

2023 LiveLaw (SC) 157

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ABHAY S. OKA; J., RAJESH BINDAL; J.
CRIMINAL APPEAL NO. 581 OF 2023; 01.03.2023
Sarabjit Kaur *versus* The State of Punjab & Anr.**

Code of Criminal Procedure, 1973; Section 482 - Indian Penal Code, 1860; Section 420 - A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings - The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes.

For Appellant(s) Mr. Amandeep Singh Jawandha, Adv. Ms. Anju Kaushik, Adv. Mr. Bankey Bihari, AOR Mr. Birendra Bikram, Adv.

For Respondent(s) Ms. Nupur Kumar, AOR

J U D G M E N T

Rajesh Bindal, J.

1. The Appellant having failed before the High Court has filed the present appeal. A prayer was made for quashing of F.I.R. No.430 dated 16.10.2017 under Sections 420, 120B and 506 of the Indian Penal Code, 1860. The petition filed before the High Court seeking quashing thereof was dismissed.

2. Learned counsel for the appellant submitted that the appellant entered into an agreement to purchase a plot measuring 1 (Kanal) on 27.05.2013 with Malkit Kaur, wife of Surender Singh resident of Dhillon Colony, Near Electricity Grid, G.T. Road, Moga, Jagraon, District Ludhiana, Punjab on 27.05.2013. On the basis thereof appellant entered into an Agreement to Sell the same to Sarabjit Kaur wife of Darshan Singh (respondent No.2) on 18.11.2013. The date for execution of sale deed was fixed as 25.06.2014. It was categorically mentioned in the Agreement to Sell that at present the vendor was not the owner of the property. The appellant received a sum of ₹5,00,000/- as earnest money and the date of registration of sale deed was fixed as 25.06.2014. The date for execution of sale deed was extended to 24.12.2014 on receipt of additional sum of ₹75,000/-. A complaint was filed by Darshan Singh (complainant/ respondent No.2), son of Jangir Singh on 30.09.2015 with reference to the same alleged Agreement to Sell however against property dealers Manmohan Singh, son of Prakash Singh and Ranjit Singh alias Billa, son of Pal Singh. In the aforesaid complaint, reference was made to two other transactions entered into by Darshan Singh and prayer was that an amount of ₹29,39,500/- be got recovered from the property dealers.

3. The aforesaid complaint was investigated and finally on 18.05.2016, it was opined that the dispute being civil in nature, no police action was required. Darshan Singh made another complaint on 05.10.2016 with the same allegations without disclosing the fate of his earlier complaint. Referring to the earlier enquiry made, the aforesaid complaint was consigned to record on 23.01.2017. Thereafter, another complaint was made by Darshan Singh against the appellant, Ranjit Singh and Manmohan Singh. It is on the basis thereof that F.I.R. in question was registered under Sections 420, 120-B and 506 IPC against the appellant, Manmohan Singh and Ranjit Singh.

4. The argument raised by learned counsel for the appellant is that the respondent No.2 who claims himself to be the husband of vendee had filed two complaints earlier with the same set of allegations and those were consigned to record on the basis of the legal opinion received opining the case to be of civil nature. In the first such complaint, there were no allegations against the appellant. In fact the dispute is purely civil in nature. In case the appellant failed to execute the sale deed for which admittedly the last date fixed was 24.12.2014. Respondent No.2 could have availed of his appropriate remedy of specific performance of Agreement to Sell but no suit was filed. However, third complaint was filed without disclosing the fate of earlier two complaints. The F.I.R. in question was registered on the basis of the complaint filed by respondent No.2 on 15.06.2017 i.e. nearly three years after the date fixed for execution of sale deed. The respondent No.2 had never issued any notice prior to the filing of the complaint with the police seeking any remedy. A perusal of three complaints filed by respondent No.2 clearly suggest that from the initial prayer for return of the amount paid by him, subsequently the allegations of cheating was made. In the first complaint while referring to different transactions, the allegation was only against the property dealers not against the appellant whereas in subsequent complaint improvement was made and she was also involved.

5. Learned counsel for the State submitted that the chargesheet having been filed, the appellant can raise all the pleas before the court below. It is not a case for quashing of the F.I.R.

6. Despite service of notice, respondent No.2/complainant has not appeared.

7. Heard learned counsel for the parties and perused the paper book.

8. On the material placed on record by the parties, it is evident that an Agreement to Sell was executed by the appellant in favour of the wife of respondent No.2, namely Sarabjit Kaur for sale of plot measuring 1 (kanal). The agreement to Sell specifically mentions the fact that appellant/ the vendor gets entitled to the property on the basis of the Agreement to Sell executed in her favour by Malkit Kaur on 27.05.2013. The last date fixed for registration of sale deed was 25.06.2014 which was extended to 24.12.2014. There is nothing placed on record by the complainant or the State to show that besides filing of the criminal complaint, respondent No.2 had initiated any civil proceedings for execution of sale deed on the basis of Agreement to Sell or in the alternative return of the earnest money.

9. A perusal of the first complaint made by respondent No.2 on 30.09.2015 shows that the prayer was made for return of the amount paid by him with no allegation of cheating. It was filed only against Manmohan Singh and Ranjit Singh, the property dealers. Reference in the aforesaid complaint was made to the Agreement to Sell executed between the parties. In addition, there was a reference to two other Agreements to Sell executed in total. A prayer was made for getting an amount of ₹29,39,500/- refunded from the property dealers. Though, in the aforesaid complaint reference was made to the Agreement to Sell in question, however there was no complaint made against the appellant. The aforesaid complaint was investigated by the Economic Offences Wing and a report was submitted to the Senior Superintendent of Police on 22.03.2016. A report was submitted on the basis of which the legal opinion was sought from the District Attorney who opined that no criminal offence was made out and the complainant shall be at liberty to invoke jurisdiction of the civil court. The aforesaid opinion was accepted by the Senior Superintendent of Police, Ludhiana (Rural) on 18.5.2016.

10. Thereafter, Darshan Singh (respondent No.2) made another complaint to DIG, Ludhiana on 05.10.2016 which again was enquired into and a finding that earlier identical complaint was filed as no criminal offence was made out and the second complaint was consigned to record. In the second complaint, there was no reference made to the earlier complaint filed by Darshan Singh.

11. Still not satisfied as the result of the earlier complaint was not to the liking of the respondent No.2. He filed another complaint on 23.01.2017. Thereafter, another complaint was filed by the respondent No.2 on 15.06.2017 on the basis thereof F.I.R. in question was registered. On the facts of the case in hand, it is evident that the effort of respondent No.2 was merely to put pressure on appellant while involving her in a criminal case to get his money back whereas there is nothing pleaded that respondent No. 2 that he was ever ready and willing to get the sale deed registered. There was no effort made by the respondent No.2 or the vendee in the Agreement to Sell to initiate any civil proceedings to get the sale deed executed on the basis of the Agreement to Sell. In fact, the last date fixed for execution of the sale deed even after extension was 24.12.2014.

12. There is nothing on record to suggest that any notice was issued by the respondent No.2 or the vendee to the appellant to get the sale deed registered just either before expiry of the last date fixed for executed of sale deed or immediately thereafter. No civil proceedings were also initiate rather the respondent No.2 proceeded only by filing complaints with the police two of which were earlier filed. Had there been any civil proceedings initiated, the question of readiness and willingness of the vendee is also an aspect to be examined by the Court.

13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court.

14. Hence, in our opinion the impugned order passed by the High Court deserves to be set aside. The petition filed by appellant for quashing of F.I.R. is ordered to be allowed. As a consequence, F.I.R. No.430 dated 16.10.2017 and all the subsequent proceedings therewith are ordered to be quashed. The appeal is, accordingly, allowed.