

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55136-2022 (O&M)
DECIDED ON: 12th MAY, 2023

AVINASH KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Bijender Singh Dhankar, Addl. AG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 482 Cr.P.C., has been invoked for quashing of FIR No. 352, dated 15.05.2017, under Sections 406, 420, 506 and 120-B IPC, registered at Police Station Central Faridabad (Annexure P-1) and challan dated 08.03.2019 (Annexure P-2) alongwith all subsequent proceedings arising therefrom.

2. The present case was registered at the instance of Vijay Pal alleging that he had entered into an agreement with the accused Mrs. Jyoti Bhatt in the presence of witnesses on 27.01.2015 with regard to purchase of agriculture land in the revenue estate of Village Khatiala, Tehsil Hodel, District Palwal and complainant gave her cash an amount of Rs.25,00,000/-. On 31.01.2015, the complainant received a call from accused No. 1 to give part payment then on the same day an amount of Rs.25,00,000/- was

transferred in the account of accused no.1, through bank account of Jai Kishan Verma No. 0167000101191269 transferred in the account of accused no.1 K.B. Enterprises account No. 13747630000470 through RTGS. The complainant made part payment several times to the accused as per details given in a FIR. The complainant met the Patwari namely Virender Singh and received Jamabandi and mutation No.4032 and 4058 of the land in dispute which shows Jyoti Bhutt as owner of the said land, then believing these documents, the complainant signed the agreement. On 26.06.2015 the complainant went to Hodel and asked the Patwari Virender to supply the Jamabandi and Mutation Nos. 4032 and 4058. On 14.07.2015 a GPA was executed by Jyoti Bhutt in the name of Mohit Soni vide Vasika No. 433/2015 and also executed a will in favour of GPA Holder and also executed a Pattanama vide Vasika No. 5532 dated 16.03.2017 and went to get the Mutation of the same, then the complainant came to know that Jyoti Bhutt accused No. 1 is not the owner of the said land. Who had already sold the said land on 04.12.2012 by Vasika No.5965/1 through Sub-Registrar Hodel in the name of Mrs. Begwati @ Beggo and Mutation of the same was entered as Mutation No.4197, in this way the accused No. 1 and 2 cheated the complainant. On 16.03.2017 the complainant reached the house of accused No.1 Mrs. Jyoti Bhutt, then she threatened us and told us whatever you can do, you may. The complainant paid an amount of Rs.1,25,00,000/- to the accused which she had grabbed.

2. Learned counsel for the petitioner has vehemently contended that

the sole allegation against the petitioner, who was working as Patwari at the relevant time, is with regard to the mutation, which is alleged to have been wilfully not entered with red ink in the jamabandi for the year 2008-2009 and it was on account of absence of the said red entry in the said jamabandi, the land in dispute was allegedly sold to the complainant by the accused Jyoti Bhatt. The assertion is that the petitioner was merely having the duty of digitisation of the revenue records only, during the said period, accordingly he cannot be held responsible for the entry in the revenue records.

3. It is further asserted that even from bare perusal of FIR, it is crystal clear that the dispute is private property dispute between the complainant and accused Jyoti Bhutt pertaining to an alleged sale of land dated 27.01.2015, which was executed after perusing the records and documents, therefore, the allegations levelled against the petitioner are baseless. The petitioner had no concern with the revenue estate of the village Khatiala as Patwari because the circle Patwari of the village Khatiala was Virender Singh and the petitioner was only given the additional duty for about 15 days for updating the mutations in the computer from the manual copies of Jamabandi which were entered by the petitioner.

4. At the same time, the contention of Mr. Bijender Dhankar, learned State counsel is that during investigation it was disclosed that mutation No. 4197 in favour of Begwati @ Beggo has been entered by Avinash Patwari (petitioner) and these mutation should have been entered in the jamabandi for the year 2008-2009, the petitioner should have given the reference of this mutation in the running jamabandi for the year 2008-2009 in red ink. It is further contended that Avinash Kumar (petitioner) entered 20

mutations in revenue estate of village Khatiala in March, 2014 out of which 19 mutations were entered correctly and reference was made in the jamabandi, however the entry of said mutation No. 4197 was willfully not made in the running jamabandi.

5. Heard.

6. Before culminating the view, It would be appetite to examine the definition of Section 420 IPC, which reads as under:-

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

7. The ingredients of an offence of cheating have been crystallized by the Apex Court in ‘SW PalaNtkar versus State of Bihar-2002 SCC(Cri.) 129’ as:-

“(i) there should be fraudulent or dishonest inducement of a person by deceiving him;(ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm .to the person induced in body, mind, reputation or property.”

8. In fact the definition of cheating has been derived in Section 420 IPC from Section 415 IPC and therefore, both the sections are to be read

inconsonance with each other and therefore, it mandates this Court to have a glance on this provision as well, which reads 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.

9. The Supreme Court in the case of “**State of Haryana & Ors. Vs. Bhajan Lal & Ors. 1992 Supp (1) SCC 335**” the scope of inherent powers of the High Court under Section 482 Cr.P.C. to quash the FIR has been discussed in detail. At the same time, the Apex Court identified the following cases in which FIR/complaint can be quashed:

“1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where the allegations in the FIR do not constitute a cognizable

offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the 21 proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. In the present case on perusal of the challan as well as FIR, it is apparent that on the day i.e. 04.12.2012 when the said sale deed was executed vide registration No.5965/1, the petitioner was not posted there in fact he was given the charge of digitisation of the revenue records only for 15 days in March 2014.

11. For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had a fraudulent or dishonest intention. In the instant case, respondent does not disclose any criminal offence under Section 420 IPC. As a universal fact the criminal proceedings should not be encouraged when it is found to be *mala-fide* or otherwise an abuse of the process of the Courts.

12. Considering the discussion made hereinabove and the record, there is nothing to show that at the very inception, there was any intention, on

behalf of the petitioner to cheat which is also condition precedent for an offence under Section 420 IPC. In view of discussions made hereinabove, this Court is of the considered view that continuation of this FIR would amount to an abuse of the process of Court and to prevent the same it is just and expedient for this Court to quash the same by exercising the powers under Section 482 Cr.P.C.

13. Accordingly, the present petition is allowed and FIR No. 352, dated 15.05.2017, under Sections 406, 420, 506 and 120-B IPC, registered at Police Station Central Faridabad (Annexure P-1) and challan dated 08.03.2019 (Annexure P-2) alongwith all subsequent proceedings arising therefrom, are quashed qua the petitioner.

14. Since the main petition has been disposed off, all the pending criminal misc. applications shall also stands disposed off.

(SANDEEP MOUDGIL)
JUDGE

12.05.2023
sham

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>