

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

CRM-M-7228-2019

Date of Decision: February 23, 2023

Pawan Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ashok Kumar Sharma, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.(Oral)

Prayer in this petition under Section 482 Cr.P.C. is to quash FIR No.898 dated 03.10.2016 registered at Police Station City Jind, District Jind, under Sections 406 and 420 of IPC and all the subsequent proceedings arising therefrom.

2. FIR was lodged on the complaint of Civil Surgeon, Jind, as per which petitioner was given parking contract for the year 2016-17 against the amount of ₹7,11,000/- on 31.12.2015. He deposited ₹3,55,000/- on the same day in accordance with the terms and conditions of the contract. Remaining amount was to be paid in two installments on 31.03.2016 and 03.06.2016. Despite repeated correspondence, petitioner failed to pay the said amount and so, his contract was canceled. Prayer was made to take necessary action for not paying the remaining amount.

3. Factual position is not disputed in the separate replies filed on behalf of both respondents.

4. Bare perusal of the allegations in the FIR would reveal that these do not make out a case either under Section 406 or 420 IPC against the petitioner.

5. Section 415 of the IPC defines the offence of cheating, which reads as under:-

*“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”.*

6. Thus, the ingredients to constitute an offence of cheating are as follows:

- i) there should be fraudulent or dishonest inducement of a person by deceiving him;**
- ii) (a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or
(b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and
- iii) in cases covered by (ii) (b) above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

7. It is clear that in order to attract the offence of cheating, fraudulent or dishonest inducement is an essential ingredient. However, in this case, nowhere in the complaint, which is the basis of the FIR, it has been alleged by complainant-respondent No.2 that petitioner had made any inducement to the complainant or anybody else to give parting contract to him. There is no allegation that at the time of taking contract, the intention of the petitioner was dishonest.

8. Still further, there is no evidence of any entrustment to attract Section 406 IPC. Section 405 of the IPC defines criminal breach of trust as under:-

“405. Criminal breach of trust.—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 willfully suffers any other person so to do, commits “criminal breach of trust”

9. A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows:

- i) A person should have been entrusted with property, or entrusted with dominion over property;
- ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and
- iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge or such trust.

10. **Thus, Entrustment is an essential ingredient of the offence.** A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

11. In the present case, it is evident from the bare perusal of the FIR that there is no entrustment of any money to the petitioner. In case, he did not pay the balance amount as per the contract of the parking, he could have been answerable to his civil liability, but no criminal offence is made out. Dispute is of purely civil nature, which has been given

criminal colour.

12 Thus, necessary ingredients of Section 406 as well as Section 420 IPC are completely missing. The FIR in question is clearly gross misuse of process of law. As such, FIR No.898 dated 03.10.2016, registered at Police Station City Jind, District Jind, under Sections 406 and 420 of IPC and all the subsequent proceedings arising therefrom, are hereby quashed.

Petition is allowed accordingly.

February 23, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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