

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

RESERVED ON : 1st FEBRUARY, 2013

DECIDED ON : 30th MAY, 2013

+ **CRL.M.C. 2790/2000 & CRL.M.A.Nos.3413/2000, 2131/2001,
1405/2002 & 4162/2003**

MOHINDER PAL SINGH Petitioner

Through : Petitioner in person.

versus

STATE & ORS. Respondents

Through : Mr.Harnam Singh in person.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present petition under Section 482 Cr.P.C. has been filed by the petitioner Mohinder Pal Singh for quashing of the complaint case '*Harnam Singh vs. Mohinder Pal Singh*' by which he was summoned for committing offence punishable under Section 420 IPC vide order dated 11.11.1998. The learned Metropolitan Magistrate dismissed review application against order dated 11.11.1998 vide order dated 15.10.1999. Vide order dated 20.07.2000, the revision petition was also dismissed. The said orders are also under challenge.

2. It reveals that complaint case under Sections 415-418 and 420 IPC was instituted on 12.01.1998. The complainant alleged that the petitioner got his professional service, guidance and consultancy to get clear 11 FDRs and executed agreement dated 22.07.1991 promising to pay 5% of the net amount realised/ settled in US dollars. He further alleged that after execution of the GPA in his favour, he had correspondence with BCCI, Bombay as well as with RBI. He also filed Suit No.725/1993 in this Court and got the necessary relief. He incurred necessary expenses. In between, KIFCO, Kuwait filed a separate suit against the petitioner in Kuwait for recovery of loan extended to him and got a decree of 3,27,500 Kuwait Dinars. KIFCO could not get their loss/ decree realised and settled the dispute with the petitioner. The petitioner informed him on telephone and through FAX about settlement for 3 lacs Kuwait Dinars and obtained his undertakings dated 26.06.1996 and 20.08.1996. Later on, he came to know that the said settlement was for US Dollars 5 lacs and it was to be paid in instalments. Mr.Arvind Kumar Gupta, accused's counsel filed letter dated 27.03.1997 in this Court. Due to false misrepresentation, he was deprived of his dues and wrongful loss to the tune of ₹ 19.75 lacs was caused to him.

3. The complainant examined himself as CW-1. Vide impugned order dated 11.11.1998, the Trial Court summoned the petitioner under Section 420 IPC.

4. Contents of the complaint reveal that the dispute between the parties was primarily of civil nature. The complainant was aggrieved that he was not given/ paid his entire dues/ professional fee. It has come on record that the complainant had filed a Civil Suit No.216/1997 (New No. S-363/1998) for Rendition of Accouts/ Recovery against Mohinder Pal Singh Sahni (petitioner), SBI Commercial and International Bank and Kuwait International Finance Company, Kuwait. Subsequently, he did not pursue the said suit and it was dismissed in default on 28.08.1998. The impugned order was passed thereafter on 11.11.1998. The complainant did not mention that the Civil Suit filed by him was dismissed for non-prosecution. The complainant had already settled the dispute regarding payment of professional fee for a sum or ₹ 4.25 lacs. He himself admitted that pursuant to the said settlement, he was given cheque for a sum of ₹ 1 lac as part payment. Subsequently, two cheques for a sum of ₹ 3.25 lacs were given to him by Babli, accused's brother-in-law which were dishonoured on presentation. The complainant instituted proceedings under Section 138 Negotiable Instruments Act and also filed criminal

complaints for forged signatures of the accused on the cheques and got registered FIRs. The necessary 'undertakings' for no objection for settlement had already been given in 1996. There was no cogent evidence/ materials to infer that due to the representations/ agreement executed between the parties, the complainant was entitled to ₹ 19.27 lacs and he suffered wrongful loss. Contrary to that, the petitioner instituted a suit in this Court for damages for retaining 40,000 shares received by the complainant as 'attorney'. Contents of the complaint do not disclose commission of offence under Section 415 IPC punishable under Section 417 IPC. Mere breach of contract (if any) cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, i.e. the time when the offence is said to have been committed. It is the intention which is the gist of the offence. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently, such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. It is well settled that when the aggrieved party has an alternative remedy in the Civil Courts, the matter should not be allowed to be filed in Criminal Courts. A concealment of facts cannot

be said to be dishonest unless the accused was under an obligation to disclose the facts concealed. There is no whisper in the complaint about the said shares or adjustment. The remedy available under Civil Law cannot be permitted to be converted in criminal proceedings to put pressure upon the other party. It is relevant to note that complainant opted to withdraw Civil Suit No.556/1997 for Rendition of Accounts by moving application under Section 151 C.P.C. when it was fixed for argument on the application under Order 7 Rule 11 CPC. The complainant also did not pursue complaint case under Section 138 Negotiable Instruments Act.

5. In the light of above discussion, the impugned order dated 11.11.1998 cannot be sustained and is set aside. The complaint case and the proceedings arising out of it are quashed. The petition is accordingly allowed.

6. Pending applications also stand disposed of. Trial Court record (if any) be sent back forthwith.

(S.P.GARG)
JUDGE

MAY 30, 2013

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