IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

289 CRM-M-3258-2020
DATE OF DECISION: 10.02.2025

SANDEEP KUMAR
...PETITIONER

Versus

STATE OF PUNJAB
... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Aayushi, Advocate for
Mr. Umesh Aggarwal, Advocate for the petitioner(s).

Mr. Rajiv Verma, DAG, Punjab.

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SANDEEP MOUDGIL, J (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing/setting aside of F.I.R. No.133 dated 31.08.2019, (Annexure P-1) under Sections 420 of IPC, registered at Police Station 'Maqboolpura' Amritsar. (Annexure P-1), and also consequential proceedings arising out of the aforementioned FIR.

2. Factual matrix of the case unfolds that the complainant namely Hari Singh had purchased one car UVA-Sail from the company in which the petitioner is working as Business Development Manager namely M/s S.V.Motors at G.T. road, Amritsar on 09.11.2015 for an amount of Rs.6,90,000/- , one insurance cover note was also issued by the said company in favour of the complainant but due to some technical error, the company issued a letter dated 13.11.2015 to the complainant informing to get the cover note changed as the company had issued new

cover note pertaining to different Insurance company and the same was issued on 01.12.2015 with respect to the said car without charging any money from the complainant.

3. Thereafter, the car of the complainant met with an accident on 03.01.2016 and pursuant to that, the complainant applied to the Insurance Company for getting the claim of insurance but the surveyor of the Insurance Company formed a report according to which the Insurance company had repudiated the claim of the complainant regarding the said car which compelled the complainant to file a complaint under the Consumer Protection Act before the District Consumers Disputes Redressal Forum at Amritsar against the Insurance Company and the company namely M/s S.V.Motors just to settle out the matter in a peaceful way had given an amount of Rs.6,00,000/- which were deposited in the account of the complainant vide cheque no. 590916 dated 04.01.2019 and thereafter he withdrew his complaint from the District Consumers Disputes Redressal Forum at Amritsar. However, later on the asking of the M/s S.V. Motors of the sale letter with regard to mangled remains and debris of the damaged car, the complainant refused to handover the sale letter and indeed again filed a fresh complaint demanding Rs. 3,00,000/- more as interest and lodged an Fir No. 133 dated 31.08.2019 under section 420 of IPC registered at Police Station Maqboolpura, Amritsar.

4. Counsel for the petitioner contends that the petitioner has been falsely roped in the instant FIR as he is only working in the company as Business Development Manager and has nothing to do with the Insurance sector. He further contends that the petitioner had neither issued any cover note nor had any dealing whatsoever with the complainant added with the fact that once the entire dispute stands

mutually settled wherein the complainant had received the entire amount i.e.Rs.6,00,000/- from the company so the instant FIR is only an arm twisting method to extract more money from the company.

5. It is also argued by the counsel for the petitioner that the offence under section 420 IPC is not made out wherein there was no intent to deceit from the very inception as the company had already paid the entire amount to the complainant.

6. Per contra, state counsel has filed reply by way of an affidavit by Gurinderbir Singh, PPS, Assistant Commissioner of Police, East, Amritsar which is taken on record. Learned state counsel submits that the complainant namely Hari Singh has not be arrayed as a party to the instant case. He further submits that the petitioner and one Minakshi (now dead) were responsible for providing insurance policy of the car but on enquiry it was revealed that the petitioner and Minakshi had not deposited premium amount of Rs. 20501/- with United Insurance Company, hence the earlier cover note of the car was rejected and thereafter the petitioner without consent and knowledge got issued new insurance cover note of another insurance company which clearly depicts that the act of the petitioner was done fraudulently to deceive the complainant and on this basis prays for dismissal of the instant petition.

7. Heard learned counsel for respective parties at length and meticulously perused the record in hand.

8. The instant petition pertains to an FIR no.133 dated 31.08.2019 under section 420 IPC based on the complaint of Hari Singh who had purchased a new car Chevrolet Sail on 09.11.2015 from S.V.Motors, Amritsar while paying full amount to the company wherein an insurance policy was to be provided of the car to the complainant but

the petitioner along with one Minakshi(now deceased) provided Cover note of United Insurance Company but did not provide policy number. Thereafter, on 03.01.2016, the car met with an accident but complainant could not get the insurance claim for which allegedly the petitioner took Rs.10,000/- as a bribe on pretext of file charges and later issued a new cover note without the knowledge of the complainant and the insurance claim was not sanctioned by the insurance company which compelled the complainant to file compliant seeking Rs.6 lakhs in lieu of loss of his car in the District Consumer Disputes Redressal Forum wherein the matter was amicably settled between M/s S.V. Motors and the complainant upon receiving the amount in question. It is only on demanding the sale letter with regard to mangled remains and debris of the damaged car from the complainant, he refused to handover the same to the company and indeed again filed a fresh complaint dated 10.04.2019 claiming Rs. 3,00,000/- more as interest on the said amount.

9. At the very outset, it is apparent that the petitioner has been working only as an employee in M/s S.V.Motors company as Business Development Managers and was not directly accountable to the complainant. Rather, the fact that the matter stands amicably settled is clearly evident wherein the company has paid back Rs.6,00,000/- to the complainant and as a result, the concerned consumer complaint no. CC/63/2018 titled as *"Hari Singh Vs The New India Assurance Co. And others"* was dismissed and the case was closed by the police on 02.02.2019 on the statement on the complainant himself.

10. The guiding factors while quashing the petition of criminal proceedings should be to secure:-

(i) ends of justice, or

(ii) to prevent abuse of process of any court

The court is sanguine of the fact that the inherent power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape etc. But on the other hand, those criminal cases predominantly having civil characteristics should be quashed when the parties have resolved their entire disputes among themselves. The same proposition stands held by the Apex Court in "***K. Bharthi and anr Vs State of Telangana & Anr Criminal Appeal No. 4113 of 2024"*** wherein it has been held that:-

> *'31. It could be seen that this court reiterated the position that the criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.'*

11. Now, taking into consideration the facts of the instant case, the court deems it apposite to refer to a legal maxim *"nemo debet bis vexari pro una et eadem" i.e no one should be vexed twice for the same cause*, meaning thereby when the company M/s S.V.Motors has paid the insurance claim of Rs. 6,00,000/- vide cheque no. 590916 dated 04.01.2019 to the complainant and it is only on the basis of his statement that the police had closed the case on 02.02.2019, therefore, by no stretch of imagination the complainant can now make petitioner liable for offence under section 420 IPC and claim another Rs. 3,00,000/- for the damage of his car.

12. In addition, it is relevant to mention section 420 IPC which is reproduced herein below:-

"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 2013 (1) ALD (Crl.) 269 (AP) MSM,J CrlP_546_2014 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".

The essential ingredients to constitute the offence of cheating are:

(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 or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

13. In ***V.Y.Jose v. State of Gujarat* Criminal Appeal No.2048 of 2008,** the Apex Court laid down following ingredients to constitute cheating.

"An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

14. For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under **Section 420** of the Indian Penal Code can be said to have been made out. An offence of cheating may consist of two classes of cases:

(1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;

(2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused."

15. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. Subsequent conduct is not the sole test i.e mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction and applying the same in the present case, the intention to deceive the complainant at the very inception stands missing.

16. Taking into consideration the facts of the present case and the spectrum of law discussed by the Apex court, this court is of the considered view that the present petition stands allowed wherein the

matter has already been settled between the parties therefore, by no stretch of imagination the petitioner can be sued again for the act which stands settled.

17. In the light of above, the present FIR no. 133 dated 31.08.2019 (Annexure P-1) under Section 420 IPC, registered at Police Station Maqboolpura, Amritsar and the consequential proceedings arising therefrom stands quashed qua the petitioner.

18. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

10.02.2025
anuradha

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*