

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-33712-2022

Date of decision:30.08.2022

Dr. Parveen Malhotra

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amit Arora, Advocate for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

1. Challenge in the present petition under Section 482 Cr.P.C. is to the order dated 13.08.2018 (Annexure P-3), vide which Judicial Magistrate 1st Class, Rohtak has treated the protest petition, filed by the complainant/petitioner as a complaint and has directed the complainant/petitioner to lead his preliminary evidence. Challenge is also to the order dated 18.11.2021 (Annexure P-4), vide which Sessions Judge, Rohtak, has dismissed the revision petition filed by the complainant/petitioner, against the order dated 13.08.2018.

2. Brief facts of the case are that the petitioner got an FIR No.74 dated 14.04.2017 registered under Section 420 IPC at Police Station PGIMS, Rohtak, District Rohtak, in which the allegations in brief were that the petitioner was doing his duties at PGIMS Rohtak and on account of a

Gupta, Assistant Professor, Medicine Department, the said person along with her husband Dr. Shalindra Aggarwal, Dr. Ramesh Jain and Dr. Manoj Goyal, had, in conspiracy with each other, spoiled the career of the complainant/petitioner. It was alleged that the petitioner was the Nodal Officer and he had made a complaint against Dr. Manoj Goyal to the Directorate of Health and being aggrieved of the said complaint, Dr. Manoj Goyal, along with the above said Doctors, started giving false complaints against the petitioner and got him removed from the designation of the Nodal Officer in connivance with Dr. Kamla Singh (Ex. Director General of Health Services), i.e., respondent No.4. Reference in the complaint was also made to an audio CD in order to show the conspiracy between the accused persons, but in the said complaint, the accused persons were found to be innocent. It was also alleged that Dr. Rakesh Gupta, Senior Professor of the Orthopedics Department, PGIMS, Rohtak, respondent No.2, was also involved in the said conspiracy. The police investigated the matter and submitted the cancellation report and in the cancellation report, it was observed that the allegations were found to be baseless and Section 420 IPC in the aforesaid case was not made out and, accordingly, the said cancellation report was submitted before the trial Court.

3. The Judicial Magistrate 1st Class, Rohtak, vide order dated 13.08.2018, after hearing the present petitioner and after taking into consideration the averments made in the protest petition, accepted the cancellation report and treated the protest petition filed by the complainant as a complaint, as there was no sufficient material available in order to summon the proposed accused persons in this case for facing trial at that

evidence. The prayer of the petitioner, as noticed in para No.2 of the said order, was that the accused persons be summoned by the Court after taking cognizance of the cancellation report filed, which as per the counsel for the petitioner/complainant was one of the recourses available to the court. The Judicial Magistrate 1st Class, after considering the entire law on the matter, observed that the Magistrate, in such a situation, has three options. Firstly, he may agree with the cancellation report and after finding that there is no sufficient ground for proceeding further, he may drop the proceedings. Secondly, the Magistrate is also empowered to take cognizance under Section 190(1) (b) Cr.P.C. on the basis of the police report and issue process and he would not in such a situation, be bound by the conclusion arrived at by the police in their report. The third option available with the Magistrate has also been noticed, as per which, he could take cognizance of the offence under Section 190(1) (a) Cr.P.C. on the basis of a complaint and proceed to examine upon oath, the complainant and his witnesses under Section 200 Cr.P.C. and in case, he adopts the third alternative, he may hold or direct an enquiry under Section 202 Cr.P.C., if he thinks fit. The Judicial Magistrate 1st Class, after considering various judgments of the Hon'ble Supreme Court and other Courts, had observed that taking of cognizance of the offence is an area within the domain of the Magistrate and after considering the facts of the present case came to the conclusion that there was no sufficient material available to summon the proposed accused persons in the case for facing the trial at that stage and, thus, while exercising his discretion, directed that the protest petition be treated as a complaint and directed the complainant/petitioner to lead his evidence. The cancellation

report was accepted. As would appear from para 7 of the impugned order that apart from the allegations made by the petitioner/complainant, statements of the accused persons were also noticed and the statements of the Dr. Rakesh Gupta as well as Dr. Ramesh Kumar Jain were also considered before passing the order.

4. The petitioner being dissatisfied with the same, filed a revision petition before the District & Sessions Judge, Rohtak, who, vide detailed order dated 18.11.2021, dismissed the said revision petition. The revision petition was dismissed primarily on two grounds. The first ground for dismissal was that the court was not satisfied inasmuch as even if the allegations levelled in the complaint were taken on face value and also, the contentions raised were taken to be true, even then how offence under Section 420 IPC was made out and it was observed that query regarding the same was posed to the learned counsel for the petitioner/complainant, but the counsel could not satisfy the conscious of the court that the offence under Section 420 IPC was made out. It was accordingly observed that the cancellation report moved by the SHO which stated that the offence under Section 420 IPC is not made out was, thus, rightly accepted by the trial Court and the acceptance of the said cancellation report could not have been said to be illegal, perverse so as to call for any interference of the Sessions Judge, Rohtak. The second ground for rejection was that the trial Court had appreciated the facts and the record in the correct light and after having considered the same, had formed an opinion that the accused persons could not be proceeded against at that stage and the said order being in accordance with law did not call for any interference by the revisional court. Moreso, it

made out, inasmuch as, there were no allegation of cheating and dishonestly inducing the delivery of property in the complaint. The arguments of the learned counsel for the petitioner/complainant that some record was not collected by the Investigating Officer as also the fact that the petitioner/complainant was not heard by the Investigating Officer, was also considered, but was rejected in view of the aforesaid facts and also, in view of the fact that the trial Court had appreciated the facts given in the original complaint and in the protest petition and then arrived at its conclusion.

5. When the matter came up for hearing before this Court, the learned counsel for the petitioner was specifically asked as to how offence under Section 420 IPC could be made out in the present case and on what grounds, petition of the petitioner seeking challenge to the observations made in para 8 of the order dated 18.11.2021 on the said aspect, are sustainable. No meaningful argument was raised by the learned counsel for the petitioner/complainant in order to call for any interference in the observations made in para 8 of the order dated 18.11.2021. The relevant portion of the order is reproduced as under: -

“8. After having heard both the sides, this Court poses a question to the learned counsel for the complainant as to how commission of offence under Section 420 of Indian Penal Code is made out, if the contentions raised by the complainant in his complaint moved to DGP or the contentions raised in the protest petition are taken to be true on its face value. However, learned counsel for the complainant could not satisfy the conscience of the Court as to how commission of offence under Section 420 of Indian Penal Code is made out against the accused. In the light of the aforesaid observation, if the learned trial Court finds that the cancellation report moved by the SHO does not disclose the commission of offence under Section 420 of Indian Penal Code and accepted the cancellation report, there is no illegality, perversity or lack of knowledge on the part of the learned trial Court. This Court is also of the considered view that no doubt the complainant was not asked by the investigating officer to join the investigation

and some of the record filed by the complainant was not considered. However, learned trial Court has appreciated the facts taken in the original complaint moved by the complainant to DGP and contents of the protest petition filed by the complainant as well as also rightly considered the record produced before the learned trial Court.”

Sections 415 and 420 IPC are reproduced as under: -

Section 415 of The Indian Penal Code

“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.”

Section 420 of The Indian Penal Code

“420. 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.”

6. A perusal of Section 420 IPC would show that the same defines the offence of cheating and dishonestly inducing the delivery of property. The term “cheating” has been defined in Section 415 IPC as has been reproduced hereinabove. The Hon’ble Supreme Court in “**Md. Ibrahim and others Vs. State of Bihar and another**’ reported as **2009 (8) SCC 751** while considering a case in which the FIR had been registered under Section 420 IPC among other Sections, has held as under: -

“Section 420 Indian Penal Code

13. Let us now examine whether the ingredients of an offence

of cheating are made out. The essential ingredients of the offence of "cheating" are as follows :

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

xxx xxx xxx

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other

law, unless that fraudulent act is specified to be an offence under the Code or other law.

xxx xxx xxx

18. The averments in the complaint if assumed to be true, do not make out any offence under sections 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under section 341 and causing hurt under section 323 of Indian Penal Code. 19. For the reasons stated above, the appeal is allowed in part. The order of the High Court is set aside. The order dated 14.12.2005 of the learned Sub-Divisional Magistrate is quashed insofar as offences under sections 420, 467, 471 and 504 Indian Penal Code. Consequently, the charges framed under those sections are also quashed. The order dated 14.12.2005 and the charges in so far as the offence under sections 323 and 341 Indian Penal Code are left undisturbed. The appeal is allowed in part accordingly.”

7. A perusal of the above judgment would show that the same was a case where an FIR had been registered on an application moved under Section 156(3) Cr.P.C. on the allegations that the first accused who had no connection with the land nor entitled thereto, had executed two registered sale deeds in favour of the second accused. It was held that neither the offence of forgery was made out nor the complainant, who was the owner of the property, was entitled to get an FIR registered under Section 420 IPC. It had been held that in a case where a person has merely acted fraudulently, it cannot be assumed that he has committed an offence punishable under the Code unless that fraudulent act is specified to be an offence under the Code or punishable under any other law.

8. In the present case, the learned counsel for the petitioner has not been able to highlight any allegation made by the petitioner/complainant to the effect that the accused persons had either fraudulently or dishonestly induced the petitioner/complainant and on such instructions/inducement, the

had consented that any person shall retain any property or that the petitioner/complainant was intentionally induced by the accused persons to do or omit to do anything which he would not do or omit to do, had he not been so deceived by the accused. No allegation has been pointed out so as to show that the petitioner/complainant after having been dishonestly induced by the accused person, had delivered any property to any person etc. However, since the Judicial Magistrate 1st Class, has kept the matter alive and has ordered that the protest petition be treated as a complaint case and the matter is pending before the said court, this court does not wish to give any final opinion that offence under Section 420 IPC is made out or not, as the same would seriously prejudice the case of the present petitioner. It will be open to the petitioner to lead preliminary evidence as ordered by the Judicial Magistrate 1st Class and after considering the entire material/evidence having been led by the petitioner/complainant in his preliminary evidence, the subsequent course of action would be determined by the Judicial Magistrate 1st Class.

9. This Court does not find any illegality or irregularity in the order passed by Judicial Magistrate 1st Class while exercising its discretion to direct that the protest petition be treated as a complaint and even the judicial pronouncement referred to by Judicial Magistrate 1st Class, have been considered in the right perspective. No law has been cited by learned counsel for the petitioner to show that the order of the Judicial Magistrate 1st Class or of the Sessions Judge, is illegal, perverse and against law.

Furthermore, no law has been cited by the learned counsel for the petitioner

to the effect that the petitioner was not heard before the cancellation report had been submitted and thus, on the said account, the impugned order was liable to be set aside.

10. The petitioner has neither placed on record the protest petition nor any documents accompanying the protest petition. However, a perusal of paragraph 2 of the impugned order dated 13.08.2018 (Annexure P-3) would show that in the protest petition, the prayer made by the petitioner/complainant was that the accused persons be summoned by the court after taking cognizance of the cancellation report. The said prayer has been duly considered and the Judicial Magistrate 1st Class has, after considering the entire material on record, exercised his discretion to treat the protest petition as a complaint instead of summoning the accused persons after taking cognizance of the cancellation report. In addition to the same, opportunity has been granted to the petitioner/complainant to lead preliminary evidence. The said discretion exercised keeping in view the facts and circumstances of the present case, cannot be held to be illegal.

11. The impugned orders had been passed on 13.08.2018 and 18.11.2021 respectively. Thereafter on 16.12.2021, the trial Court had registered the case as a complaint case and had posted the case to 26.04.2022 for preliminary evidence of the complainant. On 26.04.2022, the complainant had moved an application for exemption from personal appearance and thereafter, the matter has now been fixed for 13.09.2022, for presence of the complainant/petitioner as well as for leading preliminary evidence by the complainant at his own responsibility.

12. Thus, keeping in view the above said facts and circumstances,

this Court finds no illegality, perversity or irregularity in the orders dated

13.08.2018 and 18.11.2021. Hence, the present petition being sans merit, is accordingly, dismissed.

30.08.2022
Ishwar

(VIKAS BAHL)
JUDGE

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