



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

CRM-M-40676-2020 (O&M)

Reserved on 10.09.2024

Date of decision: 14.10.2024

Suresh Kumar

...Petitioner

Versus

State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Robin Dutt, Advocate for the petitioner.

Mr. Karan Garg, AAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. The instant petition has been filed by the petitioner/accused under Section 482 Cr.P.C seeking quashing of FIR No.178 under Sections 406, 420 IPC dated 26.06.2020, Police Station Naraingarh (Annexure P-12).
2. The allegations in nutshell are that complainant/respondent No.2 Om Parkash reported to the police that present petitioner used to visit his house frequently. The petitioner told him that government authorities are going to auction plots in vegetable market Naraingarh and asked the complainant to give him Rs.10 lacs. On this complainant gave Rs.9 lacs to the petitioner who handed over registered sale deed of his house to the complainant on 30.08.2013. However, the petitioner did not get registered the sale deed of his house in favour of the complainant and also failed to return the aforesaid amount of Rs.9 lacs. Petitioner purchased one shop in vegetable market, Naraingarh for Rs.67,70,000/- in an open auction on



02.09.2013 with promise to give half share of the said shop to the complainant, but later on petitioner failed to keep his promise. In this manner, petitioner committed fraud worth Rs.47 lacs against the complainant. The complainant made prayer that legal action be taken against the petitioner. Consequently, FIR Annexure P-12 was registered against the petitioner.

3. Notice of motion was issued in the present petition. In response to the same, State counsel appeared on behalf of respondent No.1 and filed reply by way of affidavit of Anil Kumar, Deputy Superintendent of Police, Naraingarh (Ambala) which was taken on record along with copy of the opinion Annexure R-1 given by Deputy District Attorney, DPO, Ambala dated 23.06.2020.

4. Respondent No.2 was duly served, but no one appeared on his behalf.

5. The counsel for the petitioner has *inter alia* argued that in the instant case, the dispute between the parties is primarily of a civil nature, which has been given color of criminal act. At the first instance, respondent No.2 lodged complaint in CM window and as per Annexure P-1, the said complaint was inquired into by ASI Shamsheer Singh wherein statements of both the parties were recorded and the matter was found to be of a civil in nature. Respondent No.2 gave another complaint Annexure P-2 to Superintendent of Police, Ambala which was inquired into by Economic Offences Wing, Ambala wherein also the statements of parties were recorded and on completion of inquiry, it was found that the dispute between the parties is of a civil nature and the said inquiry report is Annexure P-6.



Thereafter, respondent No.2 issued legal notices Annexure P-7 dated 09.07.2018 and Annexure P-8 dated 19.09.2019 to the petitioner wherein he raised demand of Rs.23,95,000/- along with interest. It has been further contended that the police conducted another inquiry and recorded statements and sought opinion of Deputy District Attorney. However, Deputy District Attorney, DPO, Ambala without taking into consideration the previous inquiry reports, opined that petitioner was having dishonest intention to cheat the complainant from the very beginning. On the basis of the said opinion Annexure P-11, the impugned FIR Annexure P-12 was registered against the petitioner.

6. The counsel for the petitioner has further urged that even if, the allegations made in the FIR Annexure P-12 are taken to be correct on their face value, then also no offence under Section 406 or 420 IPC is made out against the petitioner. That at the most, it is a case of breach of contract which attracts a civil liability. It is further contended that the registration of FIR Annexure P-12 amounts to misuse of the process of Court and law as well.

7. On the other hand, the State counsel has contended that the petitioner took money worth Rs.9,00,000/- from the respondent by making false promise. It is further submitted that the complainant deposited amount of Rs.23,95,000/- directly with the market committee concerned as his share in the shop which was purchased by the petitioner in his own name, dishonestly. It has been further submitted that petitioner was having *malafide* intention since inception to defraud the respondent. After thorough investigation, police presented challan against the petitioner under Section



406 and 420 IPC. It has been further submitted that the present petition is nothing but misuse of the process of law and is liable to be dismissed.

8. In the instant case, FIR Annexure P-12 was registered on 26.06.2020. A bare perusal of the FIR (Annexure P-12) is sufficient to reveal that petitioner borrowed Rs.9 lakhs from the respondent No.2 and to secure the said loan the petitioner handed over registered sale deed of his house to respondent No.2 and further petitioner purchased one shop in vegetable market Naraingarh in an open auction with promise to give half share of the said shop to the complainant. Later on the petitioner back-tracked from his promise and failed to return the loan amount and also did not handover half share out of the aforesaid shop to the respondent No.2.

9. The Hon'ble Supreme Court in ***Delhi Race Club (1940) Limited and others Versus State of Uttar Pradesh and another*** 2024 INSC 626 while elucidating the distinction between mere breach of contract and the offence of criminal breach of trust and cheating, observed as follows:-

“The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case



of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”

10. Now adverting to the facts of the present case, as the petitioner failed to fulfill his promise, the respondent No.2 lodged complaints to different authorities. As per Annexure P-1 the complaint which was submitted to CM window was inquired into by ASI Shamsheer Singh and it was found that the matter in dispute was of a civil nature. Another complaint Annexure P-2, given to Superintendent of Police, Ambala was inquired into by Economic Offences Wing Ambala, wherein also it was found that no criminal offence is made out and issue involved is primarily of a civil nature. The said inquiry report is Annexure P-6. Subsequently, another complaint was lodged by the respondent No.2 which resulted into registration of FIR Annexure P-12, on the basis of the legal opinion given by Deputy District Attorney (DPO), Ambala.

11. It is well-settled that a mere breach of contract does not give rise to ‘criminal breach of trust’ punishable under Section 406 IPC or ‘cheating’ punishable under Section 420 IPC. In both the aforesaid Sections, *mens rea* that is intention to defraud should be present and in the case of cheating it must be there from the very beginning.

12. It is apparent that respondent No.2 served legal notice, Annexure P-7, dated 9.7.2018 and another legal notice Annexure P-8 dated 19.09.2019 whereby he directed the petitioner to return amount of Rs.23,95,000/- with interest upto date. The issuance of both the said legal notices is also an indicator of the position that it is essentially a dispute of a civil nature.



13. In the aforesaid circumstances, it could be easily made out that the criminal proceedings in question are result of *malafide* and were initiated only to harass the petitioner by giving cloak of a criminal case to a dispute which was essentially of a civil nature. No case is made out for taking cognizance of the offences punishable under Section 406 or 420 IPC against the petitioner. Therefore, the impugned FIR and all the subsequent proceedings arising therefrom are not sustainable.

14. It is settled position of law that this Court is empowered under Section 482 CrPC to quash an FIR even after charge-sheet is filed, if the Court is satisfied that continuing the proceedings would be an abuse of process of law, as has been held by the Hon'ble Supreme Court in ***Anand Kumar Mohatta Versus State (Govt. of NCT of Delhi) Department of Home and another (2019) 11 SCC 706*** and reiterated in criminal appeal Nos.1884 and 1885 of 2013 ***Shalieshbha Ranchhodbhai Patel and another Versus State of Gujarat and others***, decided on 28.08.2024.

15. Consequently, the present petition is allowed and FIR No.178 dated 26.06.2020 Annexure P-12, registered under Sections 406 and 420 IPC in Police Station Naraingarh, District Ambala and all the subsequent consequential proceedings arising thereof are hereby quashed qua the petitioner.

14.10.2024

Yogesh

**(KARAMJIT SINGH)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**