IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202. **CRM-M No.32411 of 2018 (O&M)**
Date of Decision:12.12.2023

Suresh Satija ... Petitioner

Versus

State of Punjab and another ... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gautam Dutt, Advocate
for the petitioner.

Mr. IPS Sabhrwal, DAG, Punjab.

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HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.124 dated 25.07.2018 registered under Sections 420, 465, 467, 468, 471 and 120-B IPC registered at Police City I, Abohar (Annexure P-1) and all subsequent proceedings arising therefrom.

FACTUAL BACKGROUND

2. In brief, the facts are that respondent No.2 made a complaint to the Senior Superintendent of Police, District Fazilka stating therein that when respondent No.2-complainant was posted as Fertilizer Inspector in Block Abohar, he perused the record of the concerned firm i.e. M/s Satija Telecom, Amarpura Block, Abohar on the portal of Mobile Fertilizer Management System (in short MFMS) and it was revealed that licence number of the said FIR is 675 and the address is VPO Amarpura, Tehsil Abohar. However, when this firm generated retailer ID (550687) and obtained one POS machine make OASYS company, the address was mentioned as Kripa Ram Marg, Abohar and therefore, the said firm cheated the government by preparing ID with fake address based on forged documents.

On the basis of the complaint made by respondent No.2, FIR in question was registered against the petitioner.

<u>CONTENTIONS</u>

3. Learned counsel appearing for the petitioner *inter alia* contends that admittedly, there is no allegation with regard to the validity of the licence or alteration of dealer ID i.e. 550687. The entire dispute is regarding location of the dealership in the record. The online management system through portal for issuance of Point of Sale (POS) was initiated in the year 2017. The allegations contained in the FIR are that in the dealer licence No.675 issued on 06.01.2011 with dealership ID 550687, the address of dealership is shown as Kirpa Ram Marg, Abohar for carrying on the business of retail sale of fertilizer. The above licence issued on 06.01.2011 was valid upto 04.01.2017. The petitioner had another shop at Amarpura, Abohar and he sought transfer of his licence from Kirpa Ram Marg to Amarpura, Abohar. He paid the requisite fee for transfer of sale centre vide receipt challan dated 29.04.2016 (Annexure P-3) and due intimation was sent by the petitioner to Chief Agriculture Officer, Fazilka on 27.06.2016 (Annexure P-4). On 31.12.2016, the Chief Agriculture Officer-cum-Notified Authority, Fazilka issued a letter of authorization in Form A-2 as acknowledgement/renewal under Clause 8 (3) under the Fertilizer (Control) Order, 1985 valid upto 04.01.2020 qua changed address as M/s Satija Telecom, Hanumangarh Road V&PO Amarpura, Abohar. The requisite fee was deposited vide challan No.09 dated 31.12.2016 (Annexure P-5).

4. A perusal of Annexures P-5 and P-6 would indicate the location of dealership of the petitioner as Amarpura, Abohar. Annexure P-5 is the computer generated Form A-2 wherein the location of the dealership of the petitioner is mentioned as Village and Post Office Amarpura, Abohar. From the material on

record, none of the ingredients of forgery are attracted to launch prosecution against the petitioner under Sections 420, 465, 467, 468, 471, 120-B IPC. There is no allegation with regard to any fabrication or forgery of any document. There is no allegation with regard to any loss of revenue to the State exchequer. There is no complaint from any farmer or the customer with regard to any delinquency on the part of the petitioner. The only bald allegations are that the petitioner after preparing ID with fake address has cheated the government with *mala fide* intention. At the most, it is a case of irregularity, as the mobile based fertilizer management system was introduced in the year 2017. Once the petitioner has sought renewal of his licence which was renewed upto 04.01.2020 and the new address of village and post office of Amarpura (Abohar) is duly recorded in the letter of authorization, no fault can be fastened upon the petitioner.

5. Per contra, learned State counsel opposes the prayer made by the petitioner on the ground that during investigation, it has been found that the petitioner is doing business of fertilizer in the name and style of M/s Satija Telecom from the premises situated at village Amarpura, Tehsil Abohar and the petitioner is having licence No.0675 in the name of his firm with address as Village Amarpura, Tehsil Abohar. The address mentioned at the MFMS Portal pertaining to Point of Sale (POS) machine issued to the petitioner was Kirpa Ram Marg, Abohar. Further the petitioner had purchased the fertilizer from other firms showing incorrect address as Kirpa Ram Marg, Abohar. The statement of purchase of fertilizer by the petitioner from other firms is annexed with the reply as Annexure R-2.

<u>OBSERVATION AND ANALYSIS</u>

6. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that a specific stand has been taken by the petitioner in

para 5 (iii) of the petition with regard to issuance of letter of authorization in Form A-2 dated 31.12.2016 (Annexure P-5) where the changed address of location of dealership of the petitioner is mentioned as V&PO Amarpura, Abohar. However, the respondent-State in the reply filed on merit has denied that the petitioner transferred the ID on the address of Village Amarpura. Even in para 5 of the preliminary submissions, the respondent-State has denied the contention of the petitioner that his correct address has not been updated by the concerned department in the MFMS Portal. The conflicting stand with regard to updation of the correct address would show that the respondent-State contends that the petitioner has not updated the correct address whereas the petitioner has made a specific averment that after changing address of his dealership, the concerned department did not update the correct address in its records. However, the learned State counsel has not been able to controvert the fact that the petitioner was having a valid licence and dealership ID.

7. The necessary ingredients constituting the offence of cheating are defined under Section 415 IPC and forgery is defined under Section 463 IPC. Relevant Sections 415, 463 and 464 IPC are reproduced as under:-

> ***"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.*
> ***463. Forgery. -*** *Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*
> ***464. Making a false document.*** *—A person is said to make a false document or false electronic record—*

First —Who dishonestly or fraudulently—
(a) makes, signs, seals or executes a document or part of a document;
(b) makes or transmits any electronic record or part of any electronic record;
(c) affixes any electronic signature on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,
with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or
Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or
Thirdly —Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

8. The essential ingredients for commission of offence of cheating are:- deception and inducement to deliver any property to any person or to consent that any person shall retain any property. There must be an intention to induce a person to do or omit to do anything which he would not have done or omitted if he were not so deceived, and the act or omission must have caused or was likely to cause damage or harm to that person in body, mind, reputation or property. Further, to attract the offence of forgery, there must be a false document or false electronic record made with an intention to cause damage or injury to the public or to any person.

9. A perusal of the record indicates that ingredients for the offence of cheating are not satisfied. There is nothing on record to show that the petitioner has deceived any person fraudulently or dishonestly to deliver any property to any person. Therefore, a bare reading of the averments and allegations in the complaint would show that no case for offence under Section 420 IPC is made

out. An inspection of Sections 463 and 464 IPC would indicate that there must be making of a false document with an intention to cause damage or injury to the public or any person. Making of the false document is *sine qua non* for launching prosecution under Sections 467, 468, 471 IPC. A bare perusal of the allegation contained in the complaint shows that it is not a case where the petitioner dishonestly or fraudulently made a document with an intention of causing it to be believed that the document was made by some other person. It is not the case that the petitioner has dishonestly or fraudulently made a document to cheat the government and make loss to the State exchequer. Admittedly, the petitioner had a valid licence and dealership ID and the only irregularity, which transpires from the record, is that the address of dealership of the petitioner was not updated at the MFMS portal though request for the same along with requisite fee was made, which ought to have been resolved at the level of concerned department.

10. A two Judge Bench of the Hon'ble Supreme Court in ***Mir Nagvi Askari Vs. Central Bureau of Investigation (2009) 15 SCC 643*** speaking through Justice S.B. Sinha, has held as under:-

> "*166. .....However, since we have already held that the commission of the said offence has not been convincingly established, the accused could not have been convicted for the offence of forgery. The definition of "false document" is a part of the definition of "forgery". Both must be read together. [Vimla (Dr.) v. Delhi Admn. AIR 1963 SC 1572 : 1963 Supp (2) SCR 585]. Accordingly, the accused could not have been tried for offence under Section 467 which deals with forgery of valuable securities, will, etc. or Section 471 i.e. using as genuine a forged document or Section 477-A i.e. falsification of accounts. The conviction of the accused for the said offences is accordingly set aside.*"

A two Judge Bench of the Hon'ble Suprme Court in ***Sheila Sebastian Vs. R. Jawaharaj and another (2018) 7 SCC 581*** speaking through Justice N.V. Ramana has held as under:-

> *"26. The definition of "false document" is a part of the definition of "forgery". Both must be read together. "Forgery" and "fraud" are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that "false document". Hence, neither Respondent 1 nor Respondent 2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as the appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.*
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> *27. A reasonable doubt has already been thoroughly explained in Latesh v. State of Maharashtra [Latesh v. State of Maharashtra, (2018) 3 SCC 66 : (2018) 2 SCC (Cri) 235] wherein "reasonable doubt" has been enunciated by this Court as (at SCC p. 83, para 46) "a mean between excessive caution and excessive indifference to a doubt, further it has been elaborated that reasonable doubt must be a practical one and not an abstract theoretical hypothesis.*
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> *28. In this case at hand, the imposter has not been found or investigated into by the officer concerned. Nothing has been spilled on the relationship between the imposter and Respondent 1. Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the courts to ensure that suspicion does not take place of the legal proof. In this case, the trial court as well as the appellate court got carried away by the fact that accused is the beneficiary or the executant of the mortgage deed, where the prosecution miserably failed to prove the first transaction i.e. PoA as a fraudulent and*

> *forged transaction. The standard of proof in a criminal trial is proof beyond reasonable doubt because the right to personal liberty of a citizen can never be taken away by the standard of preponderance of probability."*

11. Reliance can also be placed on ***Arun Bhandhari v. State of Uttar Pradesh (2013) 2 SCC 693***, wherein a two Judge bench of the Hon'ble Supreme Court, speaking through Justice Dipak Misra, made the following observations:

> *"20. In **G.V. Rao v. L.H.V. Prasad and others, 2000(2) RCR (Criminal) 290 : (2000)3 SCC 693**this Court has held thus:*
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> > *"7. As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in **Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 Supreme Court 575** a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in **Mahadeo Prasad v. State of W.B., AIR 1954 Supreme Court 724** that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."*

CONCLUSION

12. In view of the aforesaid facts and circumstances, the instant petition is allowed and FIR No.124 dated 25.07.2018 registered under Sections 420, 465, 467, 468, 471 and 120-B IPC registered at Police City I, Abohar (Annexure P-1) and all subsequent proceedings arising therefrom, are quashed qua petitioner.

(HARPREET SINGH BRAR)
JUDGE

December 12, 2023
Pankaj*

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