

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41594-2019 (O&M)

Reserved on 19.04.2023

Pronounced on 06.06.2023

Giri Singh & Ors.

... Petitioners

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Narinder Singh, Advocate for the petitioners

Mr. GS Dhillon, AAG Haryana

None for respondent No.2

Sandeep Moudgil, J.

The petitioners seek quashing of FIR No.0203 dated 14.04.2019 (Annexure P2) under Sections 406/448/506 IPC (Sections 420/120-B/180 IPC added later on) registered at Police Station Ballabhgarh City, District Faridabad along with all subsequent proceedings.

Brief facts of the case are that one Ram Parshad ancestor of the petitioners died in the year 1979. Mutation of his inheritance No.1303 dated 12.12.1979 was entered and sanctioned in the name of his wife Vidya Devi, his son Jandhu, another son Udaipal, his daughter Dulari and another daughter Hardan. By clerical mistake, jamabandi for the year 1979-80 reflected only the names of Vidya Devi, Jhandu, Udaipal and Dulari and name of Hardan was missing in the jamabandi. Petitioner No.5, who is in his 90s, is son of Ram Parshad whereas petitioners No.1 to 3 are son of petitioner No.5 – Jhandu and petitioner No.4 is son of Udaipal and grandson of Ram Parshad.

One Vijay Kumar grandson of Hardan moved an application in 2015 pointing out the discrepancy in the revenue record and as such, pursuant thereto, the name of Hardan d/o Ram Parshad which was left to be entered in the revenue record, was entered in the mutation vide order dated 28.12.2015 passed by AC 2nd Grade (Annexure P1). Meaning thereby that presently, the name of all the five heirs including Hardan d/o Ram Parshad has been correctly entered in the revenue records viz. jamabandi and mutation.

Learned counsel for the petitioner argued that the present FIR No.0203 dated 14.04.2019 is nothing but an abuse of process of law as the grievance, if any, has already been addressed since the name of Hardan (grandmother of Vijay Kumar) stands entered in the revenue record vide order dated 28.12.2015. It is further contended that even if the contents of the FIR are taken on its face value, the fabrication, if any, in the revenue could not have been made without the connivance of the revenue authorities. The complainant has not drawn any aspersion against the revenue authorities.

Further, it is submitted that petitioner Giri Singh was born in 1968 and when the occurrence, if any, took place, the said petitioner was only 11 years of age. Likewise, petitioner No.2 Harish Kumar was born in 1983 which means he was born after 4 years of the occurrence, whereas petitioner No.3 Shri Chand was born in 1970 and as such he was only 8 years of age at the time of occurrence. It is contended that if successor-in-interest commits any offence then the petitioners cannot be sought to be prosecuted for no fault of theirs.

Learned counsel for the petitioner asserts that the FIR has been lodged with mala fide intention and does not disclose the true facts. In fact, there is no lady by the name of Hardan and the complainant claims to be the grandson of one Ramwati. It is alleged that the real reason behind the lodging of the FIR is that Sukhdev Singh, Satish Kumar, Jhandu and Sunil have filed a suit for declaration with consequential relief of permanent injunction in civil court in which they have challenged the correction made by the revenue authorities in the jamabandi. This correction has been done in the revenue 'fard badar' and interim stay has been granted in favour of the plaintiff. The complainant instead of contesting the suit, has adopted arm-twisting tactics and has lodged the present FIR.

Notice of motion was issued on 01.10.2019 and the proceedings before the trial court were ordered to be deferred.

Reply/affidavit dated 08.01.2020 has been filed by the ACP, Ballabhgarh in which it is averred that petitioners were arrested and have been released on bail. The case is under further investigation as report under Section 173 CrPC was filed against petitioners No.1 to 3. Non-bailable warrants of petitioners NO.4&5 Sukhdev Singh and Jhandu were got issued since they were absconding and had not joined investigation. In the meanwhile, the Sarpanch of village Bahabalpur informed petitioner No.5 Jhandu had expired in December, 2019 which fact is yet to be ascertained.

Learned State counsel has further averred that Mutation No.1303 dated 12.12.1979 was correctly sanctioned but mutation No.1367 regarding share of Vidhya Devi after her death was wrongly sanctioned as the name of Hardan – grandmother of Vijay Kumar was not disclosed. It is further

highlighted that the name of Hardan is also Ramwati daughter of Ram Parshad, whose property was divided in 5 shares including Hardan @ Ramwati.

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

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. Vijayasathy & 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 of paramount importance 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.

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 proceedings.

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 fulfill the promise. Similar view has been taken in the case of *S.W. Palanithkar 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 *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 occasions 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, the ingredients of Section 420 IPC cannot be said to have been made out against the petitioners as there are no element of deception by the petitioners to Hardan or her grandson-complainant. The fact that the petitioners were minor at the relevant time when the 'fraud', if any, had occurred also establishes that there was no fraudulent or dishonest inducement by the petitioners or even *mens rea* in regard to revenue entries in the name of Hardan. As a matter of fact and law, there was no promise or representation by the petitioners at the time of the alleged offence of cheating, fraudulent and dishonest intention from the inception.

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.'

Moreover, the petitioners had filed civil suit for declaration with consequential relief of permanent injunction in the civil court at Palwal in 2016 challenging the correction made by the revenue authorities in the jamabandi in which interim stay has also been granted by the civil court. The FIR which was lodged by the complainant in 2019 i.e. much after the civil suit was filed also speaks volume of the fact that the present FIR is nothing but a counter-blast to the civil suit filed by the petitioners. Be that as it may, it would be solely within the domain of the civil court to decide the question of fact on the basis of evidence to be led by the parties. To that extent, this Court refrains to comment anything on merits but to say that the ingredients of offence of deliberate intention to cause wrongful gain or wrongful loss by

the petitioners coupled with cheating so as to make it punishable under Section 420 IPC is not made out.

The Supreme Court, time and again, has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. In **State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699**, held that 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.

The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, the Supreme Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power is exercisable by this Court. Present is the case which covered by those principles which have been enunciated in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp (1) SCC 335**.

A bare perusal of the FIR came to be registered at the instance of the complainant does not disclose any act of cheating, forgery, criminal trespass, intimidation or criminal breach of trust on the part of the present

petitioners or their participation in the commission of such criminal acts inasmuch, the complainant has not been able to prove that there was an element of cheating, fraudulent and dishonest intention of the petitioners from the inception. It is not the case of the complainant that the petitioners have played any active/passive role either in scribing the document or are facilitators or witness to the document in reference to which the FIR has been made for cheating and committing forgery or have played any role in the revenue entry of the subject property. So much so, the petitioners are the grandsons of the original beneficiaries, who were minors at the time when the alleged revenue entry was not made by the legal heirs of Ram Parshad without making any reference to Hardan in the revenue records. What it appears is that the complainant has implicated the present petitioners being members of the family to put pressure on the petitioners in the light of the fact that the petitioners had filed civil suit challenging the revenue entry which has been otherwise made at the instance of the complainant by the Assistant Collector 2nd Grade, vide order dated 28.12.2015, by way of *fard badar*. That being so the current scenario, no cause of action survives with the complainant who is the grandson of Hardan.

In the result, the petition is allowed and the FIR No.0203 dated 14.04.2019 (Annexure P2) and all the consequential proceedings qua the present petitioners stand quashed.

Before parting with the order, this court would like to observe that the observations which has been made are restricted to the present FIR and the Civil Court may not be influenced by the observations made above

and may proceed with the civil suit pending between the parties,
independently on its own merits in accordance with law.

06.06.2023
V.Vishal

(Sandeep Moudgil)
Judge

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