



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-16241-2019
Date of decision: 16.09.2024

Bhambra Motors and Another

...Petitioners

Versus

Ashok Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Gaurav Goel, Advocate for the petitioners.

Mr. N.K. Verma, Advocate for the respondent.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioners under Section 482 Cr.P.C for quashing of the criminal complaint No.451/2013 titled Ashok Kumar Vs. Bhambra Motors Authorized Dealer and Another under Sections 420, 467, 468, 471, 120-B IPC and summoning order dated 14.08.2014 Annexure P-2 whereby the petitioners are summoned to face trial under Section 420/34 IPC.

2. The allegations in nutshell are that respondent Ashok Kumar filed criminal complaint (Annexure P-1) alleging that the petitioner No.1 was authorized dealer of Force Motors Limited and petitioner No.2 Gurpreet Singh is proprietor of petitioner No.1. Force Motors Limited (manufacturer of buses) and its managing director were impleaded as accused Nos.3 and 4 in the complaint Annexure P-1. The complainant/respondent met petitioners No.1 and 2 at Mohali in June 2008 to purchase two city line buses from them. On 01.07.2008, respondent/complainant purchased two 32 seater city line buses from petitioners No.1 and 2, on the assurance given by and promise made by petitioners No.1 and 2 that the said bus model and its drawing are already approved by the State Transport Commissioner, Punjab. At the time of said



deal, total sale consideration worth Rs.14,50,000/- was paid to petitioners No.1 and 2 against proper invoices No.199 and 200 both dated 01.07.2008. The said buses were purchased by the respondent/complainant by availing loan from Kotak Mahindra Bank Limited, in presence of petitioner No.2 Gurpreet Singh. Respondent/complainant approached Motor Vehicles Inspector, Fatehgarh Sahib to get the buses approved from competent authority, on which respondent/complainant came to know that no such drawing of 32 seater city line bus was ever passed by the competent authority and as such registration of both the buses could not be done. It was also alleged that the accused persons connived with each other and gave wrong information to the complainant and also gave false assurance and respondent believing the same to be correct, purchased the aforesaid two buses. That the drawing of the said bus model was approved by the competent authority in April 2009 and finally, the buses were registered by the competent authority on 23.06.2009 and only thereafter, respondent was able to ply the said two buses and in this manner, the accused persons committed the offences as detailed in the complaint Annexure P-1.

3. On completion of preliminary evidence, petitioners No.1 and 2 and accused Nos.3 and 4 were summoned to face trial under Section 420 read with Section 34 IPC by the trial Court vide its order Annexure P-2.

4. Notice was issued to respondent who appeared through his counsel filed written reply.

5. The counsel for the petitioners while assailing complaint Annexure P-1 and summoning order Annexure P-2, submits that no offence is made out against both the petitioners even if, the allegations made in complaint Annexure P-1 are taken to be correct on their face value. It is further submitted that there was no malafide intention on the part of the petitioners to deceive anyone including the respondent/complainant. No mis-information was given by the petitioners, at the time of sale of two buses, they being dealers. Proper invoices were issued to the respondent/complainant who also made payment of entire sale consideration. It is further submitted that certain objections were raised by the authority concerned before registration of the said buses. On completion



of all the formalities, the aforesaid buses were registered on 23.06.2009. It is further submitted that co-accused Force Motors Limited and its director filed similar petition under Section 482 Cr.P.C and the same was allowed and impugned complaint Annexure P-1 was quashed against the said two co-accused by this Court vide its order dated 16.01.2019 (Annexure P-6). It is further submitted that the filing of complaint Annexure P-1, summoning order Annexure P-2 amounts to misuse of the process of law.

6. On the other hand, counsel appearing on behalf of respondent submits that there was bad intention on part of the petitioners from the very beginning, in order to defraud the respondent. It is further submitted that the petitioners induced the respondent to purchase two 32 seater buses by giving assurance and undertaking that the drawing of the said bus model was already approved and passed by the competent authority. It is further submitted that at the time of settlement of aforesaid deal, petitioners gave wrong information and concealed material facts from the respondent and in this manner, they committed cheating and thus, were rightly summoned by the trial Court to face trial under Section 420 read with Section 34 IPC. It is further submitted that the drawings with regard to 32 seater bus model were approved by the competent authority only in April 2009 and finally, buses were registered on 23.06.2009 as has been admitted by the petitioners. In this manner, the respondent suffered huge financial loss. It is further contended that the petitioners cannot take any benefit of order Annexure P-6 whereby impugned complaint was quashed against accused No.3 and 4 as they were having no direct dealing with the respondent and they never gave any such false undertaking or assurance to the respondent, they being manufacturer of the buses in question.

7. I have considered the submissions made by counsel for the parties.

8. Admittedly, the petitioners and accused No.2 and 3 were summoned by the learned trial Court vide order Annexure P-2 to face trial under Section 420 read with Section 34 IPC. Subsequently, accused No.2 and 3 i.e. Force Motors Limited and its director filed petition under Section 482 seeking quashing of impugned complaint Annexure P-1 and



summoning order Annexure P-2 and the said petition was allowed by this Court vide order dated 16.01.2019 (Annexure P-6). There is nothing on the record to show that the abovesaid orders were ever challenged by the respondent. Thus, making it clear that petitioners are facing trial under Section 420 read with Section 34 IPC only.

9. The Hon'ble Supreme Court vide its decision dated 10.05.2022 passed in Criminal Appeal No.749-2022 titled ***Rekha Jain Vs. The State of Karnataka and Another*** held that to make out a case against a person for an offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. As per Section 420 IPC whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, can be said to have committed an offence punishable under the aforesaid provision of law. Thus, dishonest inducement is sine qua non to attract provisions of Sections 415 and 420 IPC.

10. Recently, the Hon'ble Apex Court in Criminal Appeal No.3114-2024 titled ***Delhi Race Club (1940) Limited and Others Vs. State of Uttar Pradesh and Another***, decided on 23.08.2024 has held that in order to constitute offences under Section 406 and 420 IPC mens rea i.e. intention to defraud or the dishonest intention must be present and in the case of cheating, it must be there from the very beginning of inception.

11. In the case at hand, there is nothing on the record to prima facie establish that deal regarding sale of two 32 seater buses was struck by the petitioners with dishonest intention to cheat the respondent. From the perusal of the record, it transpires that at the initial stage, when the respondent moved the competent authority with request to register the aforesaid buses, as per rules and regulations of the State Government, certain objections were raised by the State Transport Commissioner, Punjab. Thereafter, the concerned deficiencies/objections were removed, may be with the cooperation of both the parties. Finally, drawings of the said bus model were approved by the competent authority and the buses in question were registered and registration certificates were issued on 23.06.2009. In the given circumstances, the respondent has failed to establish that the



petitioners were having fraudulent intention from the very beginning to deceive or induce the respondent in any manner.

12. In light of the above, this Court is of the view that complaint Annexure P-1, summoning order Annexure P-2 and subsequent proceedings arising therefrom qua the present petitioners are nothing but an abuse of the process of Court and law as well.

13. For the foregoing reasons, finding merits in the present petition, the same is allowed. Criminal complaint Annexure P-1, summoning order Annexure P-2 and all the subsequent proceedings arising therefrom are quashed qua the present petitioners.

16.09.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No