

**CRM-M-22357-2013 and
CRM-M-22683-2013**

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

Date of decision: 09.11.2022

1. CRM-M-22357-2013 (O & M)

Sanjeev Kumar alias Sanju and another

...Petitioners

Versus

State of Punjab and another

.....Respondents

AND

2. CRM-M-22683-2013 (O & M)

Kulwinder Singh @ Amandeep Singh and others

...Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Rajesh Kumar Girdhar, Advocate,
for the petitioners (in both the petitions).

Mr. Harkanwar Jeet Singh, AAG, Punjab.

Mr. A.S.Dhindsa, Advocate for
Mr. Karamjit Singh Chahal, Advocate,
for respondent No.2.

HARNARESH SINGH GILL, J. (ORAL)

This order shall dispose of the above noted two petitions, as
common questions of law and facts are involved therein.

Both these petitions have been filed for quashing of FIR No.46

**CRM-M-22357-2013 and
CRM-M-22683-2013**

dated 06.06.2013, registered at Police Station Verowal, District Tarn Taran, under Sections 420 and 506 IPC, and all the subsequent proceedings arising therefrom.

At the outset, learned counsel for the petitioners submits that Raj Kumar (petitioner No.2 in CRM-M-22357-2013) and Kulwinder Singh and Tejinder Singh (petitioners No.1 and 2 in CRM-M-22683-2013) have been declared innocent during investigation and, therefore, he does not press the petitions qua them.

Dismissed being not pressed qua Raj Kumar (petitioner No.2 in CRM-M-22357-2013) and Kulwinder Singh and Tejinder Singh (petitioners No.1 and 2 in CRM-M-22683-2013)

Learned counsel for the petitioners, namely, Sanjeev Kumar alias Sanju (petitioner No.1 in CRM-M-22357-2013) and Davinder Singh @ Prince (petitioner No.3 in CRM-M-22683-2013) would contend that it was a monetary/commercial dispute between the parties, which has been given a cloak of criminal liability, and that the facts of the case, by no stretch of imagination, would invite the commission of offences under Sections 420 and 406 IPC.

Learned counsel would further contend that a civil suit filed by respondent No.2 against petitioner-Davinder Singh @ Prince, for recovery of Rs.20 lakh, on the basis of cheque No.411882 dated 06.02.2013, was decreed on 07.05.2015 and that the appeal preferred by the petitioner was also dismissed on 24.08.2016. However, regular second appeal i.e. RSA-2526-2017 filed by him, challenging the aforesaid judgments of the courts below, is pending adjudication before this Court. As such, respondent No.2

**CRM-M-22357-2013 and
CRM-M-22683-2013**

has already exhausted the remedy for recovery of the amount in question. He would further contend that the impugned FIR has been got registered with an intention to harass and humiliate the petitioners. In support of his contentions, learned counsel relies upon the judgments rendered by the Hon'ble Supreme Court in Joseph Salvaraj Vs. State of Gujarat and others 2011(3) RCR (Criminal) 632 and Wyeth Limited and Others Vs. State of Bihar and another 2022 Live Law (SC) 721.

On the other hand, learned State counsel and the learned counsel for respondent No.2 would submit that after thorough investigation, challan has been presented against petitioners, namely, Sajeev Kumar alias Sanju and Davinder Singh @ Prince, and that both the petitioners had cheated the complainant to the tune of Rs.24 lakh and that it is not a fit case to invoke the jurisdiction conferred on this Court under Section 482 Cr.P.C. In support of their contentions, reference has been made to the judgments rendered by the Bombay High Court in Pawan Kumar Vs. Ashish Enterprises 1992(3) RCR (Criminal) 521 and by the Andhra Pradesh High Court in M/s. OPTS Marketing Pvt. Ltd. Vs. State of A.P. 2001(2) R.C.R. (Criminal) 499.

I have heard the learned counsel for the parties.

As per the case of prosecution, the petitioners, who are commission agents, had purchased potato and peas crops from respondent No.2, for a sum of Rs.24 lakh; that however, the petitioners did not make the payment to respondent No.2; that after repeated demands, petitioner Davinder Singh @ Prince issued a cheque dated 06.02.2013 in favour of respondent No.2, and that when the said cheque was presented for

**CRM-M-22357-2013 and
CRM-M-22683-2013**

encashment, the same had been dishonoured on account of 'insufficient funds'.

Indisputably, the civil suit filed by respondent No.2 against petitioner-Davinder Singh @ Prince, for recovery of Rs.20 lakh, on the basis of the cheque dated 06.02.2013, was decreed on 07.05.2015 and that the appeal preferred by the petitioner was also dismissed on 24.08.2016. However, regular second appeal i.e. RSA-2526-2017 filed by him, challenging the aforesaid judgments of the courts below, is pending adjudication before this Court.

Moreover, a perusal of the contents of the FIR would show that no *prima facie* case for the offence under Sections 406 and 420 IPC, is made out against the petitioners. There is nothing on record to reflect any dishonest intention on the part of the petitioners to cheat respondent No.2. The main grievance of respondent No.2 is that the cheque issued by petitioner-Davinder Singh was dishonoured. However, respondent No.2 has availed the remedy for recovery of the amount in question. The averments in the FIR, read on its face, do not disclose the ingredients necessary to constitute offences under Sections 420 and 406 IPC. The dispute apparently appears to be monetary/commercial one, which has been given a cloak of criminal proceedings. The Investigating Agency, without any application of mind as to whether the required ingredients so as to constitute a criminal offence are fulfilled or not, has shown alacrity to register the present FIR.

The case law cited by the learned counsel for respondent No.2 are not applicable to the present case having distinguishable facts for the

**CRM-M-22357-2013 and
CRM-M-22683-2013**

reason that no case for the offence of cheating is made out.

In view of the above discussion, this Court finds that the registration of the impugned FIR is a sheer abuse of process of law. Resultantly, FIR No.46 dated 06.06.2013, registered at Police Station Verowal, District Tarn Taran, under Sections 420 and 506 IPC, and all the subsequent proceedings arising therefrom, are quashed qua petitioners- Sanjeev Kumar alias Sanju (petitioner No.1 in CRM-M-22357-2013) and Davinder Singh @ Prince (petitioner No.3 in CRM-M-22683-2013).

Disposed of.

Any observations made in this case would have not any affect on the rights of the parties in the civil proceedings pending in RSA-2526-2017.

09.11.2022

parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No