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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: January 13, 2023

1. CRM M-20686-2017 (O&M)

Sunder Pal and others …..Petitioners

Vs.

State of Haryana and ors. …..Respondents

2. CRM-M-45582-2018 (O&M)

Rajesh Kumar ……Petitioner

Vs.

State of Haryana and others …..Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

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Present:- Mr. Suman Jain, Advocate for the petitioners
in CRM-M-20686-2017 &
for Mr.R.K. Saini, Advocate for the petitioner
in CRM-M-45582-2018 and
for respondent No.3 in CRM-M-20686-2017.
Mr. Vijay Sharma, AAG, Haryana.
Mr. Mohan Singla, Advocate for respondent No.2.

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HARKESH MANUJA (ORAL)

This order of mine shall dispose of two petitions bearing CRM-20686-2017 titled as Sunder Pal and others Vs. State of Punjab and others, and CRM-M-45582-2018 titled as Rajesh Kumar Vs. State of Haryana and others for quashing of FIR No. 190 dated 23.08.2016, under Sections 206, 207, 34, 409, 420 IPC, Police Station Uklana, District Hisar, registered at the instance of respondent No.2

For convenience, facts are taken from CRM-M-20686-2017.

The facts leading to the present case are that the aforementioned FIR came to be registered against the petitioners and respondent No.3 at the instance of respondent No.2 with the allegations that the daughter-in-law and son of the complainant gave Rs.8 lacs to sunder Pal and Rajesh Kumar, i.e. petitioner No.1 and respondent No.3, who were running a Commission Agent firm in the name of M/s Lekh Ram Mange Ram at Grain Market, Uklana Mandi, District Hisar. Briefly stating, as per the allegations, the petitioner and respondent No.3 promised to pay interest against the payments received by them. It has been further stated that despite repeated requests neither any interest was paid; nor amount was returned, compelling respondent No.2 to approach the authorities for registration of FIR in question. The relevant extract from the aforementioned FIR is reproduced hereunder:-

> *"3. That the above stated accused no.1 and 2 came to my residence on Sunday dated 23.11.2014 along with their relatives for getting my help and legal advice. Then they ensured me and my son Anurag and my daughter in law Archana that if we lend them money then they will buy Cotton Seeds, Ziri, Mustard Seeds in our interest and keep on selling at the above stated firm when the prices would be increased. They will given us profit after deducing their commission. They will pay interest in case they would not be able to purchase any crops.*
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> *4. That believing on this assurance, Smt.Archana immediately gave Rs.Four lacs in cash from her salary to accused No.1 and 2 and Shri Anuraj after getting salary transferred a sum of Rs.Four lacs through cheque in the account of above sated firm No.1 of the accused through his bank account on 27.11.2014. Copy of the bank certificate is enclosed herewith. In this way, amount f Rs. Eight lacs were given to the accused.*
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> *5. That the accused never purchased any crop in her favour. In fact, they kept on using money in their*

> *own interest. They never paid us any interest or profit till date. They always kept on lingering by giving false promises."*

Referring to the contends of the FIR, learned counsel for the petitioners submits that from a bare reading of the same, it can be seen that no offence of cheating or dishonest inducement was made out against the petitioners as in fact, the family members of the complainant invested some money with the firm for the purpose of earning interest which could not be paid to them in time, on account of loss in business. He further submits that from the contents of the FIR, one can see through that no offence was made out against the petitioners or respondent No.3 as regards inducement from the beginning. Learned counsel also submits that as on today, the petitioners and respondent No.3 have already returned Rs.9 lacs against investment of Rs.8 lacs made at the instance of daughter-in-law and son of the complainant. Learned counsel also relies upon the judgment of Supreme Court in **Vijay Kumar Ghai and ors. Vs. State of West Bengal and others**, 2002 (2) RCR (Crl.) 528, to contend that no offence of cheating under Section 420/409 IPC was made out in the present case. Relevant extract of para 42 thereof, reads as under:-

> *"…At the same time, in order to attract the ingredients of Section of 406 and 420 IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act of cheating the*

> *complainant (Respondent No. 2 herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused(appellant herein). In absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC."*

On the other hand, learned State counsel assisted by learned counsel for the complainant submits that in fact the intention of the petitioners and respondent No.3 was to dupe the complainant and his family members as for a long period of time, no interest was ever paid to them against their investments in the firm, however, fact of having received Rs. 9 lacs by the family members of the complainant was never disputed.

I have heard learned counsel for the parties and gone through the paper-book(s). I find substance in the submissions made on behalf of learned counsel for the petitioners and respondent No.3.

From a perusal of contents of the FIR, one can easily trace out that the dispute primarily pertained to investments made at the instance of daughter-in-law and son of complainant with the Commission Agent firm being run by petitioner No.1 and respondent No.3 against the payment of interest and the delay in this regard, as regards the payment thereof. In this regard, reference can be made to the judgment of Hon'ble Supreme Court in the case of **S.W. Palanitkar vs State of Bihar,** reported as 2001(4) R.C.R. (Criminal) 572, wherein Hon'ble Court held that in order to prove offence of cheating or fraudulent, dishonest intention is required to be alleged and proved at the time of making the promise, however, mere failure to perform promise does not amount to such offence. Relevant portion of para 21 of aforementioned judgment is reproduced hereinafter:-

> *"……In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating….."*

In fact, the dispute in the present case revolves around the civil liability with no case alleged as regards any inducement, cheating or dishonest intention on the part of petitioners and respondent No.3, right from the inception of the money having been transferred to them at the instance of daughter-in-law and son of the complainant and thus, no offence under Sections 409/420 IPC was made out against them. More than that, from a perusal of the contents of FIR, one can see through that even offence under Sections 206 & 207 IPC are also not made out. Even otherwise, the remedy in law available to the complainant, in the facts and circumstances of the present case was at best, to file a suit for recovery against the petitioners and respondent no.3 which in fact was never availed at the instance of complainant.

It appears that for the purpose of adopting a short-cut method so as to get the recovery effected from the petitioners and respondent No.3, present proceedings were got initiated at the instance of complainant which wholly appears to be malafide in law, additionally, the registration of FIR in question in the present case has already achieved its purpose. The judgment cited by learned counsel for the petitioners fully cover the case in hand on all fours.

Resultantly, the petitions are allowed. FIR No. 190 dated 23.08.2016, under Sections 206, 207, 34, 409, 420 IPC, Police Station Uklana, District Hisar and all the criminal proceedings arising therefrom are hereby quashed.

Pending application(s), if any, shall also stand disposed of.

A photocopy of this order be placed on the file of other connected case.

January 13, 2023 (**HARKESH MANUJA**)
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*