

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32851-2018 (O & M)

Date of decision: 31.05.2022

M/s S.K Rai Engineers and Contractors Jaildar Market and anr.

.... Petitioners

V/s

M/s S.C. Jain Constructions Company Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vivek Salathia, Advocate, for the petitioners.

Mr. A.S. Bhatti, Advocate, for the respondent.

JASJIT SINGH BEDI, J. (Oral)

The present criminal miscellaneous petition under Section 482 Cr.P.C. has been filed for quashing of the criminal complaint bearing No.694 of 2016 dated 22.09.2016 (CNR No.PBLD3143742016) titled as M/s S.C. Jain Construction Pvt. Ltd. Vs. M/s S.K. Rai Engineers and others (Annexure P-1) under Section 420, 120-B IPC and summoning order dated 24.10.2017 (Annexure P-2) passed by the Court of Ms. Indu Bala, JMIC, Ludhiana and all further proceedings arising therefrom.

2. The brief facts of the case are that petitioner No.1 is a firm which was undertaking the work of four laning of the Amritsar-Pathankot Section National Highway No.15 in the State of Punjab. Petitioner No.2- Amrik Singh is one of its partners. The petitioners had entered into a sub-contract agreement with the complainant-company for spreading, levelling

and compaction of the earth by mechanical means @ Rs.140 per cubic meter. The expenses for the work (fuel, staff, transportation etc.) were to be borne by the complainant. The sub contract agreement dated 25.09.2013 was duly issued and signed by one Arvind Kumar Anand (non-petitioner-accused No.2 in the complaint).

3. It is the case of the complainant that he submitted various bills, which became due from the side of the petitiones-accused. The details thereof is as under:-

Sr. No.	Bill Nos.	Dated
(i)	2	05.12.2013
(ii)	3	10.01.2014
(iii)	4	05.02.2014
(iv)	5	07.01.2014
(v)	6	10.04.2014
(vi)	7	15.05.2014
(vii)	8	10.06.2014
(viii)	9	10.06.2014
(ix)	10.	10.08.2014

4. The accused-petitioners, thereafter, issued the following cheques:-

Sr. No.	Cheque Numbers	Dated	Amount (in Rs.)
(i)	000048	22.03.2014	3,00,000/-
(ii)	000063	28.06.2014	3.00.000/-
(iii)	000064	28.06.2014	3,00,000/-
(iv)	000069	28.06.2014	2,00,000/-
(v)	000066	25.07.2014	3,00,000/-
(vi)	000067	25.07.2014	3,00,000/-
(vii)	000022	15.12.2014	4,00,000/-
(viii)	000086	15.12.2014	3,50,000/-
(ix)	000087	15.12.2014	3,00,000/-

5. These cheques, which were issued, were dishonoured from time to time though the accused persons had made some payments in the interim period either by cash/RTGs.

6. Notices under the Negotiable Instruments Act were issued but despite the receipt of the same, the payments were not made by the accused-petitioners on the pretext that the remaining amount would be paid to the complainant on finalization of the account between the complainant and the accused. However, no proceedings under the Negotiable Instruments Act were initiated.

7. Effectively, the case of the complaint-respondent was that the cheques had been dishonoured and the accused persons had refused to pay the amount allegedly on account of lack of finalization of the account, and so an offence under Section 420 IPC was made out. Moreso, because the accused persons were untraceable which clearly showed their dishonest intention.

8. Based on the aforementioned allegations, the complaint (Annexure P-1) came to be filed, pursuant to which, the summoning order (Annexure P-2) under Section 420 and 120-B IPC was passed.

9. Thereafter, the instant petition for quashing of the complaint (Annexure P-1) and summoning order (Annexure P-2) was filed, in which, on 02.08.2018, the following order was passed:-

“Learned counsel for the petitioners submits that dispute between the parties pertains to the rendition of account, for which civil suit has been filed by the petitioners, which is pending and a complaint has also been filed under Section 420 read with Section 120-B of Indian Penal Code on the ground that cheques issued to the complainant have bounced.

Notice of motion for 29.10.2018.

Dasti as well”.

10. Subsequently, the complainant filed his response by way of an affidavit specifically denying the contents of the petition and reiterating that an offence was made out from a bare reading of the complaint and therefore, the summoning order had been rightly issued. It was, therefore, prayed that the quashing petition be dismissed.

11. The learned counsel for the petitioners submits that the filing of the criminal complaint (Annexure P-1) is a arm-twisting method adopted by the respondent-complainant wherein deliberately, a dispute arising out a purely contractual liability which is inherently a civil dispute has been given the colour of a criminal case by the complainant in order to pressurize the accused-petitioners to accept the demands of the complainant. In fact, the filing of the complaint is a counter-blast to the civil suit for rendition of accounts (Annexure P-7) filed by the petitioners.

12. It is further contended that the filing of the criminal complaint in itself is a gross abuse of the process of law as no criminal offence under Section 406 or 420 IPC is made out. The filing of the present criminal complaint is a desperate attempt by the complainant to overcome the issue of limitation with regards to launching of proceedings under Section 138 of the Negotiable Instruments Act.

13. According to the learned counsel for the petitioners, admittedly, the petitioners have business relations with the respondent-company and that with regard to the business relations, numerous financial transactions occurred between both the parties. The respondent company used to send its bills and the same were duly cleared by the petitioners by cheque or cash. Mere non-payment of an amount under a contractual liability cannot amount

14. He further submits that during the course of the transactions, the petitioners had paid some amount to the complainant-company as is borne out from the complaint. Further the expenses of fuel, transportation, staff, etc. which was to be borne by the respondent-complainant company was, in fact, borne by the petitioners. Accordingly, once the petitioners started claiming settlement of accounts from the respondent-complainant, with an ulterior and oblique motive, the respondent-company through its Director and officials started threatening the petitioners and refused settlement of accounts. In fact, the respondent-company had misused the numerous security cheques of the petitioners and presented the same for encashment which were dishonoured in July/September, 2014.

15. It is also contended that the legal notices under Section 138 of the Negotiable Instruments Act sent by the complainant were duly replied to, in which it has been categorically stated that the petitioners were always ready and willing to settle the accounts between the parties. Reference has been made to the legal notices and replies (Annexures P-3, P-4, P-5 and P-6). However, it was the respondent-company that never came forward to settle the accounts and instead filed the present complaint. In fact, the petitioners had filed a civil suit for rendition of accounts (Annexure P-7) wherein an application under Order 7 rule 11 for dismissal of the complaint of the petitioners (Annexure P-8) had also been dismissed and the civil suit was now fixed for further consideration before the Civil Court at Amritsar. The complainant, for reasons best known to him, did not file complaints under the provisions of the Negotiable Instruments Act within the stipulated period but has filed the present complaint under Section 420 IPC precisely on the ground that the cheques had been dishonoured and since the

petitioners-accused did not want to make the payment, therefore, an offence under Section 420 IPC was made out.

16. The learned counsel for the respondent-complainant while referring to his reply submits that a reading of the complaint (Annexure P-1) and the summoning order (Annexure P-2) clearly establishes that an offence under Section 420 IPC is made out. In fact, the cheques were deliberately got dishonoured and the accused did not have an intention to pay, and therefore, an offence under Section 420 IPC is made out.

17. The learned counsel for the respondent-complainant also made a reference to the judgments passed in the cases of **(i) M/s Rainbow Promoters Private Limited versus Surinder Pal (Crl. Misc. No.M-.23017-2007 decided on 4.09.2012)**, **(ii) Sangeetaben Mahendrabhai Patel versus State of Gujarat and another (Crl. Appeal No.645 of 2012 decided on 23.4.2012)**, **(iii) Vivek Sahni and another versus State of Punjab and another (Crl. Misc. No.M-3451 of 2014 decided 2.9.2014)** to contend that proceedings under Sections 138 of the Negotiable Instruments Act were independent of an FIR/complaint under Section 420 IPC and it would not amount to double jeopardy, in case, both the remedies proceeded simultaneously as the ingredients of the offences in each case were different.

18. I have heard the learned counsel for both the parties at length.

19. Before proceeding further, it would be necessary to examine the provisions of Sections 415 IPC and Section 420 IPC, which are reproduced as hereunder:-

“Section 415 IPC- 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".

“Section 420 IPC-Cheating and dishonestly inducing delivery of property:- *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.*

20. The Hon’ble Supreme Court and this Court have dealt with the issue of quashing of FIRs and criminal complaints/summoning orders in a number of judgments. Some of them are as under:-

In **“Veer Parkash Sharma versus Anil Kumar Agarwal and another, 2007(3) RCR (Criminal) 960**, the Hon’ble Supreme Court held as under:-

“6. Cognizance was taken against the appellant. He was summoned. An application was filed by him on 25.8.1987 for quashing of the said criminal proceeding before the High Court. A learned Single Judge of the Allahabad High Court by reason of the impugned order dated 3.1.2006 while refusing to exercise his jurisdiction stated :

"As the allegations against the applicant are factual in nature, that cannot be adjudicated in the present application, there is no ground for quashing criminal proceedings. Stay order, if any, stands vacated. The trial Court is directed to conclude the trial expeditiously."

7. *The principle underlying exercise of jurisdiction by the High Court under Section 482 of the Code of Criminal Procedure is now well-*

settled viz. that the allegations contained in the complaint petition even if given face value and taken to be correct in its entirety do not disclose an offence or not is the question.

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. Ordinarily, bouncing of a cheque constitutes an offence under Section 138 of the Negotiable Instruments Act. No complaint thereunder had been taken.

9. We are, therefore, left only with the question as to whether in a situation of this nature any offence of cheating can be said to have been made out.

Section 415 of the Indian Penal Code defines cheating to mean :

"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".

In Hridaya Ranjan Verma and others v. State of Bihar and another, 2000(4) SCC 168, this Court held :

"14. 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.

15. 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."

[See also Indian Oil Corpn. v. NEPC India Ltd. and others, 2006(3)

RCR (Criminal) 740 :2006(6) SCC 736

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 deliver any property; or*
- (iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit 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.

What has been alleged in the complaint petition as also the statement of the complainant and his witnesses relate to his subsequent conduct. The date when such statements were allegedly made by the appellant had not been disclosed by the witnesses of the complaints. It is really absurd to opine that any such statement would be made by the appellant before all of them at the same time and that too in his own district. They, thus, appear to be wholly unnatural.

In law, only because he had issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, in our opinion, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence under Section 417 of the Indian Penal Code.

In “Anil Ritolla @ A.K. Ritolia versus State of Bihar and another, 2007(4) RCR (Criminal) 485, the Hon’ble Supreme Court held as under:-

“6. It is not in dispute that the appellant is one of the Redistributors of Hindustan Lever Ltd. It is furthermore not in dispute that the parties had been carrying on commercial transactions for a long time. Till the financial year 1998-99 despite non-supply of Form IX-C prescribed under the Bihar Sales Tax Rules, the complainant raised

no grievance. Only in paragraph 14 of the complainant petition, a purported statement had been made that the appellant compelled him to continue the business for the year 1998-99 despite non-supply of Form IX-C in the earlier years.

7. Payment of sales tax, admittedly, is governed by the provisions of Bihar Sales Tax Act and Rules framed thereunder. Rule 14 of the Rules prescribes procedure required to be taken in the event of non-receipt of Form IX-C. It is not in dispute that a dealer who had not been supplied with the prescribed form by the supplier may take recourse to the remedies provided for under the Rules.

8. Sections 23, 24 and 415 of the Indian Penal Code read as under:-

Section 23 - Wrongful gain "Wrongful gain" is gain by unlawful means of property which the person gaining is not legally entitled.

"Wrongful loss". - "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully. - A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Section 24 – Dishonestly

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

“Section 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."

9. Ingredients of Section 420 of the Indian Penal Code are as under :

- i) Deception of any person;*
- ii) Fraudulently or dishonestly inducing any person to deliver any property; or*
- iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.*

10. The transactions between the parties were for supply of goods. Admittedly, save and except supply of Form IX-C other terms and conditions of the contract had been complied with by them. Per se, supply or non-supply of Form IX-C of the Bihar Sales Tax Rules had nothing to do with the transactions for which the parties had entered into a contract. Non-issuance of the said form ex-facie cannot give rise to commission of any offence. If the appellant or their principal were obligated to act under a statute and failed to perform their duties as indicated hereinbefore, as the statute itself provides for a remedy, ordinarily the same is required to be taken recourse to. In any event, the second Respondent could have filed a suit for damages.

In *M/s GHCL Employees Stock Option Trust versus M/s India Infoline Limited 2013(2) RCR (Criminal) 519*, the Hon'ble Supreme Court of India, held as under:-

"13. There is no dispute with regard to the legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.

14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of Magistrate summoning the accused must reflect that he has applied his mind to

the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record”.

In the case of **“International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Ors. Versus Nimra Cerglass Technics (P) Ltd. and Anr., 2015(4) R.C.R.(Criminal) 883**, the Hon’ble Supreme Court held as under:-

“20. By analysis of terms and conditions of the agreement between the parties, the dispute between the parties appears to be purely of civil nature. It is settled legal proposition that criminal liability should not be imposed in disputes of civil nature. In Anil Mahajan v. Bhor Industries Ltd. & Anr. 2006(4) RCR (Criminal) 834 : (2005) 10 SCC 228, this Court held as under :-

"6.A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

7.

8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay.... We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than

what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question."

21. In M/s Indian Oil Corporation v. NEPC India Ltd. & Ors., 2006(3) RCR (Criminal) 740 : (2006) 6 SCC 736, this court observed that civil liability cannot be converted into criminal liability and held as under:-

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. 2000(1) RCR (Criminal) 707 : (2000) 2 SCC 636 this Court observed: (SCC p. 643, para 8).

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under section 482 of

the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

22. Learned counsel for the respondent submitted that any defence to be taken by the appellants is to be raised only during the course of trial and is not to be raised in the initial stage of the prosecution. In support of his contention, the learned counsel placed reliance upon Trisuns Chemical Industry v. Rajesh Agarwal & Ors. 1999(4) RCR (Criminal) 223 : (1999) 8 SCC 686; Rajesh Bajaj v. State NCT of Delhi and Ors. 1999(2) RCR (Criminal) 160 : (1999) 3 SCC 259; P. Swaroopa Rani v. M. Hari Narayana Alias Hari Babu 2008(2) RCR (Criminal) 492 : 2008(2) Recent Apex Judgments (R.A.J.) 520 : (2008) 5 SCC 765 Iridium India Telecom Ltd. v. Motorola Incorporated & Ors. 2011(1) RCR (Criminal) 235 : 2011(1) Recent Apex Judgments (R.A.J.) 26 : (2011) 1 SCC 74. Learned counsel for the respondent further submitted that when the Magistrate has taken cognizance of an offence and the power of the High Court to interfere is only to a limited extent, the High Court cannot substitute its view for the summoning order passed by the Magistrate. In support of this contention, learned counsel placed reliance upon the decisions of this Court in Fiona Shrikhande v. State of Maharashtra & Anr. 2013(4) RCR (Criminal) 195 : 2013(5) Recent Apex Judgments (R.A.J.) 154 : (2013) 14 SCC 44; Bhushan Kumar & Anr. v. State (NCT) of Delhi &

Anr. 2012(2) RCR (Criminal) 794 : 2012(2) Recent Apex Judgments (R.A.J.) 425 : (2012) 5 SCC 424 and Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi & Ors. (1976) 3 SCC 736.

23. The above decisions reiterate the well-settled principles that while exercising inherent jurisdiction under Section 482 Cr.P.C., it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial court. High Court's inherent powers, be it, civil or criminal matters, is designed to achieve a salutary public purpose and that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the court would be justified in quashing the proceedings in the interest of justice.

*In the case of “**Vinod Natesan versus State of Kerala and ors.,***

***2019(1) RCR (Criminal) 348,** the Hon’ble Apex Court held as under:-*

“4.1 The appellant, party in person has vehemently submitted that, in the facts and circumstances of the case, the High Court has committed grave error in quashing the criminal proceedings. It is vehemently submitted by the Appellant-party in person that as the accused did not act as per the agreement entered into between the parties and did not make the payment due and payable under the agreement and a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) was due and payable and, therefore, the accused committed the offence of cheating. It is submitted that after availing his intellectual services the accused did not make the full payment including one month's notice before terminating the contract/agreement.

XXXXX

XXXXX

XXXXX

6. Having heard the appellant as party in person and the learned Advocates appearing on behalf of the original accused as well as the State of Kerala and considering the judgment and order passed by the High Court, we are of the opinion that the learned High Court has not committed any error in quashing the criminal proceedings initiated by the complainant. Even considering the allegations and averments made in the FIR and the case on behalf of the Appellant, it cannot be

said that the ingredients of Sections 406 and 420 are at all satisfied. The dispute between the parties at the most can be said to be the civil dispute and it is tried to be converted into the criminal dispute. Therefore, we are also of the opinion that continuing the criminal proceedings against the Accused will be an abuse of process of law and, therefore, the High Court has rightly quashed the criminal proceedings. Merely because the original accused might not have paid the amount due and payable under the agreement or might not have paid the amount in lieu of one month Notice before terminating the agreement by itself cannot be said to be a cheating and/or having committed offence under Sections 406 and 420 of the IPC as alleged. We are in complete agreement with the view taken by the High Court”.

In **“Satishchandra Ratanlal Shah versus State of Gujarat and another, 2019(2) R.C.R.(Criminal) 145”**, the Hon’ble Supreme Court held as under:-

“11. Coming to the aspect of quashing of the charges, it is well settled that such exercise needs to be undertaken by the High Court in exceptional cases. It is also well settled that the framing of charges being initial stages in the trial process, the court therein cannot base the decision of quashing the charge on the basis of the quality or quantity of evidence rather the enquiry must be limited to a prima facie examination. [refer to State of Bihar v. Ramesh Singh, 1977 CriLJ 1606].

12. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with 406 of IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that the respondent no.2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, the respondent no. 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognizes a difference between simple payment/investment of money and entrustment of money or property.

A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in section 405 IPC without there being a clear case of entrustment.

13. In this context, we may note that there is nothing either in the complaint or in any material before us, pointing to the fact that any property was entrusted to the appellant at all which he dishonestly converted for his own use so as to satisfy the ingredients of Section 405 punishable under section 406 of IPC. Hence the learned Magistrate committed a serious error in issuing process against the appellants for the said offence. Unfortunately, the High Court also failed to correct this manifest error.

14. Now coming to the charge under Section 415 punishable under section 420 of PC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar, : (2000) 4 SCC; 168 2000(2) RCR (Criminal) 484. In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached the respondent no. 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, the respondent no. 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

15. Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations [refer to Gian Singh v. State of Punjab, 2012(4) RCR (Criminal) 543 : (2012) 10 SCC 303]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and in-efficient transfers, under section 415 of IPC.

16. However, the High Court appears to have been carried away by

the moral element involved in the breach of promise and made certain observations. Being a policy consideration, such suggestions need to be restricted. The aforementioned observations of the High Court were not only unnecessary for the adjudication of this matter, but the same could have been understood as casting some kind of aspersions on the accused. This clearly reflected a loaded dice situation against the appellant herein”.

In the case of **“J.C. Khanna versus State of Haryana and others, 2010(2) RCR (Criminal) 566”**, this Court held as under:-

“4. As per the complainant's case, an order was placed for purchase of chemicals and solvents from the accused for a sum of Rs. 12,50,000/-. The complainant paid a sum of Rs. 4,00,000/- on 15.6.1999 to Ashok Khanna (respondent No. 4). The said sum/money is stated to have been counted by Madan, Mohan and Rajiv Arora. Ashok Khanna however signed a demand promissory note by way of security confirmation and acknowledgment of the liability and repayment guarantee. Because material was not supplied to the complainant, it has been alleged that criminal offence is spelt out.

5. I am in agreement with the reasons recorded by the Magistrate to the effect that it is a dispute of civil nature. The very fact that demand promissory note has been executed, indicates that case is of civil nature. Merely because material was not supplied, per se, would not indicate commission of offence of cheating or criminal breach of trust, in the facts and circumstances of this case”.

In **“R.K. Sharma versus State of U.P. (Criminal Miscellaneous No.M-3957-2003 decided on 12.5.2006)”**, the Allahabad High Court held as under:-

“2. The brief facts giving rise to this application are that respondent No. 2 filed a complaint before the Special Chief Judicial Magistrate, Agra against the applicant alleging that the applicant had taken Rs. 50,000/- (Fifty thousand only) from respondent No. 2 for supply of goods but he supplied the goods worth Rs. 21,230/- (Twenty one

thousand, two hundred thirty only) and misappropriated the amount of Rs. 28,770/-. For the remaining articles he assured that it will be supplied in due course. In spite of several reminders on telephone the petitioner did not supply the articles and ultimately refused the same on 15.1.2002. After the refusal it was revealed that an amount of Rs.28770/- (Twenty eight thousand seven hundred seventy only) was misappropriated. Hence, the complaint was filed. The Magistrate after recording the statement of complainant and witness summoned the applicant under section 406/420 Indian Penal Code.

3. It has been further pleaded that a perusal of complaint reveals that this is matter of sale and purchase transaction and supply of goods and the criminal courts should keep their hands off and the matter be decided by civil courts. In purchase and sale transaction nothing is entrusted and there was no element of cheating when the order was given. Thus, no offence under section 406/420 Indian Penal Code is made out, hence, the complaint is liable to be quashed.

4. The opposite party filed a counter affidavit alleging that applicant having dishonest intention fraudulently took Rs. 50,000/- for supply of goods but he sent goods for Rs. 21,230/- and mis-appropriated Rs. 28,770/-, hence, has been rightly summoned under section 406/420 Indian Penal Code. This is not a matter of sale and purchase but the applicant supplied the goods worth Rs. 21230/- and did not return the remaining entrusted amount. The applicant has intentionally played a fraud on opposite party No. 2 that is why he has not supplied the articles.

XX

XXX

XXXX

XX

6. So far as the factual position is concerned, there appears to be agreement between the parties for supply of the articles and paragraph 4 of the complaint is relevant. Para 4 of the complaint shows that the order was placed to the applicant and the articles worth Rs. 21,230/- were also sent through 'Arora Golden Transport' and for the remaining articles, the applicant assured to send the same within a short period. There must have been a fraudulent intention at the initial stage for cheating. In the present case it appears a matter

of breach of agreement between the parties, hence, it cannot be termed as 'cheating' or 'misappropriation'.

7. The opposite party No. 2 may seek the remedy available for enforcement of contract or for realising the consideration paid.

8. Thus the complaint is not maintainable and is liable to be quashed. Consequently the complaint case No. 737/2002, pending before the Special Chief Judicial Magistrate, Agra Smt. Garima Jain v. Sri R.K. Sharma under sections 406/420 Indian Penal Code Police Station New Agra, District Agra, is hereby quashed.

21. A perusal of the aforementioned judgments would show that where the dispute between the parties is essentially a civil dispute arising out of non-payment or under-payment of the price of goods, that by itself would not amount to the commission of the offence of cheating. Further, only because the cheques which were issued, were dishonoured would also not by itself mean that the complainant has been cheated. While it is true that a case of breach of trust or cheating are both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence. Mere breach of a contract should not give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction.

22. With respect to the legal position on quashing of an FIR/complaint, the law is well-settled that when a proceeding at the initial stage is said to be quashed, the test to be applied by the Courts is as to whether the uncontroverted allegations as made in the FIR/complaint establish the offence. Ordinarily, the High Court being a superior Court should refrain from analysing the material which are yet to be adduced and seen in a true perspective and a legitimate prosecution ought not to be

stified. However, the Courts have held that where a bare reading of the FIR/complaint does not make out an offence then the Courts should not be circumspect in quashing the said FIR/complaint and the consequential summoning order as the prosecution of the accused would amount to abuse of the process of the court.

In State of Haryana and others versus Bhajan Lal and others, 1991(1) RCR (Criminal) 383, the Hon'ble Supreme Court laid down the principles in Para 107 thereof. The same para is reproduced hereinbelow:-

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

23. Coming back to the facts of the present case, it may be apposite to mention here that a reading of the complaint and the summoning order reveals that an offence under Section 420 IPC is sought to be made out only on account of the fact that the cheques that had been issued were dishonoured. The relevant extract of Para 6 of the summoning order (Annexure P-2) is reproduced hereunder:-

“Further the cheques were issued at the time when there was no sufficient amount in the account and the same were dishonoured vide memo Ex.C20 to Ex.C23, Ex. C26, and Ex.C27, Ex.C34 to Ex.C36 which goes to show that accused knew about the fate of the cheque but till then in order to have a wrongful gain they issued a cheque to the complainant. The accused had dishonestly issued the false cheque to the complainant with a motive to cheat the complainant. In this way the accused has committed cheating upon the complainant.

The version of the complainant is corroborated with the testimony of CW2 Joginder Singh Neggi, CW3 Naveen Kumar, CW4 Parveen Sharma. Complainant by examining himself and other witnesses have categorically proved the prima facie case against the accused. Therefore, in the light of discussion made hereinabove, accused no.1 to 4 are ordered to be summoned to face trial for the offences 420, 120-B IPC let summons to accused no.1 to 4 be issued for 30.11.2017”.

24. The reasoning adopted by the summoning Court is fallacious. Legally speaking, merely because the cheques issued had been dishonoured does not mean that the complainant had been cheated by the accused and merely because such a statement was made by the complainant does not make out any offence.

25. The contention of the learned counsel for the petitioner that it is a civil dispute on account of non-payment/under payment under a contractual liability is also correct. A perusal of Para 5 of the complaint would show that the accused did make payments from time to time and also assured the complainant that they would make the remaining payment after the accounts were finalized/settled. Therefore, the dispute is primarily a civil dispute for rendition of accounts which was filed by the accused (Annexure P-7). An application under Order 7 Rule 11 CPC filed by the complainant was dismissed. Para 5 of the complaint (Annexure P-1) is reproduced hereinbelow:-

“5. That during execution of the work, the accused firm issued various cheques. Some of the cheques were got passed by the accused. Some times, they paid the amount in cash/RTGs also, only to trap the complainant. Other cheques were not passed due to insufficient funds and as and when the complainant apprehended the accused about the same. The accused promised that they will clear

the payment as soon as they receive the payment from the main contractor. The complainant company executed the work till July, 2014, till that time, the accused were making lump-sum payments and further assured that the remaining payment will be released on finalization of the account between the complainant and the accused no.1. The accused and the complainant settled and finalized their account on 06.08.2014, but the accused has not made the payment of any amount not got cleared any cheque which they had issued to the complainant company. After 06.08.2014, the complainant company time and again requested all the accused for making the payment but in order to cheat the complainant, all the accused have changed their phone numbers and the accused no.2 and 3 were not traceable for one year. The employees of the complainant company visited at the disclosed address of the accused no.2 and 3 at Kaithal and Dehradun, but the accused were not traceable which clearly shows their dishonest intentions. Hence, this present complaint”.

26. In fact the substance of the allegations in the FIR/complaint are to be seen in totality. Mere use of the word “cheat” in the FIR/complaint is of little consequence. The “dishonest intention at the very inception” should be made out from the allegations as well and not by a mere play of words. In the present case, the dishonouring of the cheques by itself does not make out a case of cheating, moreso when part payments were made for the goods supplied and the case of the accused from the beginning was that they were ready for a settlement of accounts.

27. Interestingly, the factum of a civil suit for rendition of accounts having been filed has not been disclosed in the complaint. Had the said fact being disclosed, possibly the summoning order (Annexure P-2) might not have been passed as the Trial Court might have come to the conclusion that the offence is not made out and a dispute between the parties is essentially a

civil one pertaining to the rendition of accounts.

28. The case of the petitioners is that the security cheques were misused. Be that as it may, for unknown reasons, the complainant did not pursue their remedy against the dishonoring of the cheques by filing a complaint under Section 138 of the Negotiable Instruments Act, but instead chose to institute the present complaint. It may be reiterated here that merely because the cheques have been dishonoured, does not by itself mean that an offence under Section 420 IPC is made out.

29. A perusal of the various judgments pertaining to offence under Sections 406, 420 IPC would reveal that the Hon'ble Apex Court had held from time to time that the predominant nature of the allegations is to be seen. In the present case, the predominant nature of the allegations are, in fact, civil in nature and do not make an offence under Section 420 IPC. The civil remedy of a suit for rendition of accounts has been availed of by the petitioners and it would be contested by the respondent-complainant.

30. The contention of the learned counsel for the respondent-complainant that the proceedings under Section 138 of the Negotiable Instruments Act can go simultaneously with proceedings under Sections 406 and 420 IPC is correct. However, the issue here is not about the proceedings going on simultaneously. In the present case, only one remedy has been availed off by the complainant by instituting the complaint under Section 420 IPC and the said argument would have been available to the complainant only if both the remedies had been availed off by the complainant and the petitioner had challenged the complaint (Annexure P-10) and the summoning order under Section 420 IPC (Annexure P-2) on the ground that only one proceeding was maintainable.

31. A perusal of the complaint (Annexure P-1), summoning order (annexure P-2) and the documents attached would reveal that no offence

whatsoever is made out, and the petitioners-accused having availed their civil remedy, the criminal proceedings are nothing but an abuse of the process of the Court.

32. In view of the aforesaid discussion, the present petition is allowed and the criminal complaint bearing No.694 of 2016 dated 22.09.2016 (CNR No.PBLD3143742016) titled as M/s S.C. Jain Construction Pvt. Ltd. Vs. M/s S.K. Rai Engineers and others (Annexure P-1) under Section 420, 120-B IPC, summoning order dated 24.10.2017 (Annexure P-2) passed by the Court of Ms. Indu Bala, JMIC, Ludhiana and all further proceedings arising therefrom are hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

May 31, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No