

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No.M-25933 of 2016 (O&M)
Date of Decision: September 19, 2019**

Sarup Inder Singh and another

.....PETITIONERS

VERSUS

State of Punjab and another

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

Mr. Amitoj Singh Dhaliwal, D.A.G., Punjab.

Mr. J.S.Grewal, Advocate
for respondent No. 2.

SURINDER GUPTA, J.(Oral)

Heard.

A complaint was filed by respondent No.2 against the petitioners for the offences punishable under Section 420 and other provisions of Indian Penal Code (for short, IPC), on which, the petitioners were ordered to be summoned for the offence punishable under Section 420 IPC, vide order dated 30.01.2011. The allegations against the petitioners are contained in para 6 of the complaint (Annexure P-1) which are reproduced as follows:

“That the office asked for report on the record of complainant, but above said accused and officers of land acquisition, Abohar area in connivance of police use to conceal the report and when complainant approached

them, they said that wrong has taken place and said that Sarupinder Singh etc. have usurped the compensation of land of the complainant after submitting false affidavits and in this case, officers can also be trapped, as such you do not pursue this case.”

The complainant alleged that in connivance with the officers of Land Acquisition Authorities and tendering a false affidavit, the petitioners got the compensation amount of the share of complainant. The affidavit, which is the basis of the complaint has been produced as Annexure P-6, which reads as follows:-

“We (1) Anupinder Singh (2) Sarupinder Singh (3) Swaran Singh sons of Ajmer Singh are residents of Village Kundal, Tehsil Abohar, District Ferozepur, do hereby solemnly affirm and state as under:-

1. That Aspal drain has crossed through the area owned by us. This has crossed through Khasra No.4, Killa No.62 3/1, 3/2, 4 and 1/23, 2, situated in Village Kundal. The partition of these khasra numbers is pending and at the time of partition, these numbers would be put in our ownership share.

2. That in case these Khasra numbers do not fall in our share at the time of partition, then we would return due compensation alongwith interest.”

Learned counsel for respondent No. 2 has argued that by giving the affidavit (Annexure P-6) the petitioners have misled the Land Acquisition Authorities to cheat respondent No.2.

Section 415 IPC defines the cheating as follows:

415. Cheating – *whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that*

any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation – *A dishonest concealment of facts is a deception within the meaning of this section.*

The question which arises for consideration is as to whether giving of affidavit (Annexure P-6) and release of payment of compensation attract the provisions of Section 420 IPC ? Vide affidavit (Annexure P-6), the petitioners have intimated the Land Acquisition Authorities that the partition proceedings of khasra numbers are pending and these khasra numbers may fall to their share. They further undertook that in the event of those khasra numbers not falling in their share in partition proceedings, they would return due compensation along with interest. At the time of filing of this affidavit or by way of recital in the affidavit they have not misled the authorities. It was for the Land Acquisition Authorities to look into this affidavit and then decide as to whether they have to accept the same. If any order was passed on the basis of this affidavit, the remedy available to respondent No.2 was to challenge that order of the Land Acquisition Authorities. The affidavit (Annexure P-6) in no manner can be termed as containing any wrong or misleading averments to cheat respondent No.2 or even the Land Acquisition Authorities.

Learned counsel for the petitioners submits that the partition proceedings were completed and khasra numbers mentioned in this affidavit have fallen to the share of petitioners. However, respondent No.2 had filed

an appeal which was dismissed and thereafter, he filed revision petition before the Commissioner, which has also been dismissed.

Learned counsel for respondent No.2 submits that the revision petition was dismissed in default due to non-appearance of counsel for revisionist and an application was filed for its restoration, which is fixed for 20.09.2019. As such, partition proceedings have not been decided finally so far.

Even if, this fact be believed that the partition proceedings have not attained finality, the submission of affidavit (Annexure P-6) does not make out commission of offence punishable under Section 420 IPC against the petitioners. Learned trial Court and Court of Revision have not considered this fact while declining the application of petitioners seeking discharge. Both the Courts below did not appreciate the fact that on the basis of contention raised by respondent No.2 in the complaint and evidence produced in support of his contention, even if believed, the provisions of Section 420 IPC are not even prima facie attracted to this case, which is a misuse of process of Court.

As a sequel of my above discussion, I find merits in this petition and the same is accepted . The order dated 09.09.2015 passed by the Judicial Magistrate Ist Class, Abohar and order dated 24.02.2016 passed by Additional Sessions Judge, Fazilka are set aside. The complaint is ordered to be dismissed and petitioners are ordered to be discharged.

(SURINDER GUPTA)
JUDGE

September 19, 2019
Jyoti-II

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No