

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10101-2019 (O&M)

Date of Decision: 15.03.2021

Sunil Garg and another

....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present : Mr. Vishal Goel, Advocate,
for the petitioners.

Mr. Sandeep Singh Deol, DAG, Punjab.

Mr. J.S.Mehndiratta, Advocate,
for complainant/respondent no.2.

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioners seek quashing of FIR no.122 dated 20.10.2018, registered at Police Station Division no.4, Patiala, for the alleged commission of an offence punishable under Section 420 of the IPC.

Arguments have been addressed at length by learned counsel for the petitioners, as also by learned counsel respondent no.2, i.e. the complainant in the FIR. The matter actually arises out of a cheque stated to have been issued by the petitioners to the complainant but which the learned counsel for the petitioners denies was actually ever issued to the complainant at all, with him further submitting that in any case proceedings under the provisions of Section 138 of the Negotiable Instruments Act, 1881, already having been instituted against the complainant, the FIR in question would not lie at all and therefore it deserves to be quashed.

He has relied upon essentially three judgments in that context,

from which he has read out the relevant passages for this court, i.e. (i) **Hridya Ranjan Pd. Verma and others Vs. State of Bihar and another, (SC): Law Finder Doc Id # 25795**, (ii) **Maripalli Mahirathnam Gupta Vs. State of Andhra Pradesh : Law Finder Doc Id # 116403** and (iii) **J. Vidya Sagar Vs. State of Andhra Pradesh and another : Law Finder Doc Id # 252386**.

Learned counsel submits that even in terms of the judgment of the Supreme Court in ***Hridya Ranjan Pd. Verma's case***, there could have been no intention to cheat the complainant because admittedly, even as per the FIR, the complainant gave a cash loan of Rs.6.5 lakhs to the petitioners in the month of November, 2017, and only thereafter, when the loan was not returned/the complainant was not inducted as a partner in any business to be run jointly by them, he approached the petitioners for return of the money when the cheques in question were issued (as per the complainant though denied by the petitioners); and consequently, that being a subsequent conduct; no element of cheating as defined under the provision of Section 415 of the IPC, is made out.

He specifically points to paragraphs 15 and 16 of the said judgment, which read as follow (after reproducing Section 415 of the IPC):-

“15. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. in the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore 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.”

As regards the applicability of the aforesaid judgment, Mr. Mehndiratta, learned counsel for the complainant, on the other hand points to Annexure R2/4 with the reply of respondent no.2 (complainant in the FIR), which is seen to be a copy of a letter addressed by petitioner no.1 to the Branch Manager of the Oriental Bank of Commerce, Patiala, on 11.01.2017, which is about 10 months prior to the money having been given by the complainant (as contended) and about 11 months prior to the cheques having been given by the petitioners to the complainant. The said communication reads as follows:

“Sir,

Kindly stop payment of cheque nos.001669 and 001670

A/c No.12052191007783. Payee name – Reliance Capital”

The contention of Mr. Mehndiratta therefore is that even much prior to the cheques in question having been given to the complainant by the petitioners, payment thereof had already been stopped, though of course at that stage it was stated that the payment was to be made to M/s Reliance Capital, with whom he admits the complainant has no relation.

However, he submits that the very said cheque as is subject matter of that communication, i.e. cheque no.001670, having been subsequently written out in favour of the complainant by the petitioners, knowing fully well that the cheque would never be honoured, and in fact with the bank having informed the complainant upon presentation of the cheque, that the payment thereof had been stopped, the intention of the petitioners, to cheat the complainant, was very clear right from the beginning.

Mr. Goel, learned counsel for the petitioners, on the other hand counters by submitting that the cheques were in fact stolen, in respect of which even an FIR was got registered at the instance of the complainant, in January 2021, with in fact the complaint itself having been made to the police in the year 2020.

He further submits that the complainant admittedly being a family friend of the petitioners, had come to the house of the petitioners on account of the death of their brother on 14.12.2017, on which date he had stolen the cheques at that point of time.

Having considered the matter, firstly of course as regards that contention, it is to be noticed that the complaint filed at the instance of the complainant against the petitioners with the police, was in the month of February, 2018, with the FIR eventually registered in the month of October, 2018; and as has been pointed out by Mr. Mehndiratta, the petitioners were summoned by the police twice or thrice in between, but with them having refused to answer the summons.

Obviously (for the purpose of this petition which is one seeking

quashing of the FIR at its initial stage), the petitioners would seem to be aware of the said complaint filed, and consequently any complaint made by them about two years later with regard to cheque in question having been stolen, cannot be accepted by this court to be sufficient reason for quashing the FIR.

Hence, I would agree with Mr. Mehndiratta (obviously again, naturally, only for the purpose of this petition itself), that the cheque in question having been 'stopped' in January, 2017, even though it was stated that it was issued to M/s Reliance Capital and not to the complainant (Raman Gupta), but the same cheque having been thereafter issued in favour of the complainant by the petitioners, the judgment in *Hridaya Ranjan Pd. Vermas' case* (supra) would not apply, inasmuch as the action leading to the cheating alleged to have been committed, was not after the cheque money was handed over by the complainant (as per his contention), with the cheques having been issued in December 2017 (again of course as per the contention of complainant).

Naturally, to determine as to whether the allegations of the complainant are correct, or those of the petitioners, evidence would need to be led before the trial court, with the report under Section 173 Cr.P.C. having been already submitted.

Hence, I find no reason to entertain this petition seeking quashing of the FIR itself, with obviously no comment made on the merits of the case, which would be gone into by the learned trial court wholly on the basis of the evidence led before it on behalf of the prosecution as also the defence.

As regards the two judgments of coordinate benches of the Andhra Pradesh High Court cited by the learned counsel for the petitioners in ***Maripalli Mahirathnam Gupta*** and ***J. Vidya Sagars' cases*** (both supra), Maripalli's case was one in which the conviction of the accused was set aside holding that no offence of cheating was made out.

Very obviously that was a case at a stage after evidence had already been led before the trial court and conviction having been pronounced thereafter, based upon such evidence (on the appeal having been dismissed and the High Court being seized of a revision before it).

As regards Vidya Sagar's case, undoubtedly that was one where the criminal complaint itself filed before the Additional JMJC, East and North, RR District, alleging therein that the commission of offences punishable under Section 138 of the Negotiable Instruments Act, 1881, as also Section 420 of the IPC, was challenged.

Paragraph 19 of the said judgment as has been specifically referred to by the learned counsel for the petitioners, reads as follows:-

“19. Now it has to be seen whether there is an allegation in the present case that the petitioner had induced the complainant on the date of issuing the cheque i.e., whether he had any fraudulent or dishonest intention at the beginning of the transaction. Unless it is specifically alleged that at the very inception the Accused has dishonest intention to cheat, the ingredients of Section 415 punishable under Section 420 of Indian Penal Code have not been made out. A reading of the complaint makes it very clear that when the second respondent approached the petitioner with regard to the due amount, he promised to settle the accounts and having verified the accounts, he requested two weeks time and subsequently issued the cheque in dispute. Though it is the case of the second respondent that the petitioner had closed the Account without any intimation to him, it is not clear as to when the

account was closed.”

As already stated, at this stage, of the trial not even having commenced in the present case, and no evidence therefore having been led, I do not see how the contention of learned counsel for the petitioners, even on the basis of said judgment, can be held to be sustainable, with the letter dated 11.01.2017, asking the bank to stop payment qua that particular cheque, having been written (as contended by the complainant), 11-12 months prior to the cheque in question having been issued; even though, to repeat, at that stage the direction for stopping payment was in respect of M/s Reliance Capital. Yet, with the bank in any case having stopped payment to the complainant, as the number of the cheque was the same one in respect of which payment was directed by the petitioner to be stopped, in my opinion evidence on both sides would need to be led before the trial court.

Thus, all aspects would be needed to be gone into by the learned trial court on the basis of evidence led before it, before coming to a conclusion as to whether the petitioners are indeed guilty of having committed any offence or not.

Consequently, this petition is dismissed with the aforesaid observations made.

(AMOL RATTAN SINGH)
JUDGE

15.03.2021
adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No