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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10.02.2025

+ CRL.REV.P. 699/2018 & CRL.M.A. 30260/2018

VILAS RAO KOLI

.....Petitioner

Through: Mr. F. S. Chauhan, Advocate
(Through VC)

versus

STATE OF NCT OF DELHI & ANR

.....Respondents

Through: Ms. Richa Dhawan, APP for State

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present revision petition has been filed impugning the order dated 24.05.2018 passed by the Court of Shri Priyank Nayak, the learned Metropolitan Magistrate-03, Shahdara District, Karkardooma, Delhi ['Trial Court'] in complaint Case R. No. 3480/16 registered at Police Station [P.S] Farsh Bazar.

Arguments on behalf of the Petitioner

2. Learned counsel for the Petitioner states that Respondent No. 2 was the owner of the property bearing no. 111/208 at Ground Floor, Gali Ganga Ram, Chhota Bazar, Shahdara, Delhi ('Subject Property'). He states that the said property consists of three shops and had already been let out by Respondent No. 2



2.1. He states that on 03.10.2000¹, the Subject Property was transferred in favour of the Petitioner herein by Respondent No. 2 on the basis of General Power of Attorney ('GPA') executed by wife of Kunj Behari Lai Sharma. He states that the Petitioner, thereafter, became the lawful owner of the subject property and had informed this fact to the tenants.

2.2. He states that the sale in favour of the Petitioner was duly witnessed by the son of Respondent No. 2. He states, however, when the Petitioner herein approached the tenants for collecting the rent, the tenants declined to pay the rent on the pretext that the Subject Property has been purchased by them from Respondent No. 2. He states that the tenant relied upon purported transfer documents dated 28.11.2000, 29.11.2000 and 21.12.2000 executed in their favour by Respondent No. 2. He states that Respondent No. 2 as well confirmed having executed the transfer documents dated 28.11.2000, 29.11.2000 and 21.12.2000 in favour of the respective tenant(s).

2.3. He states that Respondent No. 2 was not left with any right, title or interest for the Subject Property, after having transferred the same in favour of the Petitioner on 03.10.2000. And in these facts, the Petitioner herein was constrained to file a criminal complaint against the Respondent No. 2 and the tenants, who were arrayed as accused numbers 1 to 5 with respect to the purported transfer documents executed on 28.11.2000, 29.11.2000 and 21.12.2000.

2.4. He states that, in the meantime, the Petitioner herein has also filed a civil suit bearing no. 665/09 before the competent Civil Court at (N/E) Karkardooma Courts ('civil suit') for recovery of physical possession of the Subject Property against Respondent No. 2 and the tenants. He states that

¹ Documents comprising Agreement to Sell ('ATS'), irrevocable general power of attorney ('GPA'), receipt and Will before the Sub-Registrar, Seelampur Delhi.



the said civil suit has since been decreed in his favour on 17.09.2011 and the said decree has been upheld by the Addition District Judge–01 (North–east) Karkardooma Court, Delhi vide judgment dated 11.02.2014 (‘Appellate Court’).

2.5. He states, however, the tenants continue to illegally occupy the Subject property and though the execution proceedings are pending, the Petitioner herein has still not received the physical possession of the Subject Property.

2.6. He states that the Trial Court vide impugned order dated 24.05.2018 has dismissed the subject criminal complaint on the finding that the Petitioner herein cannot maintain a complaint as the Petitioner herein is not the party to the transfer/conveyance documents dated 28.11.2000, 29.11.2000 and 21.12.2000. The Trial Court held that the Petitioner cannot be said to have been cheated within the meaning of Section 415 of IPC.

2.7. He further states that though the Petitioner herein does not dispute the finding of the Trial Court that the Petitioner herein was not cheated since the transfer of the property vide documents dated 03.10.2020 in favour of the Petitioner is absolute. He, however, states, that the action of the Respondent No. 2 in attempting to sell the Subject Property to the tenants in November/December 2000 despite having already sold the Subject Property to the Petitioner is an act of cheating and can be maintained at the instance of any third party as well.

3. None appears on behalf of the Respondent No. 2.

Analysis and conclusion

4. This Court has heard the Petitioner and perused the record.

5. Before adverting to the facts of the present case it would be imperative to refer to the judgments which would enunciate the scope of



exercising the power under Revisional Jurisdiction by this Court.

5.1. The Supreme Court in the case of **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and others**, 2015 (3) SCC 123 held that the revisional power of the High Court cannot be equated with the power of an Appellate Court. The relevant paragraph reads as under:

“... 14. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non- consideration of any relevant material or there is palpable misreading of records, the revisional court is not justified in setting aside the order, merely because another view is possible. **The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court under Section 397 to 401 of Cr.PC is not to be equated with that of an appeal.** Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction....”

(Emphasis supplied)

5.2. Further the Supreme Court in the case of **Girish Kumar Suneja v. CBI**² opined that the revisional jurisdiction of High Court is discretionary in nature and cannot be invoked by a party as a matter of right. The relevant para reads as under:

“11. The Constitution Bench of this Court considered the scope of the revision jurisdiction of the High Court under Section 439 of the Criminal Procedure Code, 1898 (the old Code) in *Pranab Kumar Mitra v. State of W.B.* [*Pranab Kumar Mitra v. State of W.B.*, 1959 Supp (1) SCR 63 : AIR 1959 SC 144 : 1959 Cri LJ 256] The consideration was in the context of an application for substitution filed by the son of a convict who had challenged his conviction and sentence, but had expired during the pendency of the revision petition. **The Constitution Bench held that the revision jurisdiction of the High Court is a discretionary jurisdiction to be exercised in aid of justice. What is significant is that a litigant does not have a right to have a revisable order set aside.** Whether the

² (2017) 14 SCC 809.



High Court chooses to exercise its revision jurisdiction in a particular case or not depends upon the facts of that case—hence, the reference to the revision jurisdiction as a discretionary jurisdiction. **The revision jurisdiction of the High Court only conserves the power of the High Court to ensure that justice is done in accordance with the recognised rules of criminal jurisprudence and that criminal courts subordinate to the High Court do not exceed their jurisdiction or abuse the powers vested in them by the Criminal Procedure Code (the old Code)**

(Emphasis supplied)

5.3. Lastly, while discussing the scope of revision jurisdiction, the Coordinate Bench of this Court in **Taron Mohan v. State & Anr.**,³ had observed as under:

“... 9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence....”

(Emphasis supplied)

6. In view of the aforesaid legal proposition, it is thus a settled law that the scope of interference in the revision petition is very limited and can be invoked only if the order passed by the Trial Court suffers from jurisdictional error or any patent illegality, infirmity or perversity. It is also settled that the Revisional Court cannot reappreciate the evidence and cannot substitute the view of the learned Trial Court with its own merely because another view is possible.

³ 2021 SCC OnLine Del 312



7. Now, adverting to the facts of the present case the main grievance of the Petitioner herein is that despite having being left no title of the three shops in the Subject Property after 03.10.2000, Respondent no. 2 could not have executed any documents in November/December 2000 representing herself to be the owner of the shops and purporting to transfer the same to the tenants. The Petitioner contends that the action of the Respondent No. 2 in purporting to wrongfully hold herself to be the owner in November/December 2000 and transferring the shops to tenants shows dishonest intention and she has committed the act of cheating vis-à-vis the tenants.

8. The said contention raised by Petitioner has been duly considered by the Trial Court. The Trial Court referred to the judgement of Supreme Court in **Mohd. Ibrahim v. State of Bihar**⁴ wherein the Supreme Court while explaining Cheating as per Sections 415 and 420 IPC held that if an accused/person (seller) sells a property knowing that it does not belong to him and thereby defrauds the person who purchased the property [purchaser] it may be possible for the said purchaser to complain that the seller has committed the fraudulent act of cheating; however a third party who is not the purchaser under the said transaction will not be able to maintain the complaint.

9. The aforesaid law vis-à-vis Sections 415 and 420 of IPC settled in the judgment of **Mohd. Ibrahim** (supra) has been recently cited with approval in **Jit Vinayak Arolkar v. State of Goa**⁵ as well, wherein the Supreme Court quashed an FIR registered at the instance of a third party, who was aggrieved by the registration of a sale deed by the accused in favour of the

⁴ (2009) 8 SCC 751

⁵ 2025 SCC OnLine SC 31



purchaser. The Supreme Court held that since the Complainant had not been deceived by the accused to transfer or deliver the immovable property, the ingredients of Section 415 IPC were not made out against the accused.

10. In the present case as well, the complainant/Petitioner is not the purchaser in the transfer/conveyance documents dated 28.11.2000, 29.11.2000 and 21.12.2000 executed by Respondent no. 2. The substance of the complaint has to be seen and mere use of phrase cheating in the complaint is of no consequence. A Co-ordinate bench of this Court in **Raffles Education Corporation Limited v. State of NCT of Delhi**⁶ elucidating upon Section 420 IPC at paragraph ‘63’ and ‘64’ has aptly held as under: -

“63. It is well-settled that Section 420 IPC deals with the offence of cheating and dishonestly inducing delivery of property. **This section is invoked when an individual deceives another person, leading to the delivery of property or the alteration or destruction of valuable security.** To constitute an offence under Section 420 IPC, the following elements must be present : (i) Deception : The accused must have deceived the complainant. (ii) Inducement : The deception must have induced the complainant to deliver property or to do or omit to do something. (iii) Fraudulent or dishonest intention : The intention must be fraudulent or dishonest from the outset. (iv) Resultant delivery of property : The deception must result in the delivery of property or valuable security. These elements differentiate an offence of cheating from a mere breach of contract.

64. The intention is the gist of the offence, and therefore in order to summon a person for the offence of cheating, there has to be material on the record that there was fraudulent or dishonest intention at the time of making the promise. Reference can be made to Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168)”

(‘Emphasis Supplied’)

11. In the case in hand, the essential ingredients of inducement and

⁶ 2024 SCC online Del 7743



delivery as per Section 415 IPC are not satisfied as admittedly the Petitioner/Complainant was not induced to deliver any property to the accused persons. Similarly, there is no allegation that the Petitioner/complainant's signatures have been forged on the impugned transfer documents and, therefore, the ingredients of Section 471 IPC are also not made out.

12. Thus, on a perusal of the impugned order there is no illegality, perversity, or infirmity, which necessitates the interference of this Court. The order of the Trial Court is a well-reasoned order after having appreciated evidence and material on record. The opinion of the Trial Court thus need not be substituted. Hence, the Trial Court's order dated 24.05.2018 is upheld.

13. The Petitioner herein has admittedly succeeded in the civil proceedings and has a decree for possession in its favour. The Petitioner has thus availed its remedies available in law.

14. With the aforesaid observations the revision petition stands dismissed along with the pending applications, if any.

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 10, 2025/rhc/ms