

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

CRM-M No.10514 of 2023
Date of decision: 22nd May, 2023

Ramesh Kumar Bansal

... Petitioner

Versus

Manoj Sharma @ Manoj Jaipuria & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Swarn Tiwana, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

1. The petitioner is challenging the order dated 29.11.2022 (Annexure P-4) passed by learned Sessions Judge, Fatehgarh Sahib whereby the revision petition filed by him against the order dated 22.04.2022 (Annexure P-2) of learned Judicial Magistrate 1st Class, Fatehgarh Sahib was dismissed.

2. Before proceeding further, it would be relevant to notice the allegations levelled in the complaint.

3. The gist of the allegations levelled in the complaint by petitioner/complainant is that the respondents/accused were on friendly terms with him and his son. In the month of May 2015, as the respondents were in need of money, they requested the complainant to help them by rendering financial help in their real estate business. The

complainant agreed to help the accused and on their request, he transferred an amount of ₹ 25.00 lacs through RTGS on different dates i.e. ₹ 10.00 lacs on 08.05.2015 vide cheque No.174216; ₹ 6.50 lacs on 09.05.2015 through RTGS and ₹ 8.50 lacs on 14.05.2015 vide cheque No.174217. The respondents/accused assured the complainant/petitioner that the above mentioned amount would be returned by them by May 2016 along with interest @ 24% p.a. However, when the complainant requested the respondents/accused to return the borrowed money, they kept postponing the return of the money on some pretext or the other. The complainant then served a legal notice dated 30.10.2017 on the accused to pay the amount in question. Despite the legal notice sent, the accused failed to return the amount received by them from the complainant.

4. Learned counsel for the petitioner has reiterated the stand taken and the submissions made before the Courts below by urging that the Courts below had erred in dismissing the complaint by overlooking and ignoring the fact that the payment of money to the respondents/accused stood duly proved by the complainant. He has further submitted that the courts below had erred in observing that it was essentially a civil dispute between the parties and a civil suit for recovery had already been filed by the complainant. He has further submitted that the petitioner could not be precluded from

simultaneously pursuing his remedy under the criminal law with the civil proceedings as it was evident that the accused had cheated the petitioner of a huge sum of money.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. Both the Courts below dismissed the complaint in question on the ground that the essential ingredients alleged by the complainant were clearly amiss in the case in hand and no prima facie case inviting the mischief of Sections 406, 420, 506, 120-B IPC was made out against the accused/respondents.

7. The thrust of the allegations, which stand levelled in the complaint in question, is that the respondents/accused defrauded the complainant of a sum of ₹ 25.00 lacs. The essential ingredient to attract the mischief of an offence under Section 420 IPC is that there must be a dishonest inducement by the accused to cause the complainant to deliver some property or valuable security. Still further and most importantly, the intention to deceive or to dishonestly induce the complainant to deliver some property or a valuable security must be present at the very first instance i.e. at the time of inception of the alleged transaction.

8. Adverting to the case at hand, admittedly, the complainant gave the amount in question to the accused out of his own volition, to

help the accused/respondents in their business. The complaint in question is completely silent and does not in any manner disclose as to how the complainant was dishonestly induced to part with the amount in question. Therefore, this Court has no hesitation to concur with the findings recorded by the courts below that the essential ingredients to attract mischief of Section 420 IPC are clearly amiss in the case in hand.

9. Failure of the accused to return the amount in question can certainly not be construed to fall within the ambit of Section 420 IPC. It is a matter of record that the complainant has availed of the remedy available to him under the civil law by filing civil suit for recovery. Clearly, the matter is of a civil nature, which is being given the cloak of a criminal offence.

10. As a sequel to the above, this Court does not find any infirmity much less illegality in the impugned orders. There being no merit in the instant petition, the same stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

May 22, 2023
rps

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