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

**CRM-M-312-2025 (O&M)
Date of decision : 09.01.2025**

Pradeep Gupta

...Petitioner(s)

Versus

Anil Kochar

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Gurmandeep Singh Sullar, Advocate,
Mr. Devaki Anand Sullar, Advocate,
and Mr. Haneesh Kumar, Advocate for the petitioner.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short, 'the BNSS'*) praying for quashing of the summoning order dated 11.01.2024 (P-1), passed by learned Judicial Magistrate First Class, Gurugram (*for short, 'JMIC'*), in complaint No.COMI/231/2023 dated 29.04.2023, under Sections 420, 406 read with Section 120-B of the Indian Penal Code, 1860 (*for short, 'the IPC'*), titled as ***"Anil Kochar Vs. Smt. Mamta Kaul and others"*** and all subsequent proceedings arising therefrom.

2. Contends that co-accused, namely, Mamta Kaul, had engaged the petitioner, only to provide legal assistance for the purpose of vetting the agreement to sell, which she intended to execute with respondent-complainant. Further contends that petitioner's signatures on the alleged agreement to sell dated 11.12.2021 (P-2) as a witness

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have been forged by the respondent-complainant. Also contends that petitioner was not present at the time of execution of alleged agreement to sell, nor he had signed the agreement to sell as a witness; rather he has been falsely implicated by the respondent-complainant. Lastly contends that at best, it is a civil dispute, which has been given the colour of criminal nature. In support of his contentions, learned counsel has cited the following judicial pronouncements:-

1. *Murari Lal Gupta Vs. Gopi Singh, (2005) 13 Supreme Court Cases 699.*
2. *Paramjeet Batra Vs. State of Uttarakhand and others, (2013) 11 Supreme Court Cases 673.*
3. *Vesa Holdings Private Limited and another Vs. State of Kerala and others, (2015) 8 Supreme Court Cases 293;*
4. *Dilip Singh Vs. State of Madhya Pradesh and another, Criminal Appeal No.53 of 2021, decided on 19.01.2021.*
5. *Kunti and Another Vs. State of Uttar Pradesh and another, (2023) 6 Supreme Court Cases 109.*
6. *Gulam Mustafa Vs. State of Karnataka and Another, 2023 SCC OnLine SC 603.*
7. *Charanjit Sharma and another Vs. State of Punjab and others (P&H), CRM-M-47809-2018, decided on 15.11.2023.*
8. *A.M. Mohan Vs. The State Represented by SHO And Another, Criminal Appeal No.1716 of 2024, decided on 20.03.2024.*
9. *Radheyshyam & Ors. Vs. State of Rajasthan & Anr., Special Leave to Petition (Crl.) No.13675 of 2023, decided on 22.07.2024.*

3. Heard learned counsel for the petitioner and perused the paper-book.

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4. It transpires that respondent-complainant had filed complaint under Sections 420, 406 & 120-B IPC with the allegations that petitioner along with other co-accused cheated him to the tune of Rs.21,00,000/-, on the pretext of selling property in question vide agreement to sell dated 11.12.2021. During preliminary stage, in support of above allegations, the respondent-complainant examined himself as CW-1; witness Vikas Tandon as CW-2 and also tendered some documents, including agreement to sell in question.

4.1. Learned JMIC, on the basis of oral and documentary material placed on the record, summoned the petitioner along with co-accused to face trial under Sections 420, 406 & 120-B IPC vide the order impugned dated 11.01.2024 and for reference, relevant part of the same is recapitulated as under:-

“13. A perusal of the entire documentary evidence available on record shows that the accused No. 1 Mamta Kaul entered into agreement to sell Ex.CW1/A for sale of property in question. In the said agreement it was mentioned that the property in question was in the joint name of Sh. Sanjay Kaul and Smt. Mamta Kaul and after Lt. Sh. Sanjay Kaul expired, his legal heirs are his wife Mamta Kaul and dau Sanskriti. It was also mentioned that Mamta Kaul had convinced that she would do all legal formalities to get the transfer of said property in her name before obtaining transfer permission in the name of complainant. It is further mentioned in the said agreement that the first party has agreed to obtain a Court Decree and other necessary documents required for executing the transfer/sale deed of the property in question in the name of complainant. The said agreement also bears mention of payment of Rs.21,00,000/- to the accused no. 1 by accused no. 2. Further Ex.CW1/B shows that a suit was existing between the accused no. 1 and accused no. 3 bearing No. CS-4038-2021, which was dismissed

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as withdrawn vide order dated 16.08.2022. Further, CWI has deposed on oath regarding allegations levelled in the complaint and he supported his allegations with the above said documentary evidence. CW2 Vikas Tandon has also deposed that the agreement Ex. CW1/A was signed in his presence and he also witnessed the said agreement. He also deposed that the amount of Rs.21,00,000/- was paid out of which Rs.11,00,000/- was paid to accused no. 1 and 3 on 13th December and part payment of Rs. 10,00,000/- was paid on 24.12.2021, which was witnessed and received by accused no. 2. He also deposed that the accused had assured to get the registry done in favour of complainant and that the civil case was filed withdrawn without the knowledge of complainant.

14. The evidence available on record shows that the accused no. 1 was not having the clear title in the property in question but she entered into agreement to sell Ex. CW/A by deceiving the complainant and induced him to pay Rs.21,00,000/- to her on the pretext of sale of property in question and she along-with accused no. 2 and 3 assured him that she would get the property in question transferred in her exclusive name through Court Decree but she got the civil suit between herself and accused no. 3 dismissed as withdrawn which shows that she had dishonest intention to cheat the complainant. Therefore, the conclusion is irresistible that the ingredients required for the offence of cheating and dishonestly inducing delivery of property in criminal conspiracy with each other are clearly established on record by the testimonies of witnesses as well as the documents tendered on record.

18. In these circumstances, from the contents of the complaint and the preliminary evidence adduced by the complainant, the case under Sections 420 and 406 read with Section 120-B of the Indian Penal Code, 1860 is prima facie established. This court is of the considered view that there is sufficient ground for proceeding against the accused persons under Sections 420 and 406 read with Section 120-B of the Indian Penal Code, 1860. Hence, both the accused persons are ordered to be summoned under Sections 420

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and 406 read with Section 120-B of the Indian Penal Code. 1860, on filing of copy of complaint and process fee for 29.02.2024.”

4.2 Perusal of above extract reveals that “sufficient” reasons have been recorded by learned trial Court while passing the impugned summoning order.

5. It is also discernible from the alleged agreement to sell that an amount of Rs.21,00,000/- was paid by the respondent-complainant and out of which, petitioner received Rs.10,00,000/- in cash and endorsement was made in this regard on the agreement to sell in question. For reference, the relevant part of agreement reads as under:-

“Part payment paid on 24.12.21, Amount of 10,00,000/- (ten lakh only) on cash mode received by Pradeep Gupta S/o Sh. S.C. Gupta.”

5.1 Moreover, it is specifically alleged that an assurance was also given by the petitioner as well as co-accused to the effect that property in question would be transferred in favour of respondent-complainant as and when co-accused-Mamta Kaul becomes the exclusive owner after the decision of civil suit pending between Mamta Kaul and her daughter, Sanskriti Kaul (both co-accused). However, said civil suit was got dismissed as withdrawn vide order dated 16.08.2022 and respondent-complainant had never been informed about the same. Moreover alleged that title of the property in question was not clear at the time of execution of agreement to sell in view of the fact that a civil suit was already pending qua the same.

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5.2 Thus, the aforesaid act and conduct of the accused, *prima facie*, shows their dishonest intention to cheat the respondent-complainant and as such, the allegations of cheating levelled against petitioner are duly supported by way of oral as well as the documentary evidence on record.

6. Also noteworthy that Hon'ble Supreme Court, in ***U.P. Pollution Control Board Vs. Dr. Bhupendra Kumar Modi, (2009) 2 SCC 147*** has categorically held that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused.

6.1 Apart that, it is settled proposition of law that once learned trial Court has exercised its discretion, it is not for this Court to substitute its own discretion for that of learned trial Court to examine the case on merits with a view to find whether allegations in the complaint, if proved, would ultimately end in the conviction of accused. Similar view has been taken by Hon'ble the Supreme Court in ***"Dy. Chief Controller of Imports and Exports Vs. Roshanlal Agarwal, (2003) 4 SCC 139"***, in para No.9 of the judgment and which reads as under:-

"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate

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for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process of the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v. Mohan Meakins Ltd. and after noticing the law laid down in Kanti Bhadra Sha v. State of W.B. it was held as follows:

The Legislature has stressed the need to record reasons in certain situations such as dismissal of the complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate has not passed a speaking order.”

7. Furthermore, this Court has gone through the entire paper-book, but there is not even a word discernible that respondent-complainant is having any ill will or motive, so as to falsely implicate the petitioner. On the contrary, it appears that petitioner did sign the agreement in question as a witness; received Rs.10,00,000/- and he is now trying to wriggle out of the same.

7.1 Also noteworthy that petitioner has neither annexed copy of complaint with the petition; nor he has challenged the same, for the reasons best known to him.

8. So far as the judicial pronouncements cited by learned counsel for the petitioner is concerned, the same are not helpful for the following reasons: -

- (1) In ***Murari Lal Gupta's case (supra)***, the title of the property in question was clear and there was no averment regarding dishonest and fraudulent intention; but in this case, as discussed above, title of the property was not clear.

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- (2) In *Paramjeet Batra's case (supra)*, Civil litigation was already pending between the parties; and the accused-appellant had been acquitted in another complaint of similar nature; therefore, distinguishable on facts.
- (3) In *Vesa Holdings' case (supra)*, Hon'ble the Supreme Court held that there was no dishonest intention to cheat from the very inception; however, in present case, the dishonest intention of petitioner is well apparent.
- (4) In *Dilip Singh's case (supra)*, petitioner therein had been granted pre-arrest bail by the Hon'ble Madhya Pradesh High Court with a condition to deposit Rs.41,00,000/- in Court and the said condition was challenged before Hon'ble the Supreme Court; hence distinguishable on facts.
- (5) In *Kunti's case (supra)*, the dispute was simplicitor regarding sale-purchase of a property; hence distinguishable on facts.
- (6) In *Gulam Mustafa's case (supra)*, there was unexplained delay of more than 60 years in launching the prosecution; therefore, distinguishable on facts.
- (7) In *Charanjit Sharma's case (supra)*, the Coordinate Bench of this Court observed that civil suit was already pending between the parties; however, no such civil litigation is pending between the parties herein; hence distinguishable on facts.
- (8) In *A.M. Mohan's case (supra)*, allegations were against co-accused and not against the petitioner;

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however, in this case, specific allegations have been levelled against all the accused, including present petitioner of receiving Rs.10,00,000/-.

(9) In *Radheyshyam's case (supra)*, Hon'ble the Supreme Court held that there were no allegations of cheating or breach of trust; whereas, in present case, there are specific allegations against the petitioner of conniving with other co-accused and duping the complainant to the tune of Rs.21,00,000/-.

9. In view of the above discussion, this Court does not find any ground to quash the impugned summoning order dated 11.01.2024.

10. Consequently, there is no option, except to dismiss the petition.

11. Ordered accordingly.

12. Above observations be not construed as an expression of opinion on merits of the controversy, in any manner.

Pending application(s), if any, shall stand disposed off.

09.01.2025
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/ reasoned : Yes / No

Whether reportable : Yes / No