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Court : Rajasthan

Decided On : Jul-18-1978

Reported in : 1978WLN(UC)282

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Revision No. 65 of 1978

Appellant : Hazarimal

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

K.D. Sharma, J.

1. This is a petition in revision filed by Hazari Mal against the order of the learned Sessions Judge, Jalore, dated 25th January, 1978, by which the order of discharge passed in his favour by the Additional Munsiff and Judicial Magistrate, Jalore, on 5th May, 1977, in Criminal Case No. 167 of 1977 tinder Section 420, I.P.C. was set aside and the case was sent for further inquiry to the learned Magistrate.

2. The brief facts giving rise to this revision-petition are enumerated below. The petitioner and his cousin Munnilal obtained a money decree for Rs. 844/-, against

Bhanwar Singh alias Unjan complainant and in execution of that decree purchased the house of the complainant for Rs. 500/-. The sale was confirmed and a sale certificate in respect of the house was granted by the court to the petitioner and his cousin on 29th October, 1958. The petitioner and his cousin, however, did not get the actual possession of the house in pursuance of the sale certificate and permitted the complainant to occupy the house as a tenant on monthly rent of Rs. 5/- The complainant executed a rent note in favour of the petitioner and his cousin on 19th October, 1959 & thereafter, continued to occupy the house as their tenant. On 23rd January, 1966, Munni Lal cousin of the petitioner agreed to sell the house to the complainant for a sum of Rs. 500/-. The said agreement was reduced to writing. It is alleged that in that deed of agreement the receipts of Rs. 100/- towards the sale price and Rs. 60/-, towards the arrears of rent were executed. On 9th June, 1968, a money order of Rs. 160/-, was sent by the complainant to the petitioner for payment of arrears of rent. According to the complainant he paid by money order Rs. 100/-, towards the sale price of the house and Rs. 60/-, only towards arrears of rent. Thereafter the complainant made repeated requests to the petitioner to accept the balance and to execute a registered deed of sale in his favour but the petitioner and his cousin assured the complainant that he would not be ejected and that a sale-deed would be executed in his favour. It is alleged by the complainant that on 18th September, 1976, Hazari Mal petitioner came to his hotel and told him that if he paid to the former a sum of Rs. 500/-, towards the sale price and the arrears of the rent he would execute a registered sale-deed of the house in the latter's favour. According to this assurance, the complainant paid Hazari Mal petitioner a sum of Rs 500/-, in the presence of Sonia and Prabhu. The petitioner promised the complainant that he would execute the sale-deed and get it registered within four or six days, but despite such promise the petitioner and his cousin did not execute the deed of sale and get it registered in favour of the complainant. It is further alleged that the petitioner and his cousin declined to have received a sum of Rs. 500/-, and took steps to get the complainant evicted from the house in the execution proceedings. The complainant, therefore, filed a complaint, against Hazari Mal petitioner and Munni Lal for the offence of creating punishable under Section 420, I.P.C. in the court of the Judicial Magistrate, Jalore, on 7th October, 1976. The learned Magistrate forwarded the complaint to the

Station House Officer, Ahore for investigation under Section 156(3), Cr.P.C. The police registered a criminal case under Section 420, I.P.C. against Hazari Mal made the usual investigation into it and, eventually, challenged the petitioner only under Section 420 I.P.C. The learned Judicial Magistrate perused the papers submitted by the police along with the charge-sheet and after hearing the learned Counsel for the parties, discharged the petitioner of the offence of cheating. Aggrieved by the order of discharge the State filed a revision-petition in the court of the Sessions Judge, Jalore, who, after perusing the record and hearing the parties, set aside the order of discharge and sent the case back to the court of the Judicial Magistrate, Jalore for further inquiry. As against the order of the Sessions Judge, the petitioner has come up in revision to this Court.

3. I have carefully gone through the record and heard Mr. S.C. Bhandari for the petitioner and Mr. Ram Singh Rathore for Bhanwar Singh non-petitioner and Mr. K.C. Bhandari, Public Prosecutor, for the State. It has been contended by Mr. S.C. Bhandari appearing on behalf of the petitioner that there is no material on the record to show that the representation, on the basis of which the money was alleged to have been obtained by the petitioner, was incorrect at the time it was made or was false to the knowledge of the petitioner. According to him, the non-petitioner No. 2 concocted a false story of having parted with a sum of Rs. 500/- on the assurance of the petitioner that a registered deed of sale in respect of the house in question would be executed by the latter in his favour. The learned Counsel but there submitted that this concoction was made to bring pressure upon the petitioner to withdraw the execution proceeding for ejectment of Bhanwar Singh from the disputed house. In the alternative, Mr. S.C. Bhandar has urged, that, even if the prosecution case is taken to be true at its face, no criminal offence of cheating is made out against the petitioner and, if any case is made out, it is a case of mere breach of contract which is not necessarily cheating in the absence of dishonest or fraudulent intention of the petitioner, at the time when he entered into contract. In support of his above contention, Mr. S.C. Bhandari relied on *Hari Prasad Cahmaria v. Bishnu Kumar Surekha* : 1974 CriLJ352, *Superintendent and Remembrancer v. Mohan Singh* : 1975 CriLJ812, *Harnarain Shah v. Tribenilal* 1973 Cr.L.J. 140 & *Kanhayialal v. Kirorilal* A.I.R 1955 NUC Raj. 4041, Mr. Ramsingh Rathore, learned Counsel for Bhanwarsingh, on the other hand contended that

there is material on the record to show that at the time when the representation was made by the petitioner, he knew that it was false and with that knowledge he induced Bhanwar Singh non-petitioner to part with a sum of Rs. 500/-. According to the learned Counsel for the non-petitioner, the petitioner practiced deception on Bhanwar Singh non-petitioner, by dishonestly or fraudulently representing to him that he would get the sale-deed of the house duly executed in the latter's favour upon payment of a further sum of Rs 500/- The non-petitioner believed such representation and gave the petitioner a sum of Rs 500/-, in the presence of Sonia and Prabhu witnesses. On the strength of these facts, Mr. Ram Singh submitted that the plea of the petitioner that he may be liable in a civil court under a contract or agreement to sell the home cannot be considered a valid defence to the charge of cheating.

4. I have given my best consideration to the rival contentions. It may be observed at the outset that the difference in the case of breach of contract and a case of cheating is some times very thin It is no doubt true that a mere breach of contract does not necessarily amount to cheating unless there is dishonest or fraudulent intention on the part of the accused at the time he induces the complainant to enter into the contract and to part with any property. The prosecution is always bound to show that the representation made by the accused was to his knowledge at the time he made it and, secondly, the false representation made by him had induced the complainant to part with the money In the present case the allegations in the complaint against the petitioner are that he came to the hotel of Bhanwar Singh, non-petitioner, and made a false representation to him that he would execute a sale-deed of the house in his favour and would get it registered within a couple of days, if the latter gave him a sum of Rs. 500/-. There is further allegation against the petitioner that the aforesaid representation made by him had induced the complainant to part with the sum of Rs. 500/- in the presence of Sonia and Prabhu Further allegations are made against the petitioner that he later on denied to have received a sum of Rs. 500/-, from Bhanwar Singh on a representation that he would get the sale deed executed and registered in favour of the latter. Apart from these allegations, the petitioner has stated in his statement recorded by the police in the course of investigation that he has already made part payments to the petitioner towards the agreed sale price of the house prior to the payment of Rs.

500/-, but the petitioner did not execute a sale-deed of the house in his favour despite repeated requests. There is no proof of these allegations at this stage. The, petitioner has seriously disputed the allegations made against him including the payment of Rs. 500/-, to him on 18th September, 1976. Hence, at this initial stage I do not want to express any definite opinion on the merits and demerits of the prosecution case Suffice it to say that the order of the Sessions Judge, Jalore, directing the Additional Munsiff Magistrate, Jalore, to make a further inquiry into the matters is not erroneous or an abuse of the process of the court which calls for interference in exercise of the revisional or inherent powers It may however, be observed that the Sessions Judge was wrong in expressing any opinion on the merits of the case and in specifically directing the Magistrate to frame a charge against the petitioner. It will' be open for the Additional Munsiff Magistrate, Jalore, to come to his own conclusion, upon consideration of all the materials on the record as specified in Section 239, Cr PC and upon such examination, if any of the accused, as he thinks necessary, and after hearing the prosecution and the accused, whether there is ground for presuming that the accused-petitioner has committed an offence under Section 420, I.P.C. The mind of the Magistrate shall not be influenced by observations, if any, made by the Sessions Judge or by me on merits or demerits of the case.

5. With these observations, the revision-petition filed by Hazari Mal petitioner under Section 397/401 read with Section 482, Cr PC is dismissed. The. record of the case be sent back immediately to the Additional Munsiff-Magistrate, Jalore, for further inquiry in the light of the observations made above.