10th Edition
OCTOBER 2024

THE LAW LEDGER

The Fortnightly e-journal
DELHI POLICE ACADEMY



SUPREME COURT OF INDIA

RADHEYSHYAM & ORS. …APPELLANT(S)
VERSUS
STATE OF RAJASTHAN & ANR.. RESPONDENT(S)

Mere non-performance of an Agreement to Sell by itself does not amount to cheating and breach of trust

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CRIMINAL APPEAL NO.3020 OF 2024 (@ Special Leave to Petition (Crl.) No.13675 OF 2023)

Date of Judgement: 22/07/2024

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Facts of the Case:

In this case, the appellants, Radheyshyam and others, entered into an Agreement to Sell a property (Swami Towers, Shitla Bazar, Rajgarh) with the respondent (Mohd. Naseem) on June 29, 2020, for a total sale consideration of ₹5.11 crores. An advance of ₹11 lakhs was paid initially, and an additional ₹1 crore was also subsequently paid.

The respondent alleged that despite repeated requests, the appellants refused to execute the registry of the property, leading him to file an FIR in May 2022, claiming that the appellants had cheated him and breached their trust. A civil suit for specific performance of the contract was also filed by the respondent in June 2023, based on the same agreement.

The appellant approached the High Court for quashing of the FIR. However, the Hon'ble High Court declined to quash the FIR, leading to this appeal.

Issues Advanced:

(i) Whether mere non-performance of an Agreement to Sell after receiving partial payment by itself constitute criminal offenses of cheating and criminal breach of trust?

Judgement:

The Supreme Court examined whether non-execution of a sale deed after receiving partial payment constitutes criminal offenses of cheating and criminal breach of trust. The Court emphasized that mere non-performance of an Agreement to Sell by itself does not amount to cheating or breach of trust.

The relevant para of the judgement is reproduced below:

6. "....Mere non-performance of an Agreement to Sell by itself does not amount to cheating and breach of trust. Respondent no.2 has adequate remedy of filing a Civil Suit for relief of specific performance of a contract which he has already availed and the suit is still pending....."

Regarding the allegations of cheating, the Court observed that there was no fraudulent inducement in this case. The Hon'ble Court noted in Para 9 as under:

9."From the bare perusal of the FIR, it is evident that there was no act of cheating, that is, the complainant was nowhere fraudulently induced or dishonestly deceived by the appellants. A commercial transaction took place between the parties during which the parties consensually agreed for the sale of the property of the appellants and respondent no. 2 paid the part consideration. The default in payment of their loan dues on

part of the appellants is not reflective of their deceitful intention towards the complainant. Mere non-registration of the sale or its refusal cannot amount to cheating. The delivery of the advance payment towards consideration was made in furtherance of an Agreement to Sell and it is not the case of the respondent that he was in anyway deceived or duped to make such payments to the appellants. It is a civil dispute and gives rise to the complainant's right to resort to the remedies provided under civil law by filing a suit for specific performance."

With regard to allegations of criminal breach of trust, the Court clarified in Para 12, which is reproduced as under:

12. "In the present case, the appellants were not entrusted with any property by respondent no. 2 – complainant. The only delivery made was of part payment towards an Agreement to Sell between the parties. The amount paid towards consideration cannot be said to have been entrusted with the appellants by respondent no. 2."

The Court strongly emphasized that civil disputes cannot be converted into criminal cases. The relevant para is reproduced below:

13. "The act of the appellant at best constitutes a civil wrong and does not call for any criminal action against them. A civil wrong cannot be given a criminal colour merely to coerce the appellants into registering the sale. The judicial process cannot be used as a tool to enforce specific performance of an agreement."

The Supreme Court finally allowed the appeal and quashed the FIR while clarifying that its observations should not influence the pending civil suit.