

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40222-2017 (O&M)

Date of decision: 09.03.2018

Meghraj Dass and another

...Petitioners

V/s.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. P.S. Ahluwalia, Advocate for the petitioners.

Mr. D.S. Sukarchakia, DAG, Punjab.

SUDIP AHLUWALIA, J. (Oral)

CRM-7271-2018

Allowed, as prayed for.

CRM-M-40222-2017

This is an application for anticipatory bail in case FIR No.73 dated 07.06.2016, registered under Sections 406 and 420 of the Indian Penal Code at Police Station Sadar, Kapurthala District Kapurthala.

The allegation in the FIR is that the petitioners who are residents of West Bengal had in the year 2014 bought potatoes worth Rs.1,55,32,500/- which were sent to them by vehicles upto 08.12.2014, and for which they had paid an amount of Rs.80,51,512/- to the complainants. But they subsequently

refused to pay the balance amount of Rs.74,80,988/-. Consequently the FIR was registered under Sections 406 and 420 IPC.

It has been contended on behalf of the petitioners that dispute between the parties is actually civil in nature in-as-much as the quality of potatoes sent to them by the complainants was unacceptable on account of which they sent a legal notice to the complainants and also filed the suit for damages which is currently pending in the concerned Civil Court in the District of Malda, West Bengal.

Reliance has also been placed upon the decision of the Supreme Court in ***Veer Prakash Sharma V/s. Anil Kumar Agarwal and another 2007(3) R.C.R.(Criminal) 960*** wherein the preliminary proceedings arising out of the complaint filed by the supplier alleging non-payment or under payment of the price by the buyer were ordered to be quashed by the Supreme Court with the following observations:-

“8. The dispute between the parties herein is essentially a civil dispute. Non-payment or under-payment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.

No offence, having regard to the definition of criminal breach of trust contained in Section 405 of the Indian Penal Code can be said to have been made out in the instant case.

Section 405 of the Indian Penal Code reads, thus:

“Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made.”

It was also observed in interpreting Section 420 of the IPC:-

“The ingredients of Section 420 of the Indian

Penal Code are as follows:

(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to delivery any property; or

(iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to to do anything which he would not do or omit.

No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that he had an intention to cheat the respondent from the very inception.”

In the present case also there is no allegation to the effect that intention of the petitioners from the very beginning was to cheat the complainants, or that the part payment made by them was actually some form of deception to conceal their intention of withholding rest of the payment.

Undoubtedly a civil suit arising out of the dispute is pending in a Court of competent jurisdiction.

In the given circumstances, the application is allowed and the petitioners are permitted to be released on bail to the satisfaction of Arresting/Investigating Officer subject to

compliance of the other conditions in terms of Section 438(2)
Cr.P.C.

Disposed off.

09.03. 2018
Divyanshi

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No