

Nageshwar Prasad Singh Alias Sinha vs Narayan Singh And Anr. on 2 April, 1998

Equivalent citations: AIR1999SC1480, 1999CRILJ598, JT1998(6)SC414, RLW1999(1)SC125, (1998)5SCC694, AIR 1999 SUPREME COURT 1480, 1998 (5) SCC 694, 1998 AIR SCW 4007, 1998 SCC(CRI) 1378, 1998 UP CRIR 625, 1998 CRILR(SC&MP) 670, (1998) 6 JT 414 (SC), 1998 CRILR(SC MAH GUJ) 670, 1998 (6) JT 414, (1999) 24 ALLCRIR 81, (1999) 2 EASTCRIC 135, (1998) 15 OCR 542, (1999) 1 RAJ LW 125, (1998) 4 CURCRIR 90, (1998) 37 ALLCRIC 695, (1999) SC CR R 20, (1999) 1 KER LJ 24

Bench: M.M. Punchhi, K.T. Thomas, S. Rajendra Babu

ORDER

1. The accused-appellant faces a charge of cheating under Section 420 of the Indian Penal Code before the Court of the Magistrate concerned. The respondents, who are complainants, the former being an advocate, accused him of the offence because he backed out from an agreement for sale of certain property situated in the town of Patna. It is alleged that an agreement was signed between the complainant-respondents and the appellant whereby some land was agreed to be sold by the appellant to the complainants on a consideration and allegedly, a part thereof was paid as earnest money, the balance being payable in the manner indicated in the Deed. The most important term in the Deed was that possession of the plot would stand transferred to the complainants and possession in fact was delivered to the complainants over which they have made certain constructions. The complaint was laid on the basis that the appellant had cheated the complainants of the sum of money they had paid as earnest money as his subsequent conduct reflected that he was not willing to complete the bargain for which the complainants had to file a suit for specific performance which was pending in the civil court.

2. Section 415 of the Indian Penal Code which defines the offence of cheating illustrates it well in providing statutory illustrations. Illustration (g) is relevant for our purpose which reads as follows: "(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

3. The latter part thereof illustrates that at the time when agreement for sale was executed, it could have in no event been termed dishonest so as to hold that the complainants were cheated of the earnest money, which they passed to the appellant as part-consideration, when possession of the total land involved in the bargain was passed over to the complainant-respondents, and which remains in their possession. Now, it is left to imagine who would be interested in delaying the

matter in completing the bargain when admittedly the complainants have not performed their part in making full payment. The matter is therefore before the civil court in this respect. The liability, if any, arising by the breach thereof is civil in nature and not criminal. We therefore allow this appeal, and set aside not only the impugned orders of the High Court, but quash the proceedings too which are pending before the Magistrate. The complainant-respondents shall pay compensatory costs to the appellant for these vexatious proceedings which we assess at Rs. 10,000 which the respondents are directed to pay to the appellant within six weeks from today.