

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

**CRM-M-3348-2019 (O&M)
Date of Decision: 23.02.2023**

Karamjit Singh and another

.....Petitioners

Vs.

Jasminder Singh

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Lakshay Bector, Advocate
for the petitioners.

Ms. Molly A. Lakhanpal, Advocate
for the respondent.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash criminal complaint No.101-A dated 28.05.2012 titled as 'Jasminder Singh Versus Karamjit Singh and another' pending in the Court of Learned Judicial Magistrate 1st Class, Ludhiana; and summoning order dated 16.08.2012 (Annexure P-2) summoning the petitioners under Section 420 of the Indian Penal Code and all the subsequent proceedings.

2. Parties are closely related to each other, inasmuch as complainant Jasminder Singh (now respondent) and accused No.1 Karamjit Singh (now petitioner No.1) are real brothers. Accused No.2 – petitioner No.2 is the wife of petitioner No.1. Complaint was filed by respondent under Section 138 of the Negotiable Instruments Act stating therein that in a complaint filed by one Raj Kanwal under Section 138 of the Negotiable Instruments Act against Karamjit Singh, matter was compromised for ₹6,00,000/- and being brother, he (respondent Jasminder Singh) had paid an amount of ₹5,00,000/-. At that time, accused had assured to return the

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money in short period. Accused No.2 came to India and made part payment of only ₹50,000/-. Thereafter, no amount has been paid till date. It was further alleged in the complaint that one more case arising out of FIR No.56 dated 26.07.1999 registered at Police Station Sudhar, District Ludhiana under Section 420 of the IPC was pending against accused Karamvir and others, in which they were acquitted and in that case also payment had been made by the complainant-respondent. Another allegation put forth by the complainant is regarding the Will dated 27.10.1996 of Jagir Singh, father of the parties. It is alleged that accused Karamvir in the presence of his wife and witnesses has admitted the Will, as per which plot No.128 had fallen to share of accused Karamjit Singh and Khasra Nos.131 & 132 had come to the share of complainant Jaswinder Singh. Accused Karamjit Singh had undertaken to execute the sale deed in favour of the complainant regarding plot No.128 in lieu of ₹5,00,000/-, but later on, accused have slipped away from the terms of the compromise and thus, their intention has become dishonest. With these allegations prosecution of the accused – petitioners was sought under Section 406/420 of the IPC.

3. After recording preliminary evidence, Learned Judicial Magistrate 1st Class, Ludhiana vide impugned order dated 16.08.2012 (Annexure P-2) ordered summoning of the accused to face prosecution under Section 420 of the IPC.

4. It is contended by the petitioners that there is no allegation at all that any inducement was made by any of them to respondent or that there was any dishonest intention. The real dispute is regarding the ancestral property of the parties. The petitioners are residents of Canada. Petitioner

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No.1 had executed a Power of Attorney dated 01.01.2008 in favour of respondent Jaswinder Singh to look after their property of Village Ghuman. The said Power of Attorney was later on revoked on 05.02.2010 as respondent had failed to pay the Chakota of the property and had illegally executed lease deed dated 16.09.2011 in favour of a Trust namely Kama Gata Maru Memorial Trust of Village Ghuman. The said trust, of which respondent is the sole in charge, is a fake Trust. It is submitted that as the respondent came to know that petitioners are coming to India after securing their bail in another case, he filed a suit for permanent injunction against Bhagwan Singh and Gurmail Singh, who are cultivating the land of the petitioners. Copy of the plaint and the written statement of said civil suit are Annexure P-4 and Annexure P-5. Petitioner No.2 has also filed a separate civil suit challenging the transfer of the property in favour of the Trust, which is also pending. It is because of all this litigation that complaint has been filed.

5. Reply filed by the respondent – complainant has been taken on record, wherein the pendency of the civil litigation is not disputed. However, it is contended that petitioners are being rightly prosecuted under Section 420 of the IPC.

6. Having considered submissions of both the sides, this Court finds complaint Ex.P-1 to be gross misuse of the process of law. Perusal of the complaint Annexure P-1 would reveal that there is no allegation against petitioner No.2 Rajinder Kaur except that she had come to India in November, 2010 and had made payment of ₹50,000/- to the complainant.

7. As far as the allegations against petitioner No.1 Karamjit Singh

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are concerned, it is alleged that complainant had made payment for settlement of a complaint under Section 138 of the Negotiable Instruments Act and one more case on behalf of said Karamjit Singh but later on the payment was not returned. It is not the allegation that Karamjit Singh had dishonest intention since beginning.

8. It is clearly mentioned in para No.2 of the complaint that now intention of the accused has become dishonest. Meaning thereby, it is at the later part of time, when the intention of the accused – petitioners is alleged to have become dishonest. Nowhere it is mentioned in the complaint as to when the payment had been made by the complainant on behalf of petitioner - accused No.1 to Raj Kanwal Singh.

9. As far as the allegations regarding the assurance of accused to transfer the property, which came to his share as per the Will of the father, in favour of respondent - complainant is concerned, it is purely a civil matter. In case there was any such undertaking on the part of the accused No.1 – petitioner No.1, complainant was well within his right to file a suit for specific performance. In case accused refused to execute the sale deed contrary to the alleged assurance given by him, that does not make out the criminal offence of cheating.

10. It has been observed in a catena of judgments of Hon'ble Supreme Court that there is a growing tendency to convert purely civil disputes into the criminal cases simply for the reason that civil remedies are time consuming. In the absence of any allegation that accused – petitioners had fraudulent or dishonest intentions at the time of making assurance to the complainant, no offence amounting to cheating under Section 415 of the IPC

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is made out and therefore summoning order Annexure P-2 is held to be illegal.

11. Consequent to entire discussion as above, the complaint (Annexure P-1), summoning order (Annexure P-2) and all the subsequent proceedings arising therefrom are hereby quashed.

February 23, 2023
Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No