HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-47232-2017

Date of Decision: 09.02.2023

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Kulwant Singh ... Petitioner

VS.

State of Punjab & Anr. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. OS Batalvi, Advocate and
Mr. Damanjeet Singh, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

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Sandeep Moudgil, J.

The petitioner seeks quashing of the FIR No.357 dated 28.11.2017 under Sections 420 IPC, registered at Police Station Division A, Police Commissionerate, Amritsar.

Learned counsel for the petitioner submits that the complainant advanced friendly loan of an amount of Rs.2,40,000/- on his request to the petitioner and in lieu thereof, the complainant took 3 blank and duly signed cheques as security/guarantee. The petitioner returned an amount of Rs.1 lakh in January, 2017 and assured to return the remaining amount. No cheques were returned by the complainant to the petitioner. Thereafter, the complainant filed 3 complaints under Section 138 of the Negotiable Instruments Act against the petitioner. It is further submitted that the complainant, in order to put undue pressure and to resile from the fact of already having received an amount of Rs.1 lakh, filed yet another complaint which culminated into the present FIR No.357 dated 28.11.2017 wherein it has been alleged that the petitioner borrowed an amount of Rs.80,000/- from the complainant and did not return the same.

Learned counsel for the petitioner contended that initially at the time of lodging of the complaint, the complainant alleged that the petitioner borrowed an amount of Rs.80,000/- but later on, during enquiry proceedings conducted by the police, the complainant recorded a totally different and contradictory statement to the effect alleging that the petitioner promised to arrange a job for complainant's son Simranjit Singh but failed to do so.

It is further argued that the petitioner has been falsely implicated by the complainant in the present case, as there is no legal debt and liability towards the complainant. Moreover, the complainant has misused the cheques in question issued by the petitioner.

Further, counsel for the petitioner vehemently contended that there is nothing on record to ascertain the criminal liability of the petitioner and other accused persons under Section 420 IPC which envisages that dishonest intention should be from the inception of transaction. He has also placed on record copies of the judgments passed by the court below vide which the above-mentioned 3 complaints filed by the complainant against the petitioner under Section 138 of Negotiable Instruments Act have been dismissed holding that no offence under Section 138 of the Negotiable Instruments Act is made out against the petitioner.

Learned State counsel has filed status report dated 09.03.2018 of ACP East, Amritsar City wherein it is averred that during the course of enquiry, the petitioner was issued notices but the petitioner did not join the enquiry and on the basis of evidence produced by the complainant, it came to fore that the petitioner has duped the complainant of Rs.3,20,000/- on the pretext of getting her son appointed in police department.

Heard learned counsel for the parties and gone through the record.

A perusal of the judgment dated 01.09.2018 passed by the JMIC, Amritsar in complaint case No.4687 of 2017 'Jaswinder Kaur vs. Kulwant Singh', shows that respondent did not turn up for her cross-examination and as such, after notice, her evidence was closed. It is well settled that speedy justice to the accused cannot be denied due to negligence on the part of the complainant and therefore, the trial court reached to a conclusion and rightly so, that the respondent-complainant was at fault as despite numerous opportunities and specific directions also, the respondent did not come forward for being cross-examined which is sine qua non to prove the allegations that the petitioner took friendly loan of Rs.1 lakh and in these circumstances, the documents tendered by the respondent-complainant cannot be read into evidence. Moreover, the initial presumption is in favour of the complainant but the burden upon the accused to rebut this presumption is not beyond shadow of any reasonable doubt but preponderance of probabilities and once the petitioner has proved sufficiently his defence, the burden automatically shifts upon the respondent-complainant to prove her case. Having miserably failed to prove her case, the trial court rightly held that no offence under Section 138 of the NI Act is made out against the petitioner.

From the above, it is crystal clear that the respondent has failed to prove her case under Section 138 of NI Act which establishes the fact that no loan was advanced by the respondent to the petitioner. If it had been so, the respondent-complainant would have eagerly watched the proceedings and would not have delayed in pursuing the process of law. Rather, she opted not to appear before the trial to lead her evidence despite numerous opportunities granted by the trial court.

Section 420 IPC, provides that whoever cheats and thereby dishonestly induces a person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine.

To establish the offence of Cheating in inducing the delivery of property, the following ingredients need to be proved:-

1. The representation made by the person was false.
2. The accused had prior knowledge that the representation he made was false.
3. The accused made false representation with dishonest intention in order to deceive the person to whom it was made.
4. The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

As observed and held by Supreme Court in the case of ***Prof. R.K. Vijayasarathy & Anr. Vs. Sudha Seetharam & Anr., (2019) 16 SCC 739,*** the ingredients to constitute an offence under Section 420 are as follows:-

i) a person must commit the offence of cheating under Section 415;

ii) the person cheated must be dishonestly induced to;

a) deliver property to any person; or

b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.

It is paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

It is equally well-settled that the phrase 'dishonestly' emphasizes a deliberate intention to cause wrongful gain or wrongful loss, and when this is coupled with cheating and delivery of property, the offence becomes punishable under Section 420 IPC. Contrarily, the mere breach of contract cannot give rise to criminal prosecution under Section 420 unless fraudulent or dishonest intention is shown right at the beginning of the transaction. It is equally important that for the purpose of holding a person guilty under Section 420, the evidence adduced must establish beyond reasonable doubt, mens rea on his part. Unless the complaint showed that the accused had dishonest or fraudulent intention 'at the time the complainant parted with the monies', it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract."

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in ***State of Haryana v. Bhajan Lal 1992 Supp (1)***

SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding

In the case of ***State of Kerala v. A. Pareed Pillai and another, AIR 1973 SC 326*** the Supreme Court ruled that to hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise and such a dishonest intention cannot be inferred from a mere fact that he could not subsequently fulfil the promise. Similar view has been taken in the case of ***S.W. Palanitkar and others v. State of Bihar & another (2002) 1 SCC 241*** and also in the case of ***State of Kerala vs. A. Pareed Pillai and Anr. (1972) 3 SCC 661***.

In the case of ***Hiralal Harilal Bhagwati vs CBI, (*2003) 5 SCC 257** it has been held that:-

> *"It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had the fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed."*

In ***Laxmi Narayan Kalra v. the State of Bihar, AIR 1956 SC 544,*** the cheque was issued by way of security but was not supported by credit in the bank. The court opined that under the circumstances, though the action of the accused was highly reprehensible, in absence of any dishonest intention, the charge under section 420 failed, and conviction has to be set aside.

Recently in the case of ***Satishchandra Ratanlal Shah v. the State of Gujarat, (*2019) 9 SCC 148,** the Supreme Court held that the mere inability of the appellant to return the loan amount cannot give rise to criminal prosecution for cheating unless the fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. It has been held that giving of a cheque in lieu of money due with the knowledge that the drawer had no funds with the bank, does not amount to an offence of cheating in the absence of any evidence to show that the person to whom the cheque was issued parted with any property, or that he did anything which he would not have done, had he knew that the cheque would be dishonoured.

In the case of ***Dalip Kaur & Ors. Vs. Jagnar Singh & Anr, (2009) 14 SCC 696,*** the Supreme Court held that if the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants for non- refunding the amount of advance, the same would not constitute an offence of cheating or criminal breach of trust.

Thus from the above discussion, it is clear that ulterior intention is the premise for cheating. However, the courts have on multiple occasion has opined that there exists no permanent yardstick to determine the underlying nature of an event to be classified as a matter of purely civil in nature or whether it has the essence of cheating. It has to be determined on the fact of each case.

In the present case, there is nothing on record to show that the petitioner had ever promised to give a job to the son of the respondent. The oral assertion made by the respondent is not supported by any documentary evidence. The respondent has even failed to show that the petitioner deals in the work of sending people abroad for work as have been alleged by the respondent during enquiry proceedings in the impugned FIR. Moreover, there is material contradiction in the statements made by the respondent as at the time of lodging of the complaint, the respondent alleged that petitioner borrowed Rs.80,000/- from her and promised to return the same within two months but did not return the same within the said period. However, during enquiry proceedings, the respondent recorded a contradictory statement before the police that the petitioner promised for arranging job for her son and it is for that purpose that the amount of Rs.80,000 was given to the petitioner. It is well settled that dishonest intention, right from the beginning, is an essential ingredient for constituting the offence of cheating, which is totally absent in the present case.

It is highly improbable and unbelievable that the complainant, who is said to be a poor lady, handed over the above said huge amount of Rs.80,000/- to the petitioner without seeking any type of security for the same from the petitioner as was taken by the complainant, from the petitioner, at the time, she initially advanced friendly loan of Rs.2,40,000/- to the petitioner in the form of three duly signed cheques.

Taking into consideration the totality of the facts and circumstances enumerated above, the assertion made by the petitioner to the effect that the complainant has lodged the FIR against the petitioner in order to grab the amount of Rs.1 lakh already paid to the respondent by the petitioner, against which the respondent had refused to return one cheque to the petitioner, cannot be brushed aside. So much so, the manner in which the trial court has dismissed the three complaints filed by the respondent against the petitioner due to non-appearance of the respondent to conduct her case, speaks volume about the authenticity of the criminal proceedings sought to be imposed on the petitioner by the respondent.

Accordingly, in the above discussion, this petition is allowed and the FIR No.357 dated 28.11.2017 along with all other proceedings arising therefrom are hereby quashed.

09.02.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*