He further contends that the respondents-accused persons had submitted that they are ready and willing to execute the sale deed with respect to the property as and when title in respect of the property in question would vest in them. He contends that the aforesaid stand taken by the respondents cannot operate to defeat or extinguish the legal rights and remedies available to the petitioner against them. Learned counsel submits that the petitioner's entitlement to pursue appropriate legal proceedings against the respondents, upon their acquisition of lawful title over the property would, in any case, survive and remain protected in accordance with law. The mere assertion on the part of the respondents that they may execute the sale deed at some future point of time upon acquisition of title does not dilute the allegations regarding dishonest inducement, wrongful retention of money and failure to honour the commitments undertaken at the time of entering into the transaction.

15. I have heard the learned counsel for the petitioner and have gone through the documents appended with the instant petition with his able assistance.

16. It remains undisputed from the record that the petitioner had entered into an agreement dated 26.11.2010 with the respondent-accused persons for purchase of the property in question. A perusal of the said agreement to sell, exhibited as Ex.PW-1/C, reveals that accused Mahinder Kapoor had specifically recited therein that the seller had derived rights in the property by virtue of a collaboration agreement pertaining to House No. 5D-61A, NIT, Faridabad, Ground Floor without roof rights. The agreement itself thus clearly reflected the nature and source of the rights claimed by the

respondents in the property.

17. It is further evident that respondent Sonu @ Mahender was merely an attesting witness to the aforesaid agreement to sell and was not projected therein as an absolute owner independently conveying title in the property. The terms and recitals contained in the agreement disclosed the basis upon which the respondents were asserting their rights i.e. through a collaboration arrangement entered into with the original owners of the property.

18. The record further reveals that the collaboration agreement executed between Mahinder Kapoor and the original owners, namely Yogesh Khurana and Ajay Khurana, was admittedly prior in point of time to the agreement entered into with the petitioner. Thus, the foundation of the respondents' claim over the property and the nature of title document had already been disclosed and incorporated within the agreement itself at the time the petitioner entered into the transaction.

19. In such circumstances, it cannot be said that there was any concealment, suppression or fraudulent misrepresentation on the part of the respondent-accused persons with regard to either the description of the property or the source from which their rights in the property were claimed to emanate. The petitioner was fully aware, from the recitals contained in the agreement itself, that the rights claimed by the respondents were flowing from a collaboration agreement executed with the original owners and not from any independent title deed standing exclusively in their names.

20. Consequently, it cannot prima facie be inferred that the petitioner was dishonestly induced or lured into parting with his money on

the basis of false assurances or fabricated representations regarding ownership of the property. The transaction in question appears to have been entered into with full disclosure of the nature of title asserted by the respondents and the rights claimed under the collaboration arrangement.

21. The settled principles governing transactions relating to immovable property would squarely apply in the present case. A prospective purchaser of immovable property is expected to exercise due diligence and undertake appropriate title verification and satisfaction before entering into such transactions. The obligation of conducting necessary inquiry regarding title, nature of rights and encumbrances attached to the property forms an integral part of a prudent transaction concerning immovable property. In the absence of any demonstrable concealment or fraudulent suppression attributable to the respondents, the dispute arising between the parties would primarily assume the complexion of a civil dispute emanating from contractual obligations and competing claims arising out of the transaction.

22. It is further evident from the record that all the aforesaid aspects were examined and considered by both the Courts while appreciating the controversy involved in the present matter. The trial Court, upon evaluation of the oral as well as documentary evidence adduced by the parties arrived at a conclusion that the essential ingredients constituting the offences alleged against the respondents-accused persons were not made out.

23. The said findings were thereafter re-examined by the Appellate Court, which, upon independent appraisal of the evidence and consideration of the rival submissions advanced on behalf of the parties, affirmed the conclusions recorded by the trial Court. The Appellate Court specifically

recorded a finding that the judgment passed by the trial Court did not suffer from any illegality, perversity or legal infirmity warranting interference.

24. The Appellate Court further observed that the grievance raised by the petitioner substantially arose out of a contractual and property transaction and that the remedies available to the petitioner were essentially civil in nature. It was specifically noticed that the petitioner was at liberty either to seek recovery of the amount already paid by him to the respondents-accused persons in accordance with law or, in the alternative, to pursue appropriate proceedings for enforcement and execution of the sale deed in his favour as and when the title of the respondents-accused persons over the property became clear and marketable.

25. The Courts thus concurrently found that the dispute between the parties predominantly pertained to enforcement of contractual obligations and competing claims arising out of a property transaction and did not disclose the requisite criminal intent from inception so as to attract the penal provisions invoked against the respondents-accused persons. The relevant part of the findings recorded by the Appellate Court reads thus:-

“12. On perusal of file, it is observed that the prosecution has examined as many as eight witnesses. The complainant has stepped into witness box as PW1 has has proved complaint Ex. PW1/A. He also placed on record agreement to sell Ex. PW1/C, receipt Ex. PW1/D, recovery memo of collaboration agreement Ex. PW1/E, collaboration agreement Ex. PW1/F, receipts Ex. PW1/G and Ex. PW1/H, disclosure statement of Mahender Arora @ Sonu Ex. PW1/J, photos Ex. PW1/L to Ex. PW1/N and explanation Ex. PW1/O.

13. PW2 Retired SI Suresh Kumar has lodged the FIR as Ex. PW2/A and made endorsement Ex. PW2/B.

14. *PW3 Darshan Singh Stamp Vendor proved the endorsement on the stamp paper Ex. PW3/C and endorsement Ex. PW3/A.*

15. *PW4 Ajay Kumar has proved the collaboration agreement as Ex. PW1/F and receipt Ex. PW1/G. He also proved that the Mahender Kapoor has filed civil suit against him. He has lodged FIR Ex. PW2/A against the Mahender Kapoor.*

16. *PW5 Retired SI Sube Singh has performed the duty of Investigating Officer and proved the documents recovered by him during investigation.*

17. *ESI Rohtash examined as PW6. He was present alongwith AIS Suresh and have arrested the accused persons wherein accused suffered disclosure statement.*

18. *Retired SI Suresh Chand examined as PW7 who was subsequent IO of the case. Prem Chand Chawla examined as PW8 who proved the agreement to sell dated 26.11.2010 executed between the complainant and accused Mahender Kapoor for a consideration of Rs. 16 lakh.*

19. *From the testimony of witnesses as discussed above, it is established that on 3.11.2010 collaboration agreement was arrived between Yogesh Khurana and Ajay Khurana being first party and Mahender Kapoor accused being second party whereby the accused was required to raise construction of three storey house on plot no. 5D, 6/A NIT Faridabad measuring 64 Sq. Yards. Mahender Kapoor was liable to pay Rs. 3 lakh to the owner namely Ajay Khurana and Yogesh Khurana. After raising construction accused shall be entitled for ground floor whereas first floor and second floor with roof right shall remain with Ajay Khurana and Yogesh Khurana.*

20. *It is also admitted that Mahender Kapoor on the basis of collaboration agreement agreed to sell the ground floor of the said house which he likely to take possession vide*

agreement to sell dated 26.11.2010. The said agreement to sell is proved on file as Ex. PW1/C. On perusal of the said agreement to sell, it transpires that accused Mahender Kapoor has disclosed that he is owner on the basis of collaboration agreement and agreed to sell ground floor without roof right to the complainant for a consideration of Rs. 16 lakh. Rs. 3 lakh was paid on the same day by the complainant and in this regard a receipt was executed. Thereafter various payments was made i.e. Rs.1 lakh on 13.12.2010, Rs. 2 lakh on 30.12.2010, Rs. 50,000/- on 4.2.2011, Rs. 1,50,000/- on 13.2.2011, Rs. 20 lakh on 28.10.2011, Rs. 2 lakh on 8.4.2011, Rs. 2 lakh on 6.5.2011, Rs. 1 lakh on 12.6.2011, Rs. 40,000/- on 15.6.2011. Thus the complainant has paid Rs. 15,75,000/- to the accused Mahender Kapoor and out of which some amount has been received by Sonu on 30.12.2010, 4.2.2011, 13.2.2011, 28.10.2011, 8.4.2011, 12.6.2011, 6.5.2011 and 15.11.2011. Thus, from the receipts placed on record, it is evident that though the agreement was arrived between Mahender Kapoor and the complainant and Mahender Arora @ Sonu was also involved in the transaction.

21. *It is well settled that in order to held the accused guilty for commission of offence under section 420 IPC the prosecution is required to prove that there was dishonest inducement from the accused towards the complainant to deliver property whereas in order to held the accused guilty for commission of offence under section 406 IPC, the prosecution is required to show that complainant has delivered some property to the accused under a trust and the accused failed to comply with the terms and conditions of the trust and misappropriate the property for his own use.*

22. *In this case, the amount was delivered by the complainant to the accused persons, qua the sale consideration of the flat which he was likely to receive from Ajay Khurana and Yogesh Khurana. After completion of the construction, they*

claimed that the building material used, is sub standard and not as agreed by them under the collaboration agreement. Therefore, a suit for injunction was filed against the accused by Shri Ajay Khurana and the accused could not deliver the possession. Thus, it cannot be said that there was dishonest intention on the part of the accused to cheat the complainant rather it appears that due to circumstances of the case, the accused who were not having sufficient amount, as the amount was taken from the complainant, invested by him for raising construction of the building. He failed to get the possession of ground floor from Ajay Khurana despite that he availed remedy from the court. Since, the accused failed to get the possession from Ajay Khurana. The question to deliver the possession of the said flat in favour of the complainant does not arise. Had the accused got the possession and then failed to deliver to the complainant or delivered to some one else, then it may be said that the accused have cheated the complainant. However, in the given circumstances no such inference can be drawn against them, that they had the dishonest intention, they misappropriated the fund for their own use Moreover, Ajay Khurana has filed a civil suit for injunction to restrain them from taking possession of the alleged property and due to the said reason he could not deliver the possession of ground floor in his favour as sale deed of ground floor was never executed by Ajay Khurana in favour of the accused persons.

23. *Further, it has also come in the testimony of Prem Chand Chawla PW8 that at the time of agreement to sell the collaboration agreement Ex. PW1/F was shown to the complainant. Thus, the complainant was having the knowledge of the said collaboration agreement and it cannot be said that the agreement to sell was arrived by concealment of some material fact by the accused persons. Moreover, the reference of collaboration agreement has also been mentioned in the agreement to sell. Thus, there is no inducement on the part of*

the accused towards the complainant to deliver the property. The accused still ready to deliver the possession to execute the sale deed if they get the possession of the flat. There is no such allegation that the amount was delivered by the complainant under a trust that he would return the said amount, but misappropriate for his own use. Further, there is no specific allegations of extending threat, then offence under section 506 IPC is not made out against the accused persons.

24. *In view of foregoing discussion, the court is of the view that the only legal remedy available to the complainant is to seek recovery of the amount alleged to be paid to the accused persons and the ingredients of offence under section 420/406/506 IPC are not made out. The trial court has rightly come to the conclusion that no such offence, as alleged, committed by the accused persons. There is no illegality or irregularity in the judgment which warrants interference from this court in any manner. Consequently, the impugned judgment is up-held and the appeal being devoid of merit is dismissed. Bail bond and surety bond of the respondent/accused stands discharged. Respondents are directed to furnish personal bonds in the sum of Rs.10,000/- with one surety in the like amount under Section 437A of Cr.P.C. Record of lower court alongwith copy of judgment be sent back, thereafter appeal file be cosigned to record room.”*

26. Having heard the learned counsel appearing on behalf of the petitioner and having examined the factual matrix emerging from the record as well as the reasoning assigned by both the Courts while recording findings in favour of the respondents-accused persons, this Court does not find any material illegality, perversity, impropriety or misappreciation of evidence which may warrant interference in exercise of revisional jurisdiction.

27. The record reflects that the trial Court undertook a detailed appreciation of the oral as well as documentary evidence brought on record and arrived at a categorical conclusion that the transaction in question essentially arose out of a property agreement wherein the nature and source of rights claimed by the respondents-accused persons had already been disclosed to the petitioner through the recitals contained in the agreement itself. The trial Court further found that the essential ingredients constituting dishonest inducement or fraudulent concealment from the inception of the transaction were not established by the prosecution beyond reasonable doubt.

28. The Appellate Court thereafter independently reappraised the evidence and concurred with the findings recorded by the learned trial Court. The Appellate Court specifically observed that the dispute between the parties predominantly carried a civil complexion arising out of enforcement of contractual obligations and competing claims relating to immovable property and that the petitioner had efficacious civil remedies available to him either for recovery of the amount paid or for enforcement of the agreement subject to the respondents acquiring clear title over the property.

29. This Court further notices that both the Courts have concurrently held that there was no concealment regarding the nature of title claimed by the respondents-accused persons and that the petitioner had entered into the transaction with full knowledge that the respondents were asserting rights flowing from a collaboration agreement executed with the original owners. The findings so recorded are based upon proper appreciation of evidence and are neither perverse nor contrary to the record.

30. It is well settled that in revisional jurisdiction, this Court does not sit as a Court of appeal to re-appreciate the entire evidence merely because another possible view may exist. Interference against concurrent findings of acquittal is warranted only where the conclusions recorded by the Courts below are manifestly illegal, grossly perverse or result in miscarriage of justice. No such circumstance is made out in the present case.

31. Consequently, this Court is of the view that the judgments passed by the trial Court and affirmed by the Appellate Court do not suffer from any illegality, impropriety, perversity or material misreading of evidence so as to call for interference by this Court. The findings recording acquittal in favour of the respondents-accused persons are thus liable to be upheld.

32. In view thereof, I find that the present revision petition lack merits and the same is accordingly *dismissed*.

(VINOD S. BHARDWAJ)
JUDGE

07.05.2026
Mangal Singh

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